2018 IL App (4th) 170534-U

NOS. 4-17-0534, 4-17-0550 cons.

FILED
April 23, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| *In re* S.P., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | McLean County |
| Petitioner-Appellee, | ) | No. 13JA14 |
| v. (No. 4-17-0534) | ) | |
| Maxim G. Pappas, | ) | |
| Respondent-Appellant). | ) | |
| _____ | ) | |
| *In re* S.P., a Minor | ) | |
| | ) | |
| (The People of the State of Illinois, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-17-0550) | ) | |
| Maxim G. Pappas, | ) | |
| Respondent) | ) | Honorable |
| | ) | Kevin P. Fitzgerald, |
| (Vicky M. Pappas, Appellant). | ) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court erred by (1) terminating the father's parental rights as to the minor child, (2) barring placement of the minor child with the paternal grandmother, and (3) denying the paternal grandmother's petition to intervene.

¶ 2 Both respondent, Maxim G. Pappas, and his mother, Vicky M. Pappas, filed an appeal from the McLean County circuit court's July 10, 2017, order terminating Maxim's parental rights to his daughter, S.P. (born in December 2012). Vicky is the former foster parent of S.P. She only challenges the court's earlier orders that relate to the court's removal of S.P.

from her care. This court originally dismissed Vicky's appeal due to a lack of jurisdiction, and Vicky filed a petition for leave to appeal to the Illinois Supreme Court. On February 16, 2018, the supreme court denied Vicky's petition for leave to appeal but issued a supervisory order (*In re S.P.*, No. 123185 (Ill. Feb. 16, 2018) (nonprecedential supervisory order on denial of petition for leave to appeal)), vacating our dismissal and directing us to address all of the issues raised by Vicky and consolidate her appeal with Maxim's appeal.

¶ 3 On appeal, Maxim in case No. 4-17-0534 asserts (1) the factual basis to which he stipulated at the fitness hearing was insufficient to prove his unfitness; (2) his admission to unfitness was not knowing and voluntary; (3) his counsel failed to appear at the July 7, 2016, permanency hearing as required by section 1-5(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-5(1) (West 2016)); (4) the circuit court's July 7, 2016, order barring placement of S.P. with Vicky and placing S.P. in foster care was against the manifest weight of the evidence; and (5) the court's order finding it was in S.P.'s best interests to terminate Maxim's parental rights was against the manifest weight of the evidence. In case No. 4-17-0550, Vicky argues the circuit court erred by (1) failing to give her appropriate notice of its intent to remove S.P., (2) ordering S.P.'s immediate removal from Vicky and barring future placement with Vicky, (3) denying Vicky's motion to intervene, and (4) failing to conduct an evidentiary hearing allowing Vicky to testify as to her intent to adopt S.P. We reverse and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In March 2013, the State filed a petition for adjudication of wardship as to S.P. and a supplemental wardship petition. The petitions listed Jami May (born in 1976) as S.P.'s mother and Maxim (born in 1991) as S.P.'s putative father. Genetic testing later confirmed Maxim as S.P.'s biological father. Shortly before the wardship petition was filed, May and

Maxim gave Vicky short-term guardianship of S.P. The Department of Children and Family Services (DCFS) allowed S.P. to remain in Vicky's care. In March 2013, the circuit court found S.P. was neglected under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) based on Maxim's unresolved issues of substance abuse, as evidenced by a positive drug screen on March 4, 2013. Maxim had admitted the aforementioned allegation of neglect. The next month, the court entered a second adjudicatory order, finding S.P. neglected under section 2-3(1)(b) based on May's failure to attain a fitness finding in McLean County case No. 11-JA-125, which involved a different child of hers. After a May 2013 dispositional hearing, the court found both May and Maxim unfit, made S.P. a ward of the court, and placed custody and guardianship of S.P. with DCFS. The dispositional order noted Maxim needed to complete individual counseling, complete substance abuse treatment, participate and follow the recommendations of a domestic violence assessment, and abide by the terms of his probation.

¶ 6 DCFS filed a service plan dated January 31, 2014, which contained an evaluation completed in February 2014. As to those requirements evaluated in February 2014, Maxim was rated "Satisfactory Progress/Maintain Intervention" on every requirement, except for the requirement of engaging in family therapy upon successful completion of domestic violence services if recommended by a therapist. Maxim was rated unsatisfactory because he had yet to complete his domestic violence treatment and had not been able to begin therapy with May. The March 4, 2014, progress report noted Maxim had made progress with his services.

