

NOTICE

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2016 IL App (4th) 150897-U

NO. 4-15-0897

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 7, 2016
Carla Bender
4th District Appellate
Court, IL

In re: K.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Adams County
v.)	No. 13JA16
JUSTIN WHITE,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in terminating respondent father's parental rights, as the State failed to meet its burden of proving respondent unfit.

¶ 2 Respondent father, Justin White, appeals the order finding him an unfit parent and terminating his parental rights to K.W. (born March 20, 2013). Justin argues the orders are against the manifest weight of the evidence. We agree the State failed to meet its burden of proving parental unfitness and reverse.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, when K.W. was five days old, the State petitioned for adjudication of wardship on his behalf. In its petition, the State listed Justin as K.W.'s father and Lacinda White, who is not a party to this appeal, as K.W.'s mother. The State alleged K.W. was

neglected because Lacinda, when she was six months pregnant with K.W., tested positive for cannabis and phencyclidine (PCP). On March 2, 2013, Lacinda went to an emergency room seeking medication. Lacinda denied she was pregnant and left upon staff's refusal to provide her with medication. Justin and Lacinda also had a history of indicated reports. The record indicates Lacinda inflicted domestic abuse on Justin, and Justin violated a safety plan by allowing Lacinda to visit their children. Lacinda's and Justin's parental rights were terminated to two other children in July 2011.

¶ 5 On October 28, 2013, the trial court found K.W. neglected "and/or" abused. The court concluded K.W.'s parents had a history of indicated reports due to substance abuse and domestic violence. The court further observed their parental rights to their other children had been terminated, and Lacinda sought drugs while pregnant.

¶ 6 The family service plan, dated December 2, 2013, and authored by Jenna Miller, indicates Justin was doing very well in services. Justin terminated his relationship with Lacinda, and Lacinda filed for divorce. Justin signed the papers, but Lacinda did not file them. Justin initially moved in with his grandmother and parents to save money, but he recently moved into an apartment with his new girlfriend, Amber Kline. Justin worked for a cab company. He was committed to regaining custody of K.W. Justin was taking medication for depression and to help him sleep. He saw a psychiatrist every two months and met with a therapist, Tim Baker, twice each month. The permanency goal was to return home within 12 months.

¶ 7 A family service plan, dated June 20, 2014, reports the plan was to return K.W. home in December 2014. Justin and Kline had moved into a trailer after losing their apartment due to failure to pay rent. The trailer was always clean when Miller and the family-support

worker from Addus Healthcare, Inc. (Addus), was present. Justin continued to work for a cab company, where he had been employed "off and on for 3-4 years," earning approximately \$300 per week, plus tips. Justin participated in all services and cooperated with the Department of Children and Family Services (DCFS).

¶ 8 A family service plan, dated December 5, 2014, indicates there were concerns regarding the instability of Justin's relationship with Kline and his employment. No appointments during this time period were missed. The two were getting ready to move again. In the evaluation, Miller reported the following:

"Through observation and reports from the Addus worker and Justin, [Kline] is controlling at times and they have almost split up several times. Her behaviors have somewhat mirrored the behaviors of past relationships that Justin has had that involved domestic violence. She has told Justin that if they break up, he will not get [K.W.] back; she has not allowed him to use her car, even though he took a loan out to get it fixed."

Kline reportedly treated Justin's mother poorly. Miller further opined, "Justin has the ability to parent [K.W.] long term," but Miller "was concerned about the amount of the time this case will last before permanency can be achieved." Miller believed Justin needed "to become stable before this worker will feel comfortable increasing visitation and moving closer to return home." At the time, Justin was employed at Burger King. Justin left the cab company because the hours would conflict with his ability to parent K.W. The author concluded Justin failed to make "significant progress to correct the conditions that led to [K.W.'s] being placed in care. While he

engaged in mental health services[,] he has not made significant progress and still struggles to be able to recognize abusive and controlling issues in his intimate relationships. His current paramour has significant mental health concerns and has been unsuccessfully discharged from therapeutic services *** due to noncompliance and not engaging in services."

¶ 9 In March 2015, a legal screen was conducted by DCFS. This resulted in a change to the recommended permanency goal. DCFS recommended the permanency goal be changed to substitute care pending court determination on termination of parental rights.

¶ 10 In May 2015, the State moved for the termination of Justin's and Lacinda's parental rights. The State alleged Justin an unfit parent based on the following grounds: (1) he failed to make reasonable efforts to correct the conditions that formed the basis of K.W.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) he failed to make reasonable progress toward K.W.'s return within nine months of the adjudication of neglect (October 28, 2013, to July 28, 2014) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) he failed to make reasonable progress toward K.W.'s return within any 9-month period following July 28, 2014 (July 28, 2014, to April 28, 2015 and April 28, 2015, to January 28, 2016) (750 ILCS 50/1(D)(m)(ii) (West 2012)). The State further alleged K.W.'s best interests necessitated the termination of Justin's parental rights.

