

NOTICE
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2018 IL App (5th) 170379-U

NO. 5-17-0379

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> A.C., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Marion County.
)	
Petitioner-Appellee,)	
v.)	No. 14-JA-22
)	
Samuel C. and Jessica C.,)	Honorable
)	Erika A. Sanders,
Respondents-Appellants).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment terminating respondents' parental rights affirmed where circuit court's findings regarding the respondents' unfitness and the child's best interest were not against the manifest weight of the evidence.

¶ 2 In this case, the respondents, Samuel C. (Sam) and Jessica C., appeal the orders entered by the circuit court of Marion County on June 28, 2017, and September 6, 2017, that found them unfit as parents and found it in the best interest of their child, A.C., to terminate their parental rights.¹ For the following reasons, we affirm.

¹A.C.'s older brother was involved in the underlying case but is not subject to this appeal.

¶ 3

FACTS

¶ 4 On July 8, 2014, a petition for adjudication of wardship was filed by the State, pursuant to section 2-3 of the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2014)), alleging that the minor child in this case, A.C., was neglected by being in an environment that was injurious to her welfare because her father, Sam, repeatedly engaged in acts of domestic violence against her mother, Jessica, in A.C.'s presence.

¶ 5 An order was entered on November 5, 2014, awarding temporary custody of A.C. to the Department of Children and Family Services (Department). Also on November 5, 2014, an adjudicatory order was entered, finding that A.C. was neglected by being in an environment that was injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2014)), and the neglect was inflicted by her parent or parents, specifically Sam. An amended order of adjudication was entered *nunc pro tunc* on December 3, 2014, finding that abuse or neglect was inflicted upon A.C. by the parent or parents, specifically Sam, as alleged in the petition for adjudication. The finding was based on the following facts: (1) Sam engaged in repeated acts of domestic violence against Jessica C. in A.C.'s presence; (2) on September 11, 2014, Sam pled guilty to domestic battery, admitting he grabbed Jessica C. by her neck "in the presence of one of the minors"; and (3) Jessica C. admitted in open court on July 30, 2014, that there were repeated acts of domestic violence "in the presence of the minors."

¶ 6 A.C. was made a ward of the court via a dispositional order entered on January 14, 2015, because the respondents had not rectified the issues that led to A.C.'s removal. A permanency order was entered on April 15, 2015, setting a goal for A.C. to return home

in 12 months and ordering the respondents to comply with the service plan that was established by the Department. Permanency orders were entered on July 22, 2015, and January 20, 2016, finding that the respondents had not made substantial progress toward A.C.'s return home for failure to complete the service plan, and maintaining the permanency goal for A.C. to return home in 12 months. A permanency order was entered on July 20, 2016, finding that both respondents had made substantial progress toward A.C.'s return home and maintaining the permanency goal for A.C. to return home in 12 months. A permanency order was entered on November 2, 2016, maintaining the permanency goal for A.C. to return home in 12 months, but making no findings regarding the respondents' progress.

¶ 7 On January 31, 2017, the Department filed a petition for a termination of the respondents' parental rights and for appointment of a guardian with power to consent to A.C.'s adoption. A permanency order was entered on February 1, 2017, with a goal of substitute care of A.C. pending a court determination on the termination of the respondents' parental rights. On May 4, 2017, the Department filed an amended petition for a termination of the respondents' parental rights and for appointment of a guardian with power to consent to A.C.'s adoption. The petition alleged that Jessica C. was an unfit parent for failure to protect A.C. from an environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2016)); failure to make reasonable efforts to correct the conditions that led to A.C.'s removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)), specifically between November 6, 2014, to August 5, 2015; August 6, 2015, to May 5, 2016; and May 6, 2016,

to February 5, 2017; and failure to make reasonable progress toward A.C.'s return during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)), specifically between November 6, 2014, to August 5, 2015; August 6, 2015, to May 5, 2016; and May 6, 2016, to February 5, 2017.

¶ 8 The petition further alleged that Sam was an unfit parent for failure to maintain a reasonable degree of interest, concern, or responsibility for A.C.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); failure to make reasonable efforts to correct the conditions that led to A.C.'s removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)), specifically between November 6, 2014, to August 5, 2015; August 6, 2015, to May 5, 2016; and May 6, 2016, to February 5, 2017; and failure to make reasonable progress toward A.C.'s return during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)), specifically between November 6, 2014, to August 5, 2015; August 6, 2015, to May 5, 2016; and May 6, 2016, to February 5, 2017.