¶ 7 On March 20, 2014, the circuit court held a permanency review hearing. The attorneys discussed Maxim had made progress but not May. They indicated it was getting time for Maxim to make a decision about his relationship with May. The court found May did not make reasonable progress or reasonable efforts during the review period. It did find Maxim had

made substantial progress and substantial efforts since the last hearing. The court noted Maxim was almost complete with all of the services and would be close to a fitness finding if he was not still with May. The court explained it frequently came across situations where the parents want to raise the child together but one parent fails to achieve fitness, which prevents the other parent from being found fit and return home being an option. The court then had a lengthy discussion with May. During the discussion with *May*, the court stated it thought Maxim now needed "to make a decision about trying to get this child returned to his care in a reasonable period of time, and I don't think that's going to happen if you two are together." That same day, the court entered a permanency order, finding Maxim had made reasonable and substantial progress and reasonable efforts toward S.P.'s return. The order noted Maxim attended domestic violence and individual counseling, had completed recommended substance abuse treatment, obtained his general equivalency diploma, and remained living with May.

¶ 8 On May 27, 2014, DCFS filed another permanency report. The report noted May had been diagnosed with colon cancer and was in the early stages of treatment. It stated Maxim had made significant progress in his services. The report also indicated the parents were still in a relationship. At a June 6, 2014, court date, the parties requested the permanency hearing be continued until August 2014. Maxim's attorney noted Maxim was trying to figure out a way he could care for May in the home during her illness and gain fitness to have S.P. returned home. May's attorney noted she had recently undergone surgery for colon cancer and would start chemotherapy in the near future. The court did not address Maxim about the need to end his relationship with May to have S.P. returned to him.

¶ 9 A DCFS service plan was created on August 1, 2014, and approved on August 8, 2014. The plan noted the case remained open because May had not successfully completed her

services and Maxim remained committed to a relationship that was not appropriate for the child. The plan also stated it was evaluated on August 5, 2014. Maxim was given a rating of "satisfactory progress" or "achieved" on all of his requirements, including ones related to housing. The requirement related to counseling with May was discontinued because it was not recommended. The plan did not contain a directive Maxim needed to live apart from May and leave the relationship.

¶ 10 DCFS filed an August 6, 2014, status report, noting the case had been referred to legal screening on June 10, 2014, due to a lack of progress being made in the case. The report further noted May's 17-year-old daughter had moved into Maxim and May's apartment after May's colon surgery. The report found the one-bedroom apartment was not a suitable placement for S.P. As to Maxim, the report noted he was still employed full time and attended individual therapy. The report opined he was ambivalent about his relationship with May. Maxim noted he was overwhelmed with the course of his life at the time. The report stated Maxim did not attend May's medical appointments and did not report he provided her with special care. After an August 7, 2014, hearing, the court entered a permanency review order, finding Maxim had not made reasonable and substantial progress and reasonable efforts toward S.P.'s return. The order noted Maxim and May remained in a committed relationship, and both of them were aware of May's addiction to anxiety medications.

¶ 11 On September 16, 2014, the State filed a petition to terminate the parental rights of both Maxim and May. The petition alleged Maxim was unfit because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to S.P.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2013)); (2) failed to protect S.P. from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West Supp. 2013)); and (3) failed to make

reasonable progress toward S.P.'s return during any nine month period after the neglect adjudication, specifically December 16, 2013, to September 16, 2014 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)). On September 25, 2014, the court held a pretrial hearing, and the State noted Maxim and May had "supposedly" agreed to live apart. The State explained it had offered Maxim and May that, if they agreed to unfitness, the best interest hearing would be set in January 2015. The parties turned down the offer, and the State wanted a termination hearing in November 2014. Maxim's counsel noted Maxim and May had just received a copy of the termination petition, wanted more time to think about the State's offer, and desired a pretrial hearing in October 2014. The court set a pretrial date for October 2014.

¶ 12 At the October 16, 2014, hearing, Maxim and May both admitted they were unfit for failing to protect S.P. from conditions within her environment injurious to S.P.'s welfare. The State gave the following factual basis:

> "The State would present evidence that the Respondent Mother in 11 JA 125 in McLean County case, she surrendered her parental rights to her prior-born child without having been found fit. This is the same allegation that she admitted to in the Petition for Warship on April 11, 2013. And [Maxim] was aware of this, too, and allowed the child to be around an unfit mother."

The court found both parents unfit. The State raised some concerns about May and Maxim's relationship, and the court told Maxim that, if he wanted to parent S.P., he needed to separate from May. Maxim stated he understood, and May did as well. Additionally, the court appointed a court-appointed special advocate (CASA) to get to the truth of May and Maxim's relationship and what was in the child's best interests.