¶ 11 The fitness hearing was held in October 2015. Miller, a child-welfare specialist with DCFS, testified she became K.W.'s caseworker when DCFS took protective custody of him in March 2013. Service plans were created for Justin. From October 2013 to December 2013, Justin was required to complete a substance-abuse assessment and follow the recommendations. Justin completed the evaluation and no services were recommended. Justin was required to

complete drug drops as requested, but none were requested during that time period. Justin's progress on this task was rated satisfactory. Justin was also required to attend therapy with Timothy J. Baker at Transitions of Western Illinois (Transitions), attend his doctor appointments for psychotropic medication, follow recommendations, complete a psychological examination, and take his medication. Justin's progress was rated satisfactory. Miller reported he was cooperating with DCFS and accomplishing the necessary tasks related to the cooperation requirement. As to housing in that time period, Justin's progress was rated unsatisfactory. Justin's progress was also rated unsatisfactory on the parenting task because Miller had not yet referred him to classes. Visits with K.W. went "[v]ery well."

¶ 12 According to Miller, she created a service plan, dated June 20, 2014, for Justin. From December 2013 through June 2014, Justin's progress was rated satisfactory on all tasks. Justin "was fully cooperating with DCFS" and had participated in all services. Justin attended counseling, took his medication, saw his psychiatrist, and followed recommendations. Justin's housing improved as he remained in the same home for six months. Justin was living with his girlfriend, Kline, during that time period. Kline also participated in services. The trailer had a bedroom for K.W., and it was in suitable condition for visits. The two visits each week increased to three hours. At one point, visits became unsupervised, but Miller was uncertain of when this transition occurred. Justin acted appropriately with K.W. He used skills learned in parenting classes. Kline acted appropriately with K.W. during the visits. Justin did most of the parenting.

¶ 13 Miller testified she created a December 2014 service plan. Justin planned to divorce Lacinda, who was in prison, with his anticipated tax refund for 2014. As of December

2014, Justin had not divorced Lacinda. When Miller asked about the plans for divorce, Justin stated he did not have the money to complete the divorce. Justin was also caring for his mentally disabled mother. He planned to use his anticipated tax refund for 2014 for the divorce. On that service plan, Justin was rated satisfactory on the housing task. He resided in the same trailer. It continued to meet DCFS standards. As to the substance-abuse task, Justin was rated satisfactory. One drop was performed during this time period, and it was clean. Justin continued to cooperate with DCFS. On the parenting task, Justin continued with classes. During this time, visits were unsupervised and held twice a week for three hours. Justin acted appropriately with his child and used the parenting skills he had learned in classes. His progress was rated satisfactory.

¶ 14 Regarding the mental-health task, for the period of June 2014 to December 2014, Miller testified Justin's progress was unsatisfactory. Justin was required to meet with his therapist at Transitions, be open and honest with him, meet with his psychiatrist, take his medication, and complete a psychological evaluation. In this time period, Justin "missed a lot of appointments" with his counselor, Baker. Justin was almost discharged unsuccessfully. Justin and Kline were experiencing problems in their relationship, and Justin was not being honest about these problems. Their relationship "included domestic violence, which was a concern because of his history of being the victim of domestic violence, and this situation with [Kline] *** was the same." When Miller spoke to Justin, Justin told her he was attending the counseling sessions. When Miller learned the opposite was true, she discussed the issue with Justin. He reported "a lot of problems" were occurring in his relationship. Justin was depressed, and "his medications were changing a lot." Miller could tell Justin's mental health was affected. In January 2015, Miller transferred the case to Chaddock.

¶ 15 On cross-examination, Miller testified she was the caseworker for the two older children of Justin and Lacinda. The primary concerns in regard to the older children were Lacinda's drug use and her history of domestic violence on Justin. On the first service plan, from the period of March 2013 to December 2013, Miller rated Justin's overall progress as satisfactory and listed the goal as return K.W. home to Justin. The only reason Justin received an unsatisfactory rating was because the classes had not ended. Justin completed the classes at one agency and was participating in a class with another. Justin and Lacinda's relationship ended before August 2013. Miller testified they had not been together since that time.

¶ 16 Miller testified Justin was loving and nurturing toward K.W., K.W.'s needs were met, and K.W. was Justin's priority during the visits. Justin engaged in activities suited for K.W.'s developmental needs.

