

NOTICE
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2016 IL App (5th) 150515-U

NO. 5-15-0515

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).

<i>In re</i> H.M. and C.D.M., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Union County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 09-JA-07 & 09-JA-08
)	
Heather M.,)	Honorable
)	Charles C. Cavaness,
Respondent-Appellant).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Cates concurred in the judgment.

ORDER

- ¶ 1 *Held:* Termination of parental rights affirmed where circuit court's finding of unfitness was not against the manifest weight of the evidence.
- ¶ 2 In this consolidated case, the respondent, Heather M., appeals the orders entered by the circuit court on October 8, 2015, that found her unfit as a parent, resulting in the termination of her parental rights regarding her two children, by orders of the court entered on November 3, 2015. The issues raised on appeal are limited to the parental fitness portion of the termination proceedings. Because this appeal involves a final order terminating parental rights, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010)

requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on April 18, 2016. However, due to motions for extensions of time filed by both parties and granted by this court, the briefing schedule was not complete until April 6, 2016. This case was immediately placed on the docket for April 12, 2016, and we now issue our disposition. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 H.M. and C.D.M.—who have different fathers—were born to the respondent on August 29, 2005, and February 27, 2008, respectively. The children were taken into protective custody on May 24, 2009. Petitions for adjudication of wardship were filed on behalf of the children on May 27, 2009. The petition regarding C.D.M. alleged that the respondent abused him by inflicting physical injury to him, creating a substantial risk of physical injury to him, and inflicting excessive corporal punishment upon him by jerking his arm, spanking him, and slapping him. The petition regarding H.M. alleged that the respondent abused her by creating a substantial risk of physical injury to her and inflicting excessive corporal punishment upon her by slapping her arm and body. Both petitions alleged that the respondent screamed obscenities at the children and threatened physical harm to them, that the respondent had not taken her medication, and that her behavior was escalating. The petitions further alleged that the children, ages three years old and 15 months old, were neglected because the respondent left them unsupervised for an unreasonable amount of time without regard for their safety.

¶ 5 Adjudicatory orders were entered on August 13, 2009, finding that abuse or neglect was inflicted upon the children by the respondent. The children were made wards of the court via dispositional orders entered on September 10, 2009. Permanency orders were entered on December 3, 2009, July 29, 2010, and January 6, 2011, finding, *inter alia*, that the respondent had not made reasonable or substantial progress toward the goals of the children returning home within 12 months. Permanency orders were entered on August 25, 2011, finding that the respondent had made reasonable efforts but not substantial progress toward the goals of the children returning home within 12 months. Additional permanency orders were entered on January 26, 2012, finding, *inter alia*, that the respondent had not made reasonable or substantial progress toward the children's return. The goal established for C.D.M. was for him to remain home with his biological father, who desired custody of him. The goal remained for H.M. to return home to the respondent within 12 months.

¶ 6 On May 3, 2012, a motion was filed for the termination of the respondent's parental rights regarding H.M., and for the appointment of a guardian with the power to consent to H.M.'s adoption. On July 6, 2012, the same was filed regarding C.D.M.¹

¹The record reflects that an additional motion to terminate the parental rights of the respondent regarding C.D.M. was filed on August 8, 2012. The motion appears to be identical to the previous one filed, with the exception of an additional mailing address and telephone number handwritten beneath the signature of the special prosecutor at the end of the subsequent motion.

Additional permanency orders were entered on June 26, 2014, finding the respondent had made neither reasonable or substantial progress nor reasonable efforts toward the children's return home. Goals were set for substitute care of the children, pending a determination of the termination of the respondent's parental rights.