¶ 13 On January 20, 2015, the caseworker filed a best interests report, which listed

different addresses for Maxim and May. The report found it was in S.P.'s best interests to terminate Maxim's and May's parental rights because S.P. had lived with Vicky since she was 10 weeks old and Vicky was the best permanent family for her. The January 21, 2015, CASA status report indicated Vicky did not feel a CASA was necessary in this case and refused to cooperate with the CASA. The report noted Maxim lived with a coworker but was working on finding an affordable apartment. The CASA did express concern May and Maxim were still in a relationship because Maxim texted May on December 17, 2014, to have her tell the CASA he had missed his bus and could not meet the CASA at the agency. On January 27, 2015, the CASA filed an addendum, noting she had been to May's apartment and did not observe any of Maxim's belongings. The CASA did not feel Maxim's and May's parental rights should be terminated because May was currently engaged in her services and Maxim needed more time to demonstrate his parental skills and obtain appropriate housing.

¶ 14 On February 10, 2015, Maxim executed a voluntary surrender of parental rights, consenting to S.P.'s adoption by Vicky. On February 11, 2015, the court terminated the parental rights of May. DCFS then began working on the paperwork for Vicky's adoption of S.P.

¶ 15 At the July 15, 2015, status hearing, the circuit court questioned Vicky about not allowing the CASA into her home. The guardian *ad litem* and the prosecutor indicated they had no concerns about Vicky's home. The court's sole concern was with setting a precedent of allowing a foster parent to refuse to have a CASA in his or her home. In the end, the court did not mandate Vicky had to allow the CASA into her home.

¶ 16 After all of the adoption paperwork was completed, the adoption hearing was set for March 29, 2016. According to the May 2016 permanency report, Vicky cancelled the adoption hearing. The report also noted the caseworker had concerns Vicky was having second

thoughts about the adoption. In its May 12, 2016, permanency order, the circuit court stated the following: "Foster parent is ordered to appear at the July 7th, 2016 hearing. If foster parent fails to appear the court may barr [*sic*] placement of the minor [with] the foster parent."

¶ 17 The June 29, 2016, permanency report noted Vicky had made it clear she did not want to proceed with the adoption with the current judge and guardian *ad litem*. Vicky's adoption attorney, Julia Davis, looked into getting the adoption set in a different McLean County courtroom but learned that was not possible. Davis then contacted Robert Parker, an attorney in Peoria, Illinois, to prepare and file the adoption petition there. On June 28, 2016, Vicky asked the caseworker to remove S.P. from her home before the July 7, 2016, hearing. The July 2016 permanency report addendum stated Vicky changed her mind that day and did not want S.P. removed. Vicky indicated she was fully committed to providing permanency for S.P. through adoption. DCFS and Parker were working on the paperwork to file the adoption in Peoria County. The July 2016 addendum also stated the following:

> "[Vicky] acknowledged that she has a tendency to make statements that often upset the court, which is why she does not intend to attend court on 7/7/16. [Vicky] deeply loves her granddaughter and wishes to proceed with adopting her. However, she wishes to do so in a court setting that is not fraught with negative memories and emotions, which is why she is requesting to proceed with the adoption in another county. She hopes that the court is willing to be patient with this process and will grant her the time needed to adopt [S.P.] in Peoria County."

The caseworker concluded by noting S.P. had lived with Vicky since she was 10 weeks old and was bonded with her. In the caseworker's opinion, a review of the best interest factors demonstrated it was in S.P.'s best interests to remain in Vicky's care. The caseworker asked the

court to give Vicky more time to pursue the adoption in Peoria County and not to bar S.P.'s placement with Vicky. We note Vicky had not attended a hearing in this case since the July 15, 2015, hearing, at which she was questioned about the CASA.

