NOTICE
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2016 IL App (5th) 150403-U

NO. 5-15-0403

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

In re KE. M. and KA. M., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Williamson County.
	)	
Petitioner-Appellee,	)	Nos. 11-JA-66 & 12-JA-51
	)	
v.	)	
	)	
S.M.D.,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's decision finding mother to be an unfit parent was not against the manifest weight of the evidence.

¶ 2 The respondent, S.M.D., the mother of Ke. M. and Ka. M., appeals from the judgment of the circuit court finding that she was an unfit parent. C.M., the father of Ke. M. and Ka. M., participated in the termination proceedings, but is not participating in this appeal. We affirm.

¶ 3 BACKGROUND

¶ 4 Sometime in January 2011, the respondent contacted the Illinois Department of Children and Family Services (DCFS), seeking help with raising her five children. At the time, the respondent could not provide adequate shelter for the children. The five children were thereafter taken into foster care.

¶ 5 On August 18, 2011, Ke. M., the respondent's sixth child and first with C.M., was born and immediately removed from the respondent's care. On October 6, 2011, the circuit court found Ke. M. to be neglected in an adjudicatory order. In the order, the court found that Ke. M. was in an environment that was injurious to his welfare because the respondent's five other children were still in DCFS custody and no progress had been made on returning them home. Ke. M. has remained in foster care since the finding of neglect.

¶ 6 Sometime after Ke. M.'s birth, DCFS learned that there had been multiple domestic violence instances between the respondent and C.M. In every instance, C.M. had been the perpetrator and the respondent had been the victim. DCFS added domestic violence services to both parents' service plans as a result of these instances.

¶ 7 On August 15, 2012, Ka. M., the respondent's seventh child and second with C.M., was born and immediately removed from the respondent's care. On November 9, 2012, the circuit court found Ka. M. to be neglected in an adjudicatory order. In the order, the court found that Ka. M. was in an environment that was injurious to her welfare due to domestic violence in the home, the respondent's lack of progress in her service plan, and the "current open case with [Ke. M.]." The court ordered that DCFS prepare a report

detailing the physical and mental history of the minor, the family situation, and such other relevant information deemed appropriate. The court further ordered the respondent to be examined by a psychologist. Ka. M. has remained in foster care since the finding of neglect.

¶ 8 On July 8, 2014, Ashley Amberger, the DCFS caseworker assigned to the case, prepared a service plan for the respondent. According to the service plan, the respondent needed to provide suitable housing for her family, maintain a legal means of support to maintain the living arrangement and pay bills on time, improve budgeting skills, attend and progress through mental health counseling, create a safe and suitable home free of domestic violence, and notify Amberger in the event of an act of domestic violence. At that time, the respondent was working at a nursing home in Marion, as well as working part-time at Cracker Barrel. The plan stated that the respondent was "staying here and there because it was too difficult to save up money," though she was primarily living with her mother. The respondent had signed a lease for an apartment on March 21, 2014, and had sought financial assistance to move into the apartment on June 20, 2014. However, the respondent had not yet reported moving in, and the plan considered her progress unsatisfactory. The respondent had been meeting with Amberger monthly regarding her financial situation. However, because she had not provided up-to-date budgets and had yet to move, the plan considered her progress unsatisfactory with regards to her financial situation. In the plan, Amberger noted that the respondent had been attending mental health counseling as required in the service plan and was making progress. However, Amberger nonetheless considered her progress unsatisfactory because she "lack[ed]

understanding of how her mental health issues, domestic violence and financial issues [affected] her children and her ability to parent." In the service plan, Amberger considered the respondent to have made satisfactory progress in the area of domestic violence because there had been no reported instances since October 29, 2013.