¶ 7 Following several motions to continue and numerous status hearings, motions for the termination of the respondent's parental rights were again filed—by a different special prosecutor—on August 7, 2014. The motions alleged, *inter alia*, that the respondent was an unfit parent for failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); desertion of the children for more than three months next preceding the commencement of the adoption proceeding (750 ILCS 50/1(D)(c) (West 2014)); habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding (750 ILCS 50/1(D)(k) (West 2014)); failure to make reasonable efforts to correct the conditions that were the basis for the children's removal (750 ILCS 50/1(D)(m)(i) (West 2014)); and failure to make reasonable progress toward the return of the children within nine months after an adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 8 A fitness hearing commenced on October 23, 2014, wherein the following testimony and evidence was presented. Shelly Pinkston testified that she is employed by Lutheran Social Services of Illinois (LSSI), which is a contract representative of the Illinois Department of Children and Family Services (the Department). Shelly served as a caseworker for both children. She confirmed that services for the respondent and the

children were implemented before the children were taken into protective custody in September 2009. She opined that the respondent was an unfit person to have custody of the children and agreed that the respondent had not maintained any degree of interest, concern, or responsibility as to the children's welfare.

¶ 9 The circuit court took judicial notice of a motion to suspend visitation—based on violent behavior by the respondent—which was filed by the guardian *ad litem* (GAL) on May 20, 2010, and took judicial notice of the order granting that motion. Visitation was eventually reinstated. However, Shelly testified that the respondent had not had a visit with the children since April 2012. She explained that the visits were once again suspended by the court, per the request of the GAL, because the respondent displayed aggressive, hostile, and confrontational behavior in the presence of the children. Despite the suspended visitations, the service plan remained in place and services were continually offered to the respondent in an attempt to help her reestablish visitation. Shelly reported that the respondent did not meet the requirements of the service plan, nor was Shelly aware of any requests by the respondent to visit with the children since the visits were suspended.

¶ 10 Regarding specific goals of the service plan, Shelly testified that the respondent was required to receive a mental health evaluation and to complete treatment. The respondent began receiving services early on, but the consents to release the records expired in 2013 and Shelly was unable to obtain any information regarding any ongoing mental health treatment for the respondent. According to Shelly, she sent the consents to the respondent's attorney, who attempted to assist the respondent in executing the

necessary releases, but Shelly only received releases allowing the respondent to obtain her own records and never received any valid releases allowing LSSI to obtain the respondent's records. Accordingly, Shelly had no verification regarding the respondent's required services since 2013. Shelly reported that the respondent was on and off of her medication and was not doing well.

¶ 11 Besides the requirement of mental health treatment, the respondent's service plan also required her to undergo alcohol and substance abuse treatment. Similar to the mental health component, the respondent was receiving substance abuse services early on and actually completed counseling for alcohol and marijuana use. Shelly testified, however, that the respondent was subsequently arrested for DUI and was sent back for services, which she did not successfully complete because she was discharged from the program due to behavioral problems. Shelly received no confirmation that the respondent ever completed the treatment. Shelly further reported that she learned on August 14, 2013, that the respondent was unsuccessfully discharged from her required parenting classes due to her disruptive behavior.

¶ 12 Shelly explained that the respondent is uncooperative with those working on her case because she believes they are harming rather than helping her. For that reason, the respondent refuses to maintain any type of contact with the workers. Shelly estimated that the last completed home visit occurred in 2013, but the caseworkers did not go to the respondent's home for a period of time after that because the respondent was threatening them. Shelly made an appointment with the respondent for a home visit on June 17, 2014. When Shelly arrived, the car driven by the respondent was parked in front of the

residence, but the respondent did not answer the door, nor did she answer the phone when Shelly attempted to call her to inform her that she had arrived for the home visit. Shelly stated that she had been on the case for six months and there had been no face-to-face contact between her and the respondent other than during court proceedings. Shelly indicated that she attempted to review the service plan with the respondent at a court proceeding on June 12, 2014, but the respondent refused. Shelly stated that she and/or her coworkers attempted to contact the respondent throughout the entire months of May and June 2014, as a "last-ditch effort" to reestablish visitation between the respondent and the children. Shelly stated that "I did give it my best shot," but the respondent continually avoided contact.