¶ 17 Miller testified Justin was not honest about signs of domestic violence in the relationship. When asked about the domestic violence in their relationship, Miller stated, "[Kline's] controlling behaviors towards him." The following discussion occurred:

"[DEFENSE COUNSEL]: Okay. Then was there any physical contact of an insulting or provoking nature between *** [Kline] and Justin that you became aware of?

[MILLER]: There was no physical contact that I'm aware of.

Q. Was there any physical contact between [Kline] and Justin that might have caused harm to either Justin or [Kline] that you became aware of?

A. There was no physical contact that I'm aware of.

Q. Then when you say that there was domestic violence, you are saying that there was domestic violence because of your opinion that [Kline] was controlling?

A. The way that she treated Justin, yes."

¶ 18 Miller provided examples of this behavior. Kline threatened Justin, saying, "I'm going to leave you, and if I leave you, you are not going to get your son back. If I leave you, you are not going to have an income. You are not going to have a stable life." Kline yelled at Justin. Kline also would not allow Justin to use her car, even though he was paying for it.

¶ 19 Miller testified Justin did not share this information with her or with his counselor. A worker from Addus, who was there two to three times a week, observed the behavior and reported it. When Miller asked Justin about these incidents, Justin was honest with her. He failed to identify these incidents as domestic violence, and he received an unsatisfactory rating. Miller testified Justin continued his counseling with Baker. He took his medication, and Kline and Justin continued their couples counseling with Baker. Miller did not know how many appointments Justin missed. Miller explained the case was transferred to Chaddock because, at some point, K.W.'s sibling was identified as a specialized foster child.

¶ 20 According to Miller, all of the objectives on the third service plan were rated satisfactory except mental health. Justin continued to have unsupervised visits with K.W. He continued to provide "good parenting" of K.W. when K.W. was in his care.

¶ 21 Laura Dagg, a child-welfare specialist at Chaddock, testified she was the caseworker on K.W.'s case from January 2015 to June 2015. Dagg rated one service plan on the

case. Her rating occurred on May 31, 2015. Justin was rated satisfactory on the goal to maintain sobriety. There was no evidence Justin was not sober. As to maintaining contact, Justin was rated unsatisfactory. Justin maintained contact and was satisfactory until March 17, 2015, when there was a legal screening. Before that time, he was rated satisfactory, as he maintained regular contact. As of the March 17, 2015, legal screening, when he believed K.W. would not return home, Justin became very upset. He stopped contact with Dagg and his service provider at Transitions for a few weeks. Justin then resumed regular contact. Justin continued his services, except for that "few week" period. Justin and Kline moved Justin's mother from the trailer in February 2015, and he did not report it.

¶ 22 Dagg rated the home unsatisfactory. When she was in the home, "it was always in disarray." Dagg stated, "[t]here was [*sic*], trash, clothes laying [*sic*]." Dagg stated a cat litter box was in the kitchen and cat feces would sometimes be next to it. Regarding K.W.'s bedroom, Dagg stated the following: "The utility room that they had transferred – or converted, rather, into a bedroom for [K.W.] was just full of stuff. The dresser that was in there, the drawers were either falling out or broken, so things were falling out of it. The crib that they had in there was full of toys, and boxes and clothes. K.W. couldn't use it as a bedroom; it wasn't acceptable." Dagg testified the condition was the same both before and after March 17, 2015.

¶ 23 According to Dagg, Justin made unsatisfactory progress on his mental-health task. Justin did not attend sessions for the few weeks after the legal screening. After the screening, Justin "was very upset" and unable to focus on tasks set for him. Justin was preoccupied with K.W. and the court process. Justin returned to counseling "but was not making substantial progress."

¶ 24 As to parenting, Dagg rated Justin unsatisfactory. Dagg called the visits with K.W. "more of a play date." Dagg stated, "[t]here wasn't a lot of parenting going on." K.W. "did whatever he wanted to." Dagg identified sanitation issues, such as throwing a diaper, dirty-side down, on the floor next to K.W. Justin threw wipes next to K.W. on the floor.

¶ 25 Dagg testified to issues regarding budgeting. Justin worked at Burger King. Kline worked at H & R Block and then Fazoli's. The two had a limited income and a number of expenses. They had "a lot of old bills" Dagg did not know about until Justin told her. Justin believed the situation would just work itself out and he did not want to discuss it further.

¶ 26 According to Dagg, she first met with Justin on January 23, 2015. They met at least once a month. Dagg also conducted home visits at least once a month. When the case was assigned to Chaddock, visits occurred twice a week in the home. After the legal screening in March 2015, visitation was changed to a monthly visit at the Chaddock office.