¶ 9 On August 27, 2014, the State filed petitions for termination of the respondent's parental rights with regards to Ke. M. and Ka. M. The petitions alleged that the respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children during any nine-month period following the adjudication finding the children neglected and failed to make reasonable progress toward the return of the children during any nine-month period following the adjudication finding the children neglected. The petitions did not allege a specific nine-month period. On November 21, 2014, the circuit court entered a permanency order in which the goal for the children was changed from returning home to the respondent to substitute care pending court determination of parental rights.

¶ 10 On September 10, 2015, the circuit court conducted a stage-one fitness hearing on the petition to terminate parental rights. The State first called caseworker Amberger to testify at this hearing. Amberger stated that, in the initial service plan prepared in March 2011, the respondent was required to obtain adequate housing, to obtain sufficient income for the housing, and to complete parenting classes. She testified that domestic violence services had later been recommended for the respondent after her previous caseworker learned that the respondent had been the victim of domestic violence from C.M. on more than one occasion.

¶ 11 Amberger testified that there had been two domestic violence incidences du ring the case: an October 29, 2013, altercation and an October 28, 2014, altercation. She testified that the respondent had completed domestic violence services, but that the respondent "had been engaged in more domestic violence with the same person" after completing services. Amberger testified that the respondent did not complete mental health counseling until after the petitions were filed. She testified that the respondent had not maintained a home for more than six months prior to the petition being filed.

¶ 12 During cross-examination, Amberger acknowledged that she knew the respondent had acquired a four- or five-bedroom home in June 2013 under section 8 housing (42 U.S.C. § 1437f) in order to comply with her then-current housing requirement. Amberger explained, however, that the respondent had later lost the housing because she had not been granted custody of her children. Amberger testified that, since August 2014, the respondent had maintained the same residence. Amberger also testified that the respondent and C.M. had not been involved or resided with each other since October 2014.

¶ 13 James Nilson, a CASA volunteer, also testified. Nilson testified to a "pretty prevalent" pattern of domestic violence. He claimed that these instances could involve "other family members or neighbors." On cross-examination, Nilson testified that, to his knowledge, the respondent had never been the perpetrator of the domestic violence.

¶ 14 After Nilson's testimony, the State asked the court to take judicial notice of the service plans within the file and the requirements therein. The State did not admit into evidence any reports, summaries, or other exhibits. The State then rested its case.

¶ 15 Leon Davis, the respondent's brother, testified on her behalf. Davis stated that the respondent was never "personally homeless and in the street." Davis confirmed that the respondent had lost appropriate housing because her children were not returned to her and, therefore, "[section 8] wouldn't keep paying." He also confirmed that she applied for that housing in anticipation of having all seven of her children returned. Davis believed that the October 28, 2014, domestic violence incident caused the respondent to lose her job because "[s]he wasn't able to work" due to bruising on her face.

¶ 16 Carol Oliver, the respondent's aunt, also testified on her behalf. Oliver confirmed that the housing acquired through section 8 was a "[g]ood size house for all of the children," but the respondent lost the funding for the housing because the children were not returned. Oliver also testified that the respondent has "always" maintained a job.

¶ 17 The respondent testified at the hearing. The respondent acknowledged that, in her initial service plan, she was required to obtain housing and employment, as well as complete the services required of her. The respondent testified that she had completed domestic violence classes and mental health counseling. The respondent testified that the last instance of domestic violence was in October of 2014. She further testified that she "was done" with C.M. since that time and had no plans to reconcile with him. She testified that she had never missed visitation with her children. The respondent testified that she had completed parenting classes at Project 12 Ways. The respondent testified that she had maintained her current residence since August of 2014. She acknowledged that she lost her job at Aisin because her black eye from the October 28, 2014, domestic violence incident resulted in her being penalized under Aisin's point system. On cross-

examination, the respondent also acknowledged a domestic violence incident that had occurred in May of 2014. However, she noted that DCFS knew her history with C.M. but had never required them to separate as a condition of her service plan. The respondent called no other witnesses and admitted no exhibits.