¶ 18 On July 7, 2016, the circuit court held a hearing and first addressed Vicky's motion to dismiss the proceedings in the adoption case, which was McLean County case No. 15-AD-40. Vicky's counsel noted she wanted a dismissal order so the adoption petition could be filed in Peoria County. The court dismissed the adoption petition without prejudice. The court then recessed the case until the afternoon because the guardian *ad litem* was not available. When the court reconvened, neither Vicky nor counsel on her behalf appeared. As additional evidence to the permanency report and addendum, Elizabeth McCormack, the caseworker in this case since June 1, 2015, testified. She explained the adoption paperwork was done in July 2015 and the adoption petition was filed that month. A DCFS investigation into an allegation regarding Vicky's son, A.P., delayed the case until an unfounded finding in September 2015. Vicky did not sign the DCFS papers until late November 2015. DCFS approved the papers in February 2016, and the adoption hearing was set for March 29, 2016. According to McCormack, Vicky cancelled the hearing because she did not want the adoption hearing to occur in McLean County. Vicky did not want the judge and the guardian *ad litem* in the juvenile case involved in the adoption case. McCormack consulted with DCFS and made plans to file the adoption in Peoria County. McCormack was confident DCFS would approve the adoption in Peoria County. McCormack believed the adoption in Peoria County could be done in two to three months. McCormack visited Vicky's home twice a month and had no concerns about her care for S.P. McCormack testified it was in S.P.'s best interests to change venues and pursue the adoption in Peoria County because S.P. was bonded to Vicky, it was the only home S.P. knew, and there had

never been any concerns about Vicky's care of S.P. McCormack also stated Vicky had mentioned she had a very negative experience with the court process in Russia in adopting Maxim and A.P. and wanted a happier event with S.P. McCormack also testified she gave Vicky a copy of the May 2016 permanency order directing her appearance at the hearing and Vicky understood the order. At the conclusion of the hearing, the circuit court found it was in S.P.'s best interests to bar her placement with Vicky. The court entered a permanency order, stating S.P.'s current placement was no longer in her best interests and was thereby barred.

¶ 19 On August 3, 2016, the circuit court held a status hearing, at which Vicky appeared with counsel and sought to intervene in the case to challenge the court's July 7, 2016, order. The court stated Vicky needed to file a petition to intervene. That same day, Vicky filed a petition to intervene under sections 1-5(2)(c) and (2)(d) of the Juvenile Court Act (705 ILCS 405/1-5(2)(c), (2)(d) (West 2016)). After an August 17, 2016, hearing, the court denied Vicky's petition to intervene. In doing so, the court explained the barring of placement with Vicky was based on Vicky's conduct and refusal to come into court when ordered to do so. Vicky requested a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), which the court declined to make. On September 8, 2016, Vicky filed a motion to reconsider the denial of her motion to intervene, which the court denied on September 22, 2016.

¶ 20 On October 6, 2016, Vicky filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). On March 20, 2017, this court dismissed the appeal for a lack of jurisdiction. *In re S.P.*, 2017 IL App (4th) 160714-U. We explained that, although Rule 306(a)(5) pertains to issues of child care and custody, the plain language of Rule 306(a) specifically states it applies to parties who wish to pursue an interlocutory appeal and does not provide the same privilege for nonparties like Vicky. *S.P.*, 2017 IL App (4th) 160714-

U, ¶ 21. This court also found that, even if Vicky could appeal pursuant to Rule 306(a)(5), her motion for leave to appeal was untimely because a motion to reconsider does not extend the 30-day period for filing a motion for leave to appeal under Rule 306. *S.P.*, 2017 IL App (4th) 160714-U, ¶ 23. Our supreme court denied Vicky's petition for leave to appeal. *In re S.P.*, No. 122291 (July 11, 2017) (denying petition for leave for leave to appeal).

¶ 21 On July 10, 2017, the McLean County circuit court entered a written order terminating the parental rights of Maxim. On July 19, 2017, Maxim filed a notice of appeal from the July 10, 2017, order terminating his parental rights. His appeal is docketed in this court as No. 4-17-0534. On July 21, 2017, Vicky filed her notice of appeal, which is docketed as No. 4-17-0550. Her notice of appeal lists appealed orders with the following dates: July 7, 2016; August 3, 2016; August 17, 2016; September 22, 2016; and July 10, 2017. As stated, the supreme court ordered the consolidation of the two appeals in a February 2018 supervisory order.

¶ 22 II. ANALYSIS

¶ 23 A. Maxim

¶ 24 Citing *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 28, 74 N.E.3d 1185, the State first asserts Maxim has forfeited all of his arguments on appeal because he failed to make contemporaneous objections and to file a posttrial motion raising the errors. However, with civil cases that do not involve a jury, Illinois Supreme Court Rule 366(b)(3)(ii) (eff. Feb. 1, 1994) provides the failure to file a postjudgment motion does not limit the scope of review. Moreover, an appellant may challenge the sufficiency of the evidence supporting the judgment "without formal action to preserve the question." Ill. S. Ct. R. 366(b)(3)(i) (eff. Feb. 1, 1994). Thus, we disagree with the State Maxim has forfeited his appellate arguments. Regardless, the forfeiture

rule imposes a limitation on the parties and not this court's jurisdiction. *Dal. D.*, 2017 IL App (4th) 160893, ¶ 28. Thus, we would address Maxim's arguments even if they were forfeited. See *Dal. D.*, 2017 IL App (4th) 160893, ¶ 28.