¶ 27 Dagg testified Kline had tasks under the service plan. She was required to participate in counseling, but she had been unsuccessfully discharged before Dagg was assigned to the case. Kline had not been involved in services from November 2014 until the child-family team meeting on January 26, 2015, at which she agreed to accept a referral. Kline began meeting with Chaddock's therapist in February 2015, but she was unsuccessfully discharged within a couple of months for refusing to engage. She believed Justin was not getting K.W. back, so she saw no point in continuing. On June 11, 2015, the case was assigned to Lisa Brandon.

¶ 28 On cross-examination, Dagg testified she lost contact for about three weeks after the March 17, 2015, legal screening. Dagg acknowledged she did not include a report of cat feces in her service-plan rating, nor did she mention the dirty diaper on the floor. In the service

plan, under mental health and domestic violence, Dagg wrote, "Mr. Baker reported that [Justin] and [Kline] are doing better in couple's sessions as their level of communication is getting better" and added they have more work to do.

¶ 29 Timothy J. Baker, a clinical mental health therapist at Transitions, testified regarding his counseling sessions with Justin. Baker first met Justin on July 18, 2013, when Justin presented himself at Transitions for therapy. Justin displayed signs and symptoms commonly known for depression anxiety. Justin wanted to discuss things in his past from his childhood into adult years. Baker knew Justin had a matter pending with DCFS. Since July 2013, Justin attended sessions regularly. In the beginning, Justin met weekly with Baker. Meetings then changed to every other week and sometimes every three weeks. One of the goals of Justin's treatment plan involved stabilization, to deal with the stress from anxiety and depression. Another goal was to improve basic communication skills. A third goal was to deal with the signs and symptoms of depression.

¶ 30 Baker testified Justin and Kline also began discussing domestic-violence issues. In sessions, Baker instructed, "domestic violence has all kinds of faces," being emotional, sexual, and physical. The two discussed these faces of domestic violence. Justin initially believed domestic violence had to be physical. When Baker worked with Justin individually, Justin did very well with his communication goals. They were able to work through Justin's processing and he learned he had more control over certain matters than he realized.

¶ 31 According to Baker, when Justin began sessions with him, he was still in a relationship with Lacinda. "It was a real bad situation where there was domestic stuff going on in that." In his relationship with Kline, Justin felt like he had no say in what he could or could

not do. Justin and Kline began relationship counseling with Baker in February 2014. When discussing the couple's therapy, Baker testified to the following frequent scenarios:

"At times you could—it would be safe to say it would be tense because you would be talking about some really strong issues, and you would have to remind—I will say you had to remind [Kline] a couple of times that Justin still needed to express himself about what we were talking about. Then I would excuse [Kline] and have her go into another room, and then we talk, and then I would bring [Kline] back in and recreate what we talked about to the point where she maybe was frustrated and left the room."

The relationship counseling continued to the date of the fitness hearing.

¶ 32 Baker testified, around December 2014, his sessions with Justin were every three weeks. Around the time of the March 2015 legal screening, Justin missed sessions over an approximately 30-day period. After this time, Justin's anxiety level was at its highest. Once therapy sessions resumed, it was clear the issues with K.W. were making him anxious. Through therapy, they were able to reduce some of Justin's anxiety.

¶ 33 Regarding the relationship counseling, according to Baker, there was some loss of progress after the March 2015 legal screening. It seemed some of the skills were starting to lag and they had to be readdressed to where Justin could start dealing with reality again and the things he needed to deal with.

¶ 34 Regarding Justin's relationship, Baker reported, "I would actually say that was a broad spectrum where things could be considered healthy at one point and other points it was

not." When asked if he found that Kline wanted "to be in control of Justin," Baker responded, "I would say she wanted to overtalk [*sic*] him at times." Baker testified Justin made individual progress. As to the couple's progress, Justin improved in identifying issues and the two started to work more on how to better communicate in order to have a healthier relationship.

¶ 35 Baker opined Justin's employment and housing were sporadic, and the communication between Kline and Justin "seemed to be on and off." Baker could not say whether Justin could safely parent a child, saying parenting issues were beyond his scope.

¶ 36 On cross-examination, Baker testified Justin saw a psychiatrist at Transitions. Baker had access to the files from the psychiatrist. He had no concerns about Justin's participation in treatment with the psychiatrist. Justin, as always, signed every release presented to him. Other than the missed sessions after the legal screening, Justin's attendance and participation was "very good." Baker opined it would be fair to say, at the March 2015 meeting in which Justin learned of the changes in the situation involving a child, Justin suffered some trauma.