¶ 18 The court found that, based on her history, the respondent was unlikely to do what was necessary to have her children returned. Based on this finding, the court initially held that the respondent was unfit and therefore the court was "terminating [the respondent's] parental rights." Upon being asked for clarification, the court stated that it meant to rule only on "the first stage" of termination of parental rights.

¶ 19 On September 15 through 17, 2015, the second stage hearing on the petition to terminate parental rights was held. On September 17, 2015, the circuit court entered an order terminating parental rights and appointing a guardian with the power to consent to adoption. In the order, the court held that the respondent was an unfit parent under Sections 1(D)(m)(i)-(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(i)-(ii) (West 2014)). On September 22, 2015, the respondent timely filed notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, the respondent challenges the circuit court's order finding the respondent to be an unfit parent due to a failure to make reasonable efforts to correct the conditions that were the basis for the removal of Ke. M. and Ka. M. The respondent also challenges the circuit court's order finding her to be an unfit parent due to a failure to make reasonable progress towards the return of Ke. M. and Ka. M. The respondent lastly

argues that the circuit court erred in terminating her parental rights prior to determining the best interests of Ke. M. and Ka. M.

¶ 22 "The State must prove by clear and convincing evidence that a respondent was an unfit parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Thus, at a hearing on a petition for termination for parental rights, "[t]he State has the burden of proving parental unfitness." *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. A circuit court's finding of unfitness is afforded great deference and will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 15. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *Id.* Section 1(D)(m) of the Adoption Act "provides two independent bases for a finding of unfitness: (1) the failure by a parent to make reasonable efforts to correct the conditions that were the basis for the removal of the child, *or* (2) the failure to make reasonable progress toward the return of the child." (Emphasis in original.) *In re C.N.*, 196 Ill. 2d 181, 210-11 (2001).

¶ 23 "These two bases are distinct and require separate analyses." *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal." *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). "The focus is on the amount of effort reasonable for the particular parent involved." *Id.* " '[R]easonable progress' is an objective standard that relates to making progress toward the goal of returning the child to the parent." (Internal quotation marks omitted.) *Id.* In this case, the State argues that the respondent has not

made reasonable efforts to obtain adequate, safe housing for her children and has not made reasonable progress to obtain adequate, safe housing.

¶ 24 The rules of evidence apply to fitness hearings, though the circuit court may take judicial notice of portions of the court file. *In re J.G.*, 298 Ill. App. 3d 617, 629 (1998). Here, the State presented two witnesses. The respondent presented two witnesses and also testified herself. Neither the State nor the respondent admitted exhibits while examining witnesses. The State asked that the circuit court take judicial notice of the service plans in the file, and the circuit court did so take notice. The common law record contains only the July 8, 2014, service plan submitted by Amberger. The State's case before the circuit court thus is based on that July 8, 2014, service plan and the two witnesses. The respondent's case is likewise based on her two witnesses and her own testimony. We note that the record contains many DCFS reports that both the respondent and the State reference throughout their briefs. Nonetheless, we note that neither party admitted these reports into evidence before the circuit court, and, therefore, we do not consider them in our review.

¶ 25 In drafting section 1(D) of the Adoption Act, "the legislature has specified a number of different time periods for *** grounds of unfitness." *In re Dominique W.*, 347 Ill. App. 3d 557, 567 (2004). Both section 1(D)(m)(i) and 1(D)(m)(ii) of the Adoption Act specify a time period of "any 9-month period following the adjudication of neglected or abused minor" as the time period to be reviewed for grounds of unfitness. 750 ILCS 50/1(D)(m)(i), (ii) (West 2014). Further, "when a petition or motion seeks to terminate parental rights [for failure to make reasonable progress], the petitioner shall file with the

court and serve on the parties a pleading that specifies the 9-month period or periods relied on." 750 ILCS 50/1(D)(m)(ii) (West 2014). We note that the State failed to file a pleading specifying the nine-month period or periods relied upon in the petition to terminate parental rights. This failure is a pleading defect, however, and is not in and of itself grounds for this court to reverse the circuit court's order. See *In re S.L.*, 2014 IL 115424, ¶¶ 20-27. Although the State failed to specify the nine-month time period for either Ke. M. or Ka. M., it is apparent from the record that the parties proceeded as though the relevant nine-month periods fell in the years 2013 and 2014. Thus, we have considered the evidence in nine-month periods beginning from each child's adjudication of neglect and have analyzed the periods occurring in 2013 and 2014.