¶ 25 Maxim first asserts the factual basis to which he stipulated at the fitness hearing was insufficient to prove his unfitness. Maxim had admitted he was unfit for failing to protect S.P. from conditions within her environment injurious to her welfare based on May having surrendered her parental rights to her prior-born child without having been found fit and Maxim allowing S.P. to have contact with an unfit mother. The State concedes a finding of unfitness cannot be predicated on a failure to protect a child from an injurious home environment when the child has been removed from the parents' care. See *In re C.W.*, 199 Ill. 2d 198, 212, 766 N.E.2d 1105, 1114 (2002). However, the State contends (1) citing *In re Brianna B.*, 334 Ill. App. 3d 651, 655, 778 N.E.2d 724, 728 (2002), this court can affirm the circuit court's decision on any basis in the record and (2) citing *Dal. D.*, 2017 IL App (4th) 160893, ¶ 31, we can look to the record to see if a factual basis exists for the other allegations of unfitness. Maxim responds by citing our supreme court decision in *In re M.H.*, 196 Ill. 2d 356, 368, 751 N.E.2d 1134, 1142-43 (2001), where it held "due process requires a circuit court to determine whether a factual basis exists for an admission of parental unfitness before it accepts the admission." In reaching that conclusion, the M.H. court noted, *inter alia*, a "factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed." *M.H.*, 196 Ill. 2d at 366, 751 N.E.2d at 1142.

¶ 26 The supreme court's decision in *M.H.* does suggest the factual basis must be stated by the State at the admission hearing, as the factual basis requirement ensures the State has a basis for its allegation of unfitness and makes certain the parent's admission of unfitness is

knowing and voluntary. See *M.H.*, 196 Ill. 2d at 365-66, 751 N.E.2d at 1141. "[I]f a parent is not fully informed of the factual basis underlying the State's allegations, the risk is increased that her parental rights will be erroneously terminated because of an ill-advised admission of unfitness." *M.H.*, 196 Ill. 2d at 367, 751 N.E.2d at 1142. The supreme court also noted "[t]he State's recitation of the facts supporting the underlying petition and determining that a factual basis exists is not unduly burdensome to either the court or the State." *M.H.*, 196 Ill. 2d at 367, 751 N.E.2d at 1142. Regardless, even if this court can look to the record to find whether a sufficient factual basis exists to support Maxim's admission, the record in this case is insufficient to support another basis for an unfitness finding.

¶ 27 In its September 2014 petition to terminate, the State also alleged Maxim was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor child's welfare (750 ILCS 50/1(D)(b) (West Supp. 2013)); and (2) failed to make reasonable progress toward the minor child's return during any nine month period after the neglect adjudication, specifically December 16, 2013, to September 16, 2014 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013)). When seeking to terminate parental rights, the State must prove a parent's unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006).

¶ 28 As to his failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor child's welfare, any of its three elements "may be considered on its own as a basis in determining whether the parent is unfit." *In re Nicholas C.*, 2017 IL App (1st) 162101, ¶ 24, 77 N.E.3d 1173. A finding of unfitness under that section is "based on a subjective analysis." *Nicholas C.*, 2017 IL App (1st) 162101, ¶ 24. Moreover, this unfitness ground "does not focus on the parent's success but, rather, the reasonableness of her efforts and

takes into account the parent's difficulties and circumstances." *Nicholas C.*, 2017 IL App (1st) 162101, ¶ 24. However, a parent's demonstration of some interest, affection, or responsibility toward his or her child does not make him or her fit under this ground; rather, the parent's interest, concern, and/or responsibility must be reasonable. *Nicholas C.*, 2017 IL App (1st) 162101, ¶ 24. Last, we note " '[n]oncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under [ground] (b).' " *Nicholas C.*, 2017 IL App (1st) 162101, ¶ 24 (quoting *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004)).