¶ 13 Shelly reiterated that in five years, a variety of resolutions were offered to assist the respondent in reunification with the children, but besides completion of any treatment, Shelly also looks for a demonstration of coping skills learned during the treatment, which the respondent never accomplished. In addition to a lack of reasonable efforts, Shelly testified that there had never been any showing of any reasonable or substantial progress by the respondent. Accordingly, Shelly advised that the respondent's parental rights should be terminated.

¶ 14 The fitness hearing continued on December 18, 2014. After the respondent waived her attorney-client privilege, Jason Kleindorfer, who previously represented the respondent, testified that the respondent informed him on a regular basis that she wanted to resume visitation with her children. Jason attempted on multiple occasions to restore

visitation, but he stated that the respondent and her attorneys were the only ones ever in favor of that happening.

¶ 15 Regarding the releases of the respondent's medical and service records, Jason testified that the respondent signed releases on several occasions. He indicated the respondent signed forms in open court in 2013, but it was later discovered that the forms were prepared improperly, resulting in the respondent releasing information to herself rather than to LSSI. Jason testified that the respondent signed releases again in 2014. Jason learned that the respondent had refused to sign the releases in the past, but his experience was that the respondent did not trust LSSI and wanted everything to go through him, despite the fact that the respondent had been continually court-ordered to cooperate with social services. Jason disagreed that the respondent had a lack of interest in the case and opined that she very much wants the children back.

¶ 16 Magnolia Hood testified that she facilitated a parenting class at Centerstone, which the respondent attended and completed, after which the respondent received a certificate of completion dated June 10, 2014.

¶ 17 Nicole Jeters testified that she is employed by Centerstone as a mental health and substance abuse therapist. Nicole testified that she treated the respondent for substance abuse after the respondent received a citation for DUI. According to Nicole, the respondent was required to undergo 10 hours of therapy for substance abuse, the services commenced on October 1, 2013, and concluded on October 1, 2014. Subsequently, Nicole continued serving the respondent as her mental health therapist, but the

requirement for the service plan was not completed. Nicole had no knowledge regarding the respondent's required mental health treatment with a psychiatrist.

¶ 18 Shelly Pinkston again took the stand and testified that since the fitness hearing commenced on October 23, 2014, she received the necessary releases to verify the respondent's treatment and services. Shelly testified that the parenting class completed by the respondent through Centerstone was actually a part of her substance abuse treatment, which Shelly confirmed was completed on October 1, 2014.

¶ 19 Shelly testified that the respondent's service plan requires her to complete a parenting program called Project 12-Ways, which the respondent never completed because of the court-ordered suspension of visitation. Shelly reiterated that the visits were suspended because of aggressive behavior by the respondent during all of the visits. Besides not completing the parenting program, Shelly testified that psychiatric treatment was also required by the service plan and not completed. Shelly noted that she did receive the necessary releases from the respondent for the psychiatric records, but she never received any notification that the respondent was currently receiving any psychiatric services. Shelly emphasized that, regardless of the completed DUI treatment, part of which included the parenting class, the service plan also requires an application of what was learned during treatment—namely a demonstration of learned coping skills—which had not occurred.

¶ 20 Shelly testified that the case was opened on September 4, 2009—more than five years prior to the hearing—and no reasonable progress had been made by the respondent. Moreover, Shelly observed that the respondent is currently in jail, the details of which

Shelly was unaware. Shelly repeated that she had been on the case since April 1, 2014, and the respondent had been uncooperative the entire time. Shelly had only managed to meet with the respondent at the courthouse, and the respondent was always uncooperative there as well.

¶ 21 The respondent testified that she is currently receiving psychiatric care from Dr. Chandra at Shawnee Health Center, that she receives monthly treatment, and that her treatment has been ongoing for about three years. The respondent testified that she gave a record of her psychiatric care to her attorney one to three months ago.

¶ 22 Final permanency orders were entered on March 26, 2015, regarding H.M. and on July 2, 2015, regarding C.D.M., finding the respondent had still not made reasonable or substantial progress toward the children's return. Permanency goals were set for the children to reside with their respective biological fathers while the termination proceedings were pending.