¶ 9 A fitness hearing commenced on May 10, 2017, and continued on June 7, 2017, where the following evidence and testimony was presented. Shelby Edwards testified that she is employed as a mental health and substance abuse counselor at Community Resource Center (CRC). Shelby reported that Jessica first appeared for substance abuse counseling at CRC on November 18, 2014, but Shelby was not her counselor at that time. Shelby indicated that Jessica exhibited a lack of attendance in the treatment sessions between November 18, 2014, and July 23, 2015, and her case was closed for that reason. However, Shelby began seeing Jessica for substance abuse and mental health treatment in

October 2015 when Jessica was referred back to the program. Shelby testified that between October 2015 and November 2016, Jessica only attended about every other treatment session. Shelby was aware that Jessica relapsed in July 2016 and October 2016. Jessica began attending treatment more regularly after that time and was still attending as of the date of the hearing. Shelby reported that Jessica opened up to her much more over the last six months and she learned that Jessica's history of being a victim of domestic abuse was a trigger to her substance abuse. Shelby had encouraged Jessica to attend Alcoholics Anonymous meetings, but Jessica stated that her work prevented her from doing so. Shelby testified that Jessica had been attending parenting classes at CRC and was expected to finish the day after the fitness hearing.

¶ 10 Joanna Meinert testified that she is employed as an addictions counselor at CRC and has been so employed for 25 years. She facilitates a substance abuse treatment group and encountered Jessica in December 2015. Joanna testified that, in the beginning, Jessica's attendance was "a little sporadic" but over the last eight or nine months she attended "pretty regularly and participated in the group." Joanna indicated that, during the course of treatment, Jessica relapsed in October 2016 but it never affected her attendance in the group.

¶ 11 Kaci Beal testified that she is employed as a foster care case manager at Caritas Family Solutions. While employed in this capacity, Kaci began working with the respondents. She confirmed that A.C. was brought into protective care because Jessica was allowing Sam to maintain contact with her and A.C., notwithstanding an active order of protection forbidding the same. Kaci testified that the respondents completed an

integrative assessment and a service plan was established for them in November 2014. She explained that the service plan was established to correct the conditions that brought A.C. into protective care.

¶ 12 Kaci testified that she conducted a six-month evaluation of the respondents for the time period of November 6, 2014, to May 7, 2015. Kaci confirmed that Jessica signed releases for substance abuse treatment and completed an assessment during that time period but she was rated unsatisfactory for failure to follow the recommendations, failure to attend treatment sessions regularly, and failure to stop using alcohol per her own report. Kaci testified that Jessica also rated unsatisfactory on mental health for failure to complete an assessment and failure to demonstrate knowledge and skills learned from the assessment.

¶ 13 Kaci testified that Jessica rated unsatisfactory on employment for having sporadic employment and failing to present proof of income. Kaci reported that Jessica rated unsatisfactory on parenting during the first six-month period for failing to enroll in parenting classes and demonstrate what she learned. Kaci stated that, to her knowledge, Jessica was not on a waiting list for the classes nor did she know the availability of the classes. Kaci reported that Jessica rated satisfactory on housing and domestic violence services. Kaci testified that Jessica completed PAVE counseling for domestic violence, but she never applied what she learned to her lifestyle or to her relationship with Sam. Kaci further indicated that Jessica maintained contact with Sam, notwithstanding active orders of protection.

¶ 14 Kaci learned that Sam got a DUI in November 2014, right after the adjudication of neglect. Pursuant to the service plan, Sam was required to participate in substance abuse treatment. Kaci testified that he signed releases, cooperated with drug testing, and completed the assessment but he rated unsatisfactory because he was not attending the treatments regularly, not following the recommendations, and not abstaining from drinking. Kaci further testified that Sam rated unsatisfactory on the requirements to complete a mental health assessment and to follow the recommendations from the mental health assessment, although he did sign releases.

¶ 15 Kaci testified that Sam completed a 24-week program for domestic violence in April 2014—prior to A.C. coming into care. Because A.C. came into care in July 2014, Sam was required to complete a 48-week treatment program for second offenders, on which he rated unsatisfactory. Kaci noted that Sam rated satisfactory on housing and employment. Kaci testified that, during the time that she had the case, Sam visited with A.C. once a week for an hour.