¶ 29 In this case, Maxim had been rated satisfactory on all of the requirements of his service plan. The record indicates the only reason he was not considered fit to have the child returned to him was his relationship with May. At a March 2014 permanency hearing, the circuit court noted Maxim had made substantial progress and showed substantial efforts, as he was almost complete with all of his services. The court noted he was close to a fitness finding if it was not for him still being with May. In talking with *May*, the court noted Maxim needed to make a decision about trying to get this child returned to his care in a reasonable period of time, and the court did not think that was going to happen if he and May were together. The court never directly admonished Maxim that he had to leave May to regain care of S.P. at the March 2014 hearing. It also did not make clear to him that he needed to promptly leave May. Moreover, at the June 2014 hearing, May had recently undergone surgery for colon cancer and needed chemotherapy. Maxim desired to care for May and parent S.P. He was trying to figure out a way to do both. The court in no way indicated Maxim's plan was unworkable or that he had to leave May quickly, regardless of her serious medical condition. At the August 2014

permanency hearing, the court did find Maxim failed to make reasonable efforts and progress based solely on the fact he was still in a relationship with May. Maxim's and May's attorney had both emphasized the unique situation presented by May's cancer. At that time, May was not bedridden or in need of 24-hour care, but Maxim believed she needed care and support. We note the court's direct admonishment to Maxim about the need to terminate his relationship with May and the prosecutor's allegation May and Maxim intended to "game the system," which are noted by the State in its brief, took place *after Maxim made his unfitness admission*. Given Maxim's compliance with the service plan, the difficulties in leaving May due to her serious medical condition, and the lack of clarity in court's directive regarding Maxim's need to terminate his relationship with May, the record does not establish by clear and convincing evidence Maxim failed to maintain a reasonable degree of interest, concern, or responsibility as to S.P.'s welfare.

¶ 30 Regarding the allegation Maxim failed to make reasonable progress toward the return of S.P. during the 9-month period of December 26, 2013, to September 13, 2014, we note Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[T]he benchmark for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act 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 became known and which would prevent the court from

returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 31 As with the other allegation of unfitness, the record shows Maxim was rated satisfactory on all of the requirements in his service plan when it was evaluated on August 5, 2014. The service plan only mentioned his relationship with May in explaining why the case was still open. The caseworker's August 5, 2014, report noted Maxim and May remained in a committed relationship although they were both aware of her addiction to anxiety medications and their house was not suitable for S.P.'s placement. At the August 7, 2014, permanency hearing the court did find Maxim had not made reasonable progress. The order noted Maxim remained in a committed relationship with May. We note the State contended the court had admonished Maxim on March 20, 2014, that he had to live apart from May to attain fitness. The guardian *ad litem* stated a discussion was had that the parents needed to separate. Both Maxim's and May's attorneys noted the extraordinary circumstances of May's serious illness. Maxim's attorney did state Maxim understood a discussion took place in March about the need to make a decision. However, the record lacks a direct admonishment by the court as to Maxim's need to promptly separate from May until after the October 2014 unfitness finding and completely lacks

a directive from DCFS. Moreover, May's serious illness was clearly raised by Maxim for his delay in leaving May. Thus, we do not find the record establishes by clear and convincing evidence Maxim failed to make reasonable progress.

¶ 32 Accordingly, the State failed to provide a factual basis for Maxim's unfitness finding and reversal of the termination of his parental rights is warranted. Thus, we remand the cause for further proceedings, as S.P.'s wardship petition is still pending. Our reversal obviates the need to address Maxim's other claims related to him, and our addressing Vicky's claims in the next section disposes of the need to address Maxim's challenge to the circuit court's July 7, 2016, order barring S.P.'s placement with Vicky.

¶ 33 B. Vicky

¶ 34 While we have reversed the termination of Maxim's parental rights, we still must address all of Vicky's claims as directed by the supreme court and to ascertain if Vicky should have a role in future proceedings.

¶ 35 1. *Appropriate Notice of July 2015 Permanency Review Hearing*

¶ 36 Vicky first argues the circuit court failed to give her appropriate notice of its intent to remove S.P. from her care. The State disagrees and contends the notice was adequate. Whether a foster parent received proper or adequate notice presents a question of law, and thus our review is *de novo*. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626, 929 N.E.2d 1238, 1242 (2010).

¶ 37 We find any error in the circuit court's procedure notice would be harmless error. The circuit court gave notice of the July 7, 2016, permanency hearing in its May 12, 2016, permanency order. Vicky concedes she received the order from the caseworker. The order stated the following: "Foster parent is ordered to appear at the July 7th, 2016 hearing. If foster

parent fails to appear the court may barr [*sic*] placement of the minor [with] the foster parent." Contrary to Vicky's assertion, the court's language made clear her presence was mandatory at the July 2016 permanency hearing. The language also indicated what could happen if Vicky failed to appear. The court did not automatically bar placement of S.P. with Vicky based on Vicky's failure to appear. It held an evidentiary hearing and then found it was in S.P.'s best interests to bar her placement with Vicky. Thus, the court's language accurately portrayed what could and did happen based on Vicky's failure to appear.