¶ 37 Baker did not believe he ever told Miller Justin was not being honest or open with him. Baker denied telling Miller there was a possibility Justin would be discharged for lack of cooperation or attendance. When the time between therapy sessions stretches from weekly to once every three weeks, it is due to progress. Baker suggested to Justin his mother move out. Justin was reluctant at first, as it was his mother, but Justin agreed it should happen. After Justin's mother left the home, some stress and tension between Kline and Justin was relieved.

¶ 38 Baker testified, during his relationship sessions with Kline and Justin, he had observed verbal arguments and disputes, but he did not observe Kline verbally abuse Justin. She

did not call him names. Justin had not reported any incidents between Kline and him that suggested to Baker the verbal interaction between the two of them "was in the nature of domestic violence." The only report by DCFS on domestic violence occurring between the two was a mention of a "possibility that was going on." Per DCFS's request, Baker addressed the faces of domestic violence with Justin and Kline. After clarifications were made, Baker believed he received open and honest responses from both individuals. He believed the discussion was productive and they progressed on the matter.

¶ 39 On redirect examination, Baker acknowledged Kline had perhaps "talk[ed] down to him about employment or something." Baker acknowledged if such conduct escalated, it could meet the definition of domestic violence, but when asked if it rose to that level in their relationship, Baker stated, "I would have to say no."

¶ 40 On recross examination, Baker testified when the two would argue, Kline would sometimes "mumble, grumble under her breath." Justin did not like it when he felt he was being talked down to" or talked over. He would address Kline with Baker's support and without it. He believed in their interactions they had made minimal progress.

¶ 41 Lisa Brandon, a child-welfare specialist with Chaddock, testified she had been assigned as the caseworker in June 2015. The case was transferred to her because of the legal screening and "the anticipated recommendation of the goal change to substitute care pending termination." Brandon met with Justin periodically—approximately three times in his home, multiple meetings at the agency, and twice during visits. During the scheduled home visits, Brandon did not observe conditions she felt were unsafe. Brandon attempted unannounced visits, but no one was home. Justin's cell phone had been disconnected for lack of payment.

There was a period of a few days where their power was shut off.

¶ 42 According to Brandon, Justin had not been consistently employed. In June 2015, Brandon had been working at Manchester through a temporary position. He was laid off. Since then, Justin secured a job at McDonald's. Supervised visits occurred once a week on Thursdays for two hours at Chaddock. Brandon testified she had two phone conversations with Baker, who "indicated no significant deterioration or improvements." He had an increase in his Trileptal prescription "in terms of possibly an increase in depression or anger." Brandon stated Kline was "a lot more assertive with her information," and Justin was more laid back.

¶ 43 Brandon observed visits with K.W. Justin was more engaged with K.W. Kline was "a little more isolated from the two." Kline attempted to engage K.W., but she appeared to be playing with the toys herself, perhaps in an attempt to get K.W.'s attention.

¶ 44 On cross-examination, Brandon observed one problem with sanitation. When Justin changed K.W.'s diaper, K.W.'s bottom came into contact with the couch. Brandon tossed Clorox wipes to Justin and directed him to wipe down the seat. Justin used the wipes properly and disposed of the diaper and wipes properly. Justin engaged with K.W. in a loving nurturing way. He played with K.W. and took care of his physical needs. Justin redirected K.W. as needed.

¶ 45 The record contains a family service plan dated May 31, 2015. Dagg's testimony covers much of the content of the report. According to the service plan, Kline had not been engaged in individual mental-health services since November 2014. Kline's therapist, through Chaddock, considered Kline "mostly cooperative" but "reluctant to fully engage." Kline disclosed to her therapist a plan to kidnap K.W. but stated "she would never act" on the plan.

Kline expressed she would start services at Transitions upon being unsuccessfully discharged from mental-health services at Chaddock.

¶ 46 At the close of evidence, the guardian *ad litem* argued K.W. had "been ably cared for by very competent foster parents." The guardian *ad litem* argued the interests of K.W. were permanency, and he had waited long enough.

¶ 47 The trial court found, while some efforts and progress had been made, such progress was not "to the significant degree required under the statute." The court concluded "the evidence has shown that the father, [Justin], perhaps participated in services to the best of his ability, did those things that he was able to do." The court observed the facts show Justin's house was not in an appropriate condition for a child, and the visits had not extended to overnight visits. The court observed visits were in fact scaled back from unsupervised to supervised. The court found the State proved by clear and convincing evidence Justin was unfit on all grounds."

¶ 48 The hearing then proceeded on the best interests of K.W. Miller testified K.W. had the same foster placement his entire life. K.W. had no medical issues or developmental delays. K.W., who was 2½ years old, was attending day care with a family member. K.W. was bonded to his foster family and his siblings, who also resided in the home.