¶ 23 On October 8, 2015, the circuit court entered orders finding the respondent an unfit parent for failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the fitness proceeding (750 ILCS 5/1(D)(k) (West 2014)); failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children (750 ILCS 5/1(D)(m)(i) (West 2014)); failure to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect or abuse (750 ILCS 5/1(D)(m)(ii)

(West 2014)); and failure to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse (750 ILCS 5/1(D)(m)(iii) (West 2014)).

¶ 24 A best interest hearing was conducted on October 22, 2015. Subsequently, on November 3, 2015, the circuit court entered orders finding it in the best interest of the children for the respondent's parental rights to be terminated. The respondent filed a timely notice of appeal. Additional facts will be provided as necessary in the analysis of the issues.

¶ 25 ANALYSIS

¶ 26 On appeal, the respondent raises issues relating only to the finding of unfitness. She does not challenge the circuit court's findings regarding the best interests of the children. Accordingly, any challenges to the circuit court's ruling to that regard are forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument must contain the contentions of the appellant, the reasons therefor, and the citation of authorities; points not argued in an opening brief are forfeited and shall not be raised in the reply brief, in oral argument, or in a petition for a rehearing).

¶ 27 " 'Because the trial court's opportunity to view and evaluate the parties and their testimony is superior to that of the reviewing court, a trial court's finding as to fitness is afforded great deference and will only be reversed on review where it is against the manifest weight of the evidence.' " *In re Shanna W.*, 343 Ill. App. 3d 1155, 1165 (2003) (quoting *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000)). " 'A decision regarding parental fitness is against the manifest weight of the evidence where the opposite result is

clearly the proper result.' " *Id.* (quoting *In re Latifah P.*, 315 Ill. App. 3d at 1128). The function of this court "is not to substitute our judgment for that of the trial court on questions regarding the evaluation of the witnesses' credibility and the inferences to be drawn from their testimony; the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses as they testify." *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999).

¶ 28 Section 1(D) of the Adoption Act lists several grounds for parental unfitness, any one of which merits that finding. 750 ILCS 50/1(D) (West 2014). "It is necessary that the State prove by clear and convincing evidence one statutory factor of unfitness for the termination of parental rights to ensue." *In re M.S.*, 302 Ill. App. 3d at 1002. "Therefore, this court need not consider other findings of unfitness where sufficient evidence exists to satisfy any one statutory ground." *Id.*

¶ 29 Here, we find sufficient evidence exists to satisfy the statutory ground of unfitness for the respondent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of her children (750 ILCS 50/1(D)(b) (West 2014)). "In determining whether a parent has shown [that], courts consider a parent's efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries into the child's welfare." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). "The interest, concern[,] or responsibility must be objectively reasonable." *Id.* "Moreover, courts consider a parent's conduct in the context of the circumstances in which it occurs, including any difficulty in obtaining transportation to the child's residence, the parent's poverty, conduct of others that hinders visitation, and the motivation underlying the

failure to visit." *Id.* "However, a parent need not be at fault to be unfit, and she is not fit merely because she had demonstrated some interest in or affection for her child." *Id.* "If personal visits were somehow impractical, courts consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts." *Id.* "Completion of service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility." *Id.* at 1065. "Courts will consider the parent's efforts which show interest in the child's well-being, regardless of whether those efforts were successful." *Id.*

¶ 30 In this case, we find a lack of a reasonable degree of interest, concern, or responsibility for the children's welfare due to the respondent's lack of efforts to visit and maintain contact with the children and the lack of completion of the objectives of her service plan. See *In re Daphnie E.*, 368 Ill. App. 3d at 1064-65. There is no evidence that the respondent contacted the children through letters or phone calls, nor did the respondent send any gifts to the children. See *id.* at 1064. Moreover, there is no indication that the lack of visitation was due to the respondent's poverty, difficulty to obtain transportation, or any conduct of others that hindered visitation. See *id.* To the contrary, the lack of visitation was attributable to the respondent and to the respondent alone.