¶ 38 2. *Barring S.P.'s Placement with Vicky*

¶ 39 Vicky next contends the circuit court erred by ordering S.P.'s immediate removal of S.P. from Vicky's care and barring any future placement of S.P. with Vicky. The State disagrees.

¶ 40 In determining whether a minor should be removed from a foster care placement, the court considers the general best interests standard set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2016)). See *In re A.H.*, 195 Ill. 2d 408, 423, 748 N.E.2d 183, 193 (2001) (addressing removal of a minor from his temporary foster placement). That standard includes the following factors: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to

entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). A reviewing court will not disturb a circuit court's best interests determination unless it is contrary to the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005).

¶ 41 In its oral ruling on S.P.'s best interests, the circuit court did not address the aforementioned factors. It only expressed concern about Vicky's age, commitment, and judgment. It further noted the adoption should have been completed many months before and the removal from Vicky would be difficult for S.P. Likewise, the State's brief addresses only Vicky's actions during the court proceedings and not the statutory best interests factors. Except for permanency, the remaining best interests factors overwhelmingly favored keeping S.P. with Vicky. At the time of the July 2016 hearing, S.P. had been living with Vicky for over three years. The caseworker voiced no concerns over Vicky's care of S.P. and noted S.P. was "very bonded" with Vicky. Moreover, Maxim had only consented to S.P.'s adoption by Vicky, and thus any potential adoption by someone else would require additional proceedings and a lengthy delay in permanency. Additionally, the addendum to the permanency report requested the court not to bar placement of S.P. with Vicky because Vicky was working toward providing S.P. with permanency. The addendum explained Vicky's plan to have the adoption completed in Peoria County, and DCFS had approved of the plan. The caseworker's addendum was a change in her earlier position, which had been Vicky was not committed to providing permanency for S.P. The caseworker had changed her mind after talking with Vicky and hearing Vicky's motivations and explanations. On the morning of the July 2016 hearing, Vicky's adoption attorney had obtained

a dismissal of her adoption petition in McLean County, and the attorney had indicated the petition would be refiled in Peoria County. Thus, while the court had concerns about Vicky's commitment, the evidence at the hearing contained ample evidence Vicky had a plan to provide permanency for S.P. Thus, the permanency factor did not overwhelmingly favor barring placement with Vicky and did not outweigh all of the other factors favoring keeping S.P. with Vicky. Accordingly, we find the circuit court's barring of S.P.'s placement with Vicky was against the manifest weight of the evidence and must be reversed.

¶ 42 Vicky asks that, if we reverse the circuit court's July 7, 2016, order, we place S.P. with her or order the circuit court to do so. However, it has now been more than 21 months since S.P. was removed from her care. Moreover, we have reversed the termination of Maxim's parental rights. Thus, while we reverse the circuit court's judgment barring S.P.'s placement with Vicky, we do not find it is proper to order the circuit court to return S.P. to Vicky's care at this time. Further proceedings are warranted based on our reversal of Maxim's termination of parental rights, and during those proceedings, Vicky can be considered as a proper placement for S.P.

¶ 43 3. *Motion to Intervene*

¶ 44 Vicky further asserts the circuit court erred by denying her motion to intervene under section 1-5(2)(c) of the Juvenile Court Act (705 ILCS 405/1-5(2)(c) (West 2016)) after the court had removed S.P. from her care. The State asserts the circuit court's denial was proper and consistent with the language of the statute. This issue presents a question of statutory construction, which we review *de novo*. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 17, 72 N.E.3d 323.

¶ 45 When presented with an issue of statutory construction, the reviewing court's

primary objective is to ascertain and give effect to the legislature's intent. *Murphy-Hylton*, 2016 IL 120394, ¶ 25. The statutory language, given its plain and ordinary meaning, best indicates the legislature's intent. *Murphy-Hylton*, 2016 IL 120394, ¶ 25. Moreover, we must evaluate the statute as a whole, "construing words and phrases in context to other relevant statutory provisions and not in isolation." *Murphy-Hylton*, 2016 IL 120394, ¶ 25. In doing so, we should not render any language superfluous. *Murphy-Hylton*, 2016 IL 120394, ¶ 25.

¶ 46 Section 1-5(2)(c) of the Juvenile Court Act (705 ILCS 405/1-5(2)(c) (West 2016)) provides the following:

> "If a foster parent has had the minor who is the subject of the proceeding under Article II in his or her home for more than one year on or after July 3, 1994 and if the minor's placement is being terminated from that foster parent's home, that foster parent shall have standing and intervenor status except in those circumstances where the Department of Children and Family Services or anyone else authorized under Section 5 of the Abused and Neglected Child Reporting Act has removed the minor from the foster parent because of a reasonable belief that the circumstances or conditions of the minor are such that continuing in the residence or care of the foster parent will jeopardize the child's health or safety or presents an imminent risk of harm to the minor's life."