¶ 49 On cross-examination, Miller testified the foster family had adopted one of K.W.'s older brothers and the adoption of the oldest brother was "coming up." Miller testified Justin had surrendered parental rights to his first two sons. Neither of these children was involved in reports of physical harm to them. The foster father had been indicated for "cuts, welts, bruises, abrasions or injuries to a child," but "[h]e appealed that and it was overturned." The foster father was recommended to attend anger-management classes in October 2014.

Miller did not believe he had anger-management issues, but her supervisor recommended that service.

¶ 50 Miller testified Justin and K.W. were bonded. In her final service plan, Miller opined, "[t]his worker still feels that Justin has the ability to parent [K.W.] long term."

¶ 51 Brandon testified K.W. considers the home of his foster family his home. He calls his foster parents "Mommy and Daddy." His emotional needs were met. He was integrated into their household. The foster parents signed a permanency commitment form, intending to adopt K.W.

¶ 52 Justin testified K.W. called him "Daddy." Justin called his relationship with K.W. "very joyful." Justin enjoyed being with K.W. and when they play, K.W. will run toward Justin. Justin observes joy on K.W.'s face. Justin testified he would have no problem providing for K.W.'s physical or developmental needs. They played games and with block, dinosaurs, tractors—whatever K.W. wanted. Justin never had a problem soothing K.W. or meeting his needs.

¶ 53 According to Justin, he was not legally divorced from Lacinda. He considered them divorced, but he was unable to pay the fee of "at least a thousand dollars" to begin the process. Justin had no contact with Lacinda. Justin testified, if his parental rights were not terminated, he would continue to see Baker for counseling, take his medication, and "continue anything."

¶ 54 Justin testified his therapy sessions with Baker helped. Justin believed Baker helped him to be more assertive and express himself more. Justin is able to assert himself more with Kline. Kline worked with him on that. They sometimes agree to disagree, and at times

"come to an agreement." It is not always Kline's agreement. He planned to continue working on communication skills, as "[t]here's always room for more communication."

¶ 55 On cross-examination, Justin testified he and Kline moved from their trailer to a one-bedroom apartment "a couple of days ago." Justin believed the apartment had sufficient room should K.W. be returned to him or given overnight visits. Regarding Justin and Kline's communication skills, Justin testified Kline would not hold a grudge after disagreements. Justin worked at McDonald's and he "love[d] it there."

¶ 56 The trial court found termination of Justin's parental rights was in K.W.'s best interests and granted the State's petition.

¶ 57 This appeal followed.

¶ 58 II. ANALYSIS

¶ 59 Termination proceedings begin with an examination of parental fitness. A parent will be found "unfit" if the State proves, by clear and convincing evidence, one ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011). On appeal from a finding of parental unfitness, this court gives great deference to the trial court's decision as it viewed witnesses and observed their demeanor. *Id.* We will not reverse a fitness finding unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005). A finding is against the manifest weight of the evidence if "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *Id.*

¶ 60 Here, the trial court found Justin unfit to parent K.W. based on the following grounds: (1) Justin failed to make reasonable efforts to correct the conditions that were the basis

of K.W.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) Justin failed to make reasonable progress toward K.W.'s return within nine months of the adjudication of neglect (October 28, 2013, to July 28, 2014) (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) Justin failed to make reasonable progress toward K.W.'s return within any nine-month period following July 28, 2014 (July 28, 2014, to April 28, 2015 and April 28, 2015, to January 28, 2016) (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 61 A. Reasonable Progress

¶ 62 While Justin asserts the trial court erred on its findings related to all grounds, the State makes no argument supporting the trial court's decision Justin failed to make reasonable efforts and the State decided not to address the question "[w]hether it is appropriate to consider whether Justin made reasonable progress during the final nine-month period," which extends beyond the date of the hearing on the termination petition. Instead, the State, on appeal, "identified two *** nine[-]month periods where Justin did not make reasonable progress toward the goal of reunification." The State lists those dates as October 28, 2013, to July 28, 2014, and the period of July 28, 2014 to April 28, 2015. We begin by considering whether the record shows the State proved by clear and convincing evidence Justin failed to make reasonable progress during those two periods.

¶ 63 The question of whether a parent's progress toward the return of the children is reasonable is judged under an objective standard. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). The benchmark from which to judge progress "encompasses 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 become

known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001). Our supreme court, in determining this benchmark, considered, among other things, "the overriding concern that a parent's rights to his or her child will not be terminated lightly." *Id.* at 216, 752 N.E.2d at 1050. Progress is reasonable if the parent made measurable or demonstrable movement toward the goal of returning the child to his or her custody. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). We are mindful the State, not the parent, carries the burden of proving a lack of reasonable progress by clear and convincing evidence. See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129.