¶ 26 Ke. M.'s adjudication of neglect occurred on October 6, 2011. During the nine-month period from January 6, 2014, to October 6, 2014, the evidence showed that though the respondent had been attending mental health counseling, she "lack[ed] understanding of how her mental health issues, domestic violence and financial issues [affected] her children and her ability to parent." The evidence revealed during this time period that the respondent was living with friends and in hotels. Moreover, there was ongoing domestic violence in May 2014. The July 8, 2014, service plan rated the respondent's progress in the area of domestic violence satisfactory on the mistaken basis that there had been no reported instances of domestic violence since October 29, 2013. Thus, the respondent had failed to make reasonable progress during this period with regard to obtaining adequate, stable, and safe housing. The circuit court's decision finding the respondent to be an unfit parent with regard to Ke. M. is thus not against the manifest weight of the

evidence. Because we find that the respondent did not make reasonable progress in these areas with regards to Ke. M., we need not discuss whether she made reasonable efforts with regards to Ke. M. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 27 Ka. M.'s adjudication of neglect occurred on November 9, 2012. During the nine-month period from August 9, 2013, to May 9, 2014, the evidence showed that, as noted previously, the respondent "lack[ed] understanding of how her mental health issues, domestic violence and financial issues [affected] her children and her ability to parent" despite counseling. Further, the evidence revealed that the respondent was living with friends and in hotels during most of this time period. Lastly, there were ongoing domestic violence incidents on October 29, 2013, and in May 2014. Thus, the respondent had failed to make reasonable progress during this period with regard to obtaining adequate, stable, and safe housing. The circuit court's decision finding the respondent to be an unfit parent with regard to Ka. M. is thus not against the manifest weight of the evidence. Because we find that the respondent did not make reasonable progress in these areas with regards to Ka. M., we need not discuss whether she made reasonable efforts with regards to Ka. M. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 28 The respondent lastly argues that the circuit court erred in terminating the respondent's parental rights prior to determining the best interests of Ke. M. and Ka. M. The respondent correctly notes that termination of parental rights is "a two step process" and that "[t]he State must prove that the parent is unfit and if the parent is found unfit, the State then must prove that termination of parental rights serves the best interest of the child." *In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 51. "The trial court's finding

that a parent is unfit to have custody of his child does not automatically require the termination of the parent's legal relationship with the child." *Id.* ¶ 53.

¶ 29 The respondent argues that the circuit court effectively terminated her rights at the end of the fitness hearing, and prior to the best-interests hearing, when it stated, "I am terminating your parental rights." However, the circuit court quickly clarified this comment, stating, "I'm just going to—the first stage." The court then stated it "[could not] find that [the respondent is] fit" and proceeded to set a date for the best-interests hearing. Circuit courts have committed reversible error by repeatedly referring to best interests and failing to make factual findings at the fitness hearing. See *In re G.W.*, 357 Ill. App. 3d 1058, 1060-62 (2005). Here, however, the circuit court stated it was terminating parental rights only once. It then stated that it meant only to discuss the fitness hearing requirements, found the respondent unfit, and set a date for the best-interests hearing. Even if the circuit court misspoke, it immediately corrected itself and clarified what it intended. We do not hold this to be reversible error. Thus, because the circuit court's decision was not against the manifest weight of the evidence, and because it did not terminate the respondent's rights at the fitness hearing, we affirm.

¶ 30 CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Williamson County.

¶ 32 Affirmed.