The State does not contend the exception applies in this case, and the record also does not indicate the exception applies. Moreover, the record is clear S.P. was in Vicky's care for more than a year. Thus, at issue in this appeal is the statutory language "if the minor's placement is being terminated from that foster parent's home, that foster parent shall have standing and intervenor status." 705 ILCS 405/1-5(2)(c) (West 2016).

¶ 47 The plain language of that provision makes clear that, as soon as anyone initiates the process to terminate a minor's placement with a foster parent, the foster parent automatically has standing and intervenor status. The statute does not require the filing of a motion to intervene or any other action to gain standing and intervenor status. The circuit court does not have discretion to deny intervenor status under section 1-5(2)(c). Here, Vicky obtained standing and intervenor status when the circuit court entered the May 12, 2016, permanency order, indicating S.P.'s placement with Vicky may be barred. As such, Vicky could have filed a motion to reconsider the court's July 7, 2016, order removing S.P. from her care and barring future placement with Vicky without being granted leave to intervene. The circuit court's interpretation of the language that section 1-5(2)(c) can only be invoked before placement has been terminated overlooks the automatic nature of the provision and the language of the exception that uses the past tense language "has removed the minor."

¶ 48 In this case, the circuit court erred by (1) requiring Vicky to file a motion to intervene; (2) preventing Vicky's counsel from examining the court file when requested on August 3, 2016; (3) denying Vicky's motion to intervene; and (4) preventing her from filing a motion against the July 7, 2016, order until she was granted leave to intervene. Accordingly, we reverse the circuit court's denial of Vicky's motion to intervene and note Vicky has intervenor status and standing in the further proceedings in this case. Since we have found Vicky has intervenor status under section 1-5(2)(c), we do not address her argument regarding section 1-5(2)(d).

¶ 49 4. *Evidentiary Hearing*

¶ 50 Last, Vicky contends the circuit court erred by failing to allow her to testify under oath as to her intent to adopt at the August 3, 2016, status hearing under section 1-5(2)(a) of the

Juvenile Court Act (705 ILCS 405/1-5(2)(a) (West 2016)), which provides any previously appointed foster parent has the right to be heard by the court. However, the court did not hold an evidentiary hearing on August 3, 2016, and no pending motions were before the court at that hearing. The hearing was to see how S.P. was doing and to bring Maxim back into the case. At the hearing, Vicky sought the right to intervene to challenge the court's July 7, 2016, order. The court required a written motion to intervene, and Vicky's challenge to the July 7, 2016, order went no further at that hearing. Thus, we do not find the court committed an error under section 1-5(2)(a) of Juvenile Court Act.

¶ 51 C. S.P.

¶ 52 We recognize our reversals of (1) the termination of Maxim's parental rights, (2) the barring of placement with Vicky, and (3) the denial of Vicky's request to intervene further prolong permanency for S.P., who is now more than five years old. We do not take our actions lightly or without considerable thought and apprehension. It is unfortunate no one recognized the case law establishing the impropriety of the unfitness allegation to which Maxim admitted that had been in existence for more than 12 years at the time of the unfitness hearing. Termination of Maxim's parental rights was pursued despite his excellent job in complying with his required services, May's colon cancer, and S.P. residing with Vicky and not a nonrelative. After Maxim consented to S.P.'s adoption by Vicky, a quick adoption was delayed by paperwork and then what appears to be a personality conflict between Vicky and the judge presiding over the case. The conflict culminated in the circuit court removing S.P. from the only home she knew and in which she was doing well. Vicky was not without fault, as she should have consistently worked toward adopting S.P. and attended the July 2016 hearing. S.P.'s best interests seem to have been lost along the way in these proceedings, and it is regretful this case

resulted in protracted litigation.

¶ 53 On remand, this case should be assigned to a different trial judge, and we trust Maxim, Vicky, and all other participants in this case will focus on S.P.'s best interests.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we reverse (1) the circuit court's July 10, 2017, judgment terminating Maxim's parental rights, (2) the court's July 7, 2016, order barring placement of S.P. with Vicky, and (3) the court's August 17, 2016, order denying Vicky's motion to intervene. We remand the cause for further proceedings consistent with this order.

¶ 56 Reversed; cause remanded with directions.