¶ 64 In this case, K.W. was removed from the home because of a history of indicated reports, domestic violence inflicted by Lacinda on Justin, Lacinda's substance abuse, and the termination of Justin's parental rights to K.W.'s older siblings.

¶ 65 1. *October 28, 2013 to July 28, 2014*

¶ 66 Justin contends the record shows the State failed to prove a lack of reasonable progress during this time period by clear and convincing evidence. Justin highlights the testimony and the service-plan evaluations that show he participated in all services recommended, he had no contact with K.W.'s mother, Lacinda, and he actively participated in counseling. Justin further emphasizes Miller's June 2014 conclusions his progress during this time period was satisfactory on all grounds, including his goals of maintaining employment and finding housing.

¶ 67 The State acknowledges Justin, during this time period, had no relationship with Lacinda and entered into a relationship with Kline, that "appeared to be healthier" than his earlier

controlling behavior and likens such behavior to the domestic violence inflicted by Lacinda on Justin during their relationship.

¶ 72 This evidence, however, lacks foundation and is contradicted by other testimony elicited by the State. Miller testified the conclusions about Justin's and Kline's relationship and the domestic abuse occurring within that relationship arose from observations made and reported by "the Addus worker." Given the reasons K.W. is in care, which include previous domestic violence unaddressed by Justin, accusations of Justin's being in a similar situation carry great weight. *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050 (holding the benchmark from which to judge progress is considered, in part, "in light of the condition which gave rise to the removal of the child"). The State, however, did not identify the worker or provide specific details such as the timing and circumstances of these reported events. Because of the reasons K.W. entered care and the need to protect K.W. from a home within which domestic violence occurs, the conclusions by DCFS and Miller, resulting from unexplained remarks by an unnamed individual, likely led to the legal screening and other changes that led to the termination proceedings.

¶ 73 In addition to the tenuous evidence of these events, Miller's characterization of such incidents as domestic violence or abuse is contradicted by Baker, who spent multiple sessions working with Kline and Justin. Baker testified Justin was open and honest with him. Baker, who had observed disagreements between the two, did not believe Kline's conduct had escalated to an unhealthy level or the point of abuse. Instead, Baker testified the two had progressed in how they communicated with each other. Although Baker referred to such progress as "minimal," there is no clear and convincing evidence earlier communications were abusive and necessitated further progress.

¶ 74 Furthermore, Baker's testimony disputes multiple details provided by Miller. Miller testified Justin missed multiple sessions in December 2014. Baker testified Miller missed sessions in March or April 2015, after the legal screening that called for a change in the goal from returning home to the termination of his parental rights. Miller testified Justin missed so many sessions the therapy sessions were almost cancelled. Baker denied making that statement or having that opinion. Given these discrepancies and Miller's characterization of nonspecific allegations as domestic abuse, it is obvious such evidence does not meet the standard of proving a lack of reasonable progress by clear and convincing evidence.

¶ 75 Other inconsistencies and contradictions in the evidence further undermine the strength of the State's case. Testimony by Miller, K.W.'s caseworker until January 2015, and Brandon, K.W.'s caseworker beginning June 2015, seriously undermine the testimony of Dagg, the caseworker from January until June 2015, regarding the condition of Justin's home and Justin's ability to parent K.W. Miller consistently rated the condition of the home satisfactory. Miller opined the space for K.W. was small but appropriate. Miller further opined Justin nurtured K.W. and met K.W.'s needs during visits. Brandon concurred. Despite the testimony by these two caseworkers, Dagg testified the home was unsanitary and Justin merely acted as a play date for K.W. No explanation was provided by the State regarding these differences. While Brandon's testimony concerning Justin's conduct is irrelevant to the question of whether reasonable progress was made in the nine-month period (see *C.N.*, 196 Ill. 2d at 219 n.5, 752 N.E.2d at 1052-53 n.5), it is relevant to the credibility of Dagg's statements. While Dagg's testimony may be true, given the testimony of Miller and Brandon, it is not clear and convincing evidence of a lack of reasonable progress.

¶ 76 In its order finding no reasonable progress, the trial court emphasized visits had not progressed to unsupervised overnight visits. We find this reasoning unconvincing. Visits progressed from supervised visits to longer, unsupervised visits in the home. Unsupervised visits stopped only after a DCFS caseworker believed domestic abuse was occurring in Justin and Kline's home and movement was made toward terminating Justin's parental rights. This action was State action and not something upon which Justin's progress may, in these circumstances, properly be judged.