¶ 31 Visitation was suspended twice by court order and at the request of the GAL, once in 2010 and again in 2012, because of repeated aggressive behavior by the respondent in the presence of the children. Although visitation was suspended, testimony showed that consistent efforts were made by caseworkers to assist the respondent in completing the

requirements of her service plan, all in an attempt to reestablish visitation and assist in getting the children back home to the respondent. Shelly Pinkston testified that the respondent continually avoided the caseworkers, notwithstanding all of the efforts they made on behalf of the respondent. This went on for over five years. Although the respondent's counsel testified that the respondent had been continually court-ordered to cooperate with social services, she adamantly refused to do so. Her counsel testified in fact that the respondent did not trust the caseworkers and preferred to do everything through her attorney. This alone makes it impossible for the respondent to successfully complete her service plan, which in turn demonstrates a lack of a reasonable degree of concern, interest, and responsibility. See *In re Daphnie E.*, 368 Ill. App. 3d at 1065.

¶ 32 Testimony showed that since the last home visit completed by the caseworkers in 2013, the respondent threatened the caseworkers, thereby hindering further home visits, which were also requirements of the service plan. When Shelly Pinkston attempted the last home visit in 2014, although the appointment was scheduled and the respondent's car was parked at the residence, the respondent answered neither the door nor the telephone. Accordingly, the visit did not occur. Shelly testified that she attempted to review the service plan with the respondent when she saw her at a court proceeding, but the respondent refused. This conduct is hardly indicative of a reasonable effort to visit and maintain contact with the children, resulting in a failure to maintain a reasonable degree of interest, concern, or responsibility regarding the children. See *id.* at 1064. The respondent's counsel did testify that the respondent consistently made requests for him to

reestablish visitation. However, a parent is not fit merely because she demonstrates some interest in her children. See *id.*

¶ 33 We acknowledge the testimony that the respondent completed substance abuse treatment, as required by the service plan, and part of that included a parenting class which she also completed. However, we add that a mere 10 hours were required to complete the substance abuse treatment and it took a full year to get that done. Moreover, in order to complete the parenting program that was actually required by the service plan (Project 12-Ways), the respondent was required to visit with the children which, as already established, did not occur due to the respondent's own aggressive behavior, which resulted in suspended visitation on two separate occasions. Furthermore, her subsequent behavior and lack of cooperation with LSSI created an impossibility for the visitation to be restored. Testimony also established that the respondent had not completed mental health treatment. She had only begun mental health counseling with Nicole Jeters upon completion of the substance abuse treatment on October 1, 2014, which was the same month the fitness hearing commenced. Nor was any evidence—other than the respondent's testimony—presented to show that the respondent was receiving mental health services from her psychiatrist, as required by the service plan.

¶ 34 Finally, an issue was raised regarding when the releases were received for LSSI to have access to the respondent's service and treatment records, but in the end, as testimony established, no learned skills were ever demonstrated by the respondent upon the completion of any services. For these reasons, we do not find that the respondent made an objectively reasonable showing of any interest, concern, or responsibility toward the

children. See *In re Daphnie E.*, 368 Ill. App. 3d at 1064. Accordingly, it was not against the manifest weight of the evidence for the circuit court to find the respondent an unfit parent on that basis.

¶ 35 Although only one statutory ground is necessary for a finding of unfitness, we add that the circuit court's findings of failure to make reasonable efforts to correct the conditions that were the basis for the removal of the children (750 ILCS 5/1(D)(m)(i) (West 2014)); failure to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect or abuse (750 ILCS 5/1(D)(m)(ii) (West 2014)); and failure to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect or abuse (750 ILCS 5/1(D)(m)(iii) (West 2014))—based on evidence already stated—are also not against the manifest weight of the evidence.

¶ 36 CONCLUSION

¶ 37 For the reasons stated above, the circuit court's October 8, 2015, orders, finding that the respondent was an unfit parent and resulting in the subsequent termination of her parental rights, are affirmed.

¶ 38 Affirmed.