¶ 77 The record evidences aspects of the case unfavorable to Justin. Justin had multiple changes in his employment, Justin and Kline had financial difficulties, Justin missed some appointments after the March 2015 legal screening, Kline was unsuccessfully discharged from mental-health treatment, and Kline reported having a plan to kidnap K.W. Given the benchmark from which Justin's progress was to be judged, these matters are not by themselves sufficient to establish a lack of reasonable progress. We note the record shows multiple changes in Justin's employment, but it does not establish Justin went long periods of time without an income or work. In addition, due to the lack of evidence regarding unhealthy or abusive treatment by Kline toward either K.W. or Justin, we fail to see how a lack of Kline's progress in therapy supports a finding of a lack of reasonable progress by Justin. We further note Kline was participating in relationship therapy with Justin and the record shows Kline's revelation of a plan to kidnap K.W. expressed during a therapy session, was followed by a statement she would "never" follow through with it.

¶ 78 In addition to the contradictory and unreliable evidence in this case, the trial court's decision finding a lack of reasonable progress for all time periods, without specifically

addressing each, resulted in a finding of a lack of reasonable progress over a time that had not occurred. The State alleged, and the trial court found proved, a lack of reasonable progress for the time period of April 28, 2015, to January 28, 2016 – the hearing occurred in October 2015. The court thus judged and ruled upon Justin's efforts and progress over a future time period. Such an approach by the State and the trial court is troubling. It evidences a less than complete and thorough review of the evidence before seeking and entering a judgment that results in removing a child from his parent.

¶ 79 We are further concerned by the emphasis, at the unfitness stage of proceedings, on K.W.'s bond with his foster parents. At this stage, neither K.W.'s interests nor the interests of his foster parents are relevant to the question of whether Justin may safely parent his son. However, the guardian *ad litem* during closing argument mentioned K.W. "had been ably cared for by very competent foster parents." and the State in its brief mentions the attachment of K.W. to his foster parents and biological siblings. It is perhaps this bond, also mentioned by the caseworker in the December 2014 case plan ("it is not the same bond he shares with his foster parents, who in his mind are his parents") that motivated DCFS and the State to pursue termination proceedings despite the lack of evidence to clearly and convincingly prove Justin unfit.

¶ 80 *3. April 28, 2015, to January 28, 2016*

¶ 81 The State apparently concedes the trial court committed error by finding Justin failed to make reasonable progress over a time period that had not occurred. As mentioned above, the State contends this argument is moot because it need only prove one ground of unfitness. The State then asserts it found two grounds upon which a lack of reasonable progress

was proved. This was not one of them.

¶ 82 Because the hearing was held in October 2015, the trial court should not have ruled on Justin's conduct from that date through January 28, 2016. A finding of unfitness for this time period is against the manifest weight of the evidence.

¶ 83 B. Reasonable Efforts

¶ 84 In its termination petition, the State argued Justin was unfit for failing to make reasonable efforts to correct the conditions that were the basis of K.W.'s removal. In its brief, however, the State does not defend the trial court's decision. Instead, the State argues only it proved a lack of reasonable progress during the first two nine-month periods following the adjudication of neglect.

¶ 85 When considering an allegation of parental unfitness on this ground, a parent's efforts are considered based on the "goal of correcting the conditions that caused" the child's removal and are judged under "a subjective standard based upon the amount of effort that is reasonable for a particular person." *Daphnie E.*, 368 Ill. App. 3d at 1066, 859 N.E.2d at 137. The State bears the burden of establishing a lack of reasonable efforts by clear and convincing evidence. See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129.

¶ 86 In this case, the State sought to prove a lack of reasonable efforts for the same three time periods it sought to prove a lack of reasonable progress: October 28, 2013, to July 28, 2014; July 28, 2014, to April 28, 2015; and April 28, 2015, to January 28, 2016. The same issues regarding the inconsistencies and insufficiency of the evidence that plague the State's case regarding reasonable progress apply to the State's case Justin failed to make reasonable efforts. We therefore find the trial court's decision finding the State proved a lack of reasonable efforts

by clear and convincing evidence is against the manifest weight of the evidence.

¶ 87 This court is not naïve or blindly optimistic. Justin needs services to continue his progress. He has not, and may not, progress to the point where his home will be the best of all possible placements for K.W., but that is not the test. The State failed to meet its burden of proving Justin unfit. The trial court thus erred in terminating his parental rights to K.W. See generally *In re M.I.*, 2015 IL App (3d) 150403, ¶ 21, 44 N.E.3d 600.

¶ 88

III. CONCLUSION

¶ 89 We reverse the trial court's judgment and remand the cause.

¶ 90 Reversed and remanded.