¶ 16 Beth Volk testified that she is employed at the Department and was involved in the respondents' case from July 2015 through July 2016. Beth vaguely recalled that, when she first assumed the case, Jessica may have been admitted to a psychiatric facility. Beth testified that she prepared and evaluated service plans for the respondents. In particular, Beth evaluated service plans dated November 10, 2015, and May 18, 2016, for the six months preceding the service plans, respectively.

¶ 17 When Beth first began working on the case in July 2015, she was aware that Jessica had a mental health diagnosis. Beth rated Jessica unsatisfactory on mental health

because Jessica failed to demonstrate an ability to sustain mental health, failed to take any prescribed medications, and failed to provide documentation that she was engaging in treatment. Beth clarified that there was "a chance" that Jessica began mental health counseling before the service plan was rated, but "she would not have been completing it for the full six months or half of the six-month time period." Beth explained that completing a program is not the same as progress, which encompasses attendance as well as progressing in the treatment.

¶ 18 Regarding substance abuse, Jessica was required to complete an assessment and follow the recommendations. Beth noted that Jessica was seeing a counselor who recommended in-patient treatment because Jessica was appearing to the appointments under the influence. Beth rated Jessica unsatisfactory on this requirement because, although she was admitted to in-patient treatment on August 14, 2015, she left the facility on August 28, 2015, without notifying anyone and she failed to follow the recommendations from the treatment.

¶ 19 Beth testified that Jessica was rated satisfactory on the employment requirement because she began working during the relevant time period, although Beth received no proof of the employment. Regarding the parenting requirement, Jessica was rated unsatisfactory for failure to maintain consistent attendance in parenting classes, resulting in a failure to demonstrate any correlating skills. Beth indicated that Jessica rated unsatisfactory on the requirement to maintain adequate housing, to not have alcohol in the home, and to allow a worker into her home—announced or unannounced. She rated Jessica satisfactory on domestic violence.

¶ 20 Beth testified that she rated Sam unsatisfactory for failure to complete the mental health assessment and consequently failure to demonstrate skills learned from counseling. Beth testified that, although Sam signed releases for the domestic violence, he was rated unsatisfactory for failure to attend counseling. He was also rated unsatisfactory on substance abuse, but rated satisfactory on housing and employment.

¶ 21 Regarding the May 18, 2016, service plan, Beth testified that the goals were the same as the previous service plan. By this time, Jessica was complying with the remaining service plan requirements, including parenting, mental health, domestic violence, housing, and employment. However, Beth rated Jessica unsatisfactory on substance abuse for failure to consistently attend appointments. Beth further testified that her last day of employment, and hence, her last day on the respondents' case, was July 29, 2016. On that date, she learned that Jessica was arrested for failing a drug test, which led to the revocation of her probation. Beth documented that Jessica tested positive for opiates, benzodiazepines, and amphetamines.

¶ 22 Beth testified that the goals of the May 18, 2016, service plan were the same for Sam as those of the previous service plan. Beth reported that Sam was rated unsatisfactory on substance abuse and domestic violence. Although he signed releases and was reported by the domestic violence program as doing well in the group, Beth rated him unsatisfactory for failure to follow the recommendations and failure to demonstrate changes in behavior. Regarding employment, Beth testified that Sam was working but he failed to provide proof of income, which was required at the outset.

¶ 23 Although Sam signed mental health releases and completed an assessment, he was not recommended to complete services at that time because he was currently participating in a domestic violence program and was not making satisfactory progress. Accordingly, a future recommendation was made for Sam to refer back to the mental health program upon his completion of the domestic violence program. Beth testified that she rated Sam unsatisfactory on mental health because he failed to be reevaluated at the behest of the treatment facility and it was impossible for him to be given any recommendations because he was not making satisfactory progress in the domestic violence program by demonstrating any learned skills. Beth reported that Sam consistently rated satisfactory on maintaining stable housing and keeping her updated on changes in employment. Beth worked on the respondents' case until July 29, 2016, at which time she did not recommend any changes to the service plan based on their ratings.

¶ 24 Carla Manion testified that she was previously employed as a legal advocate and co-facilitator for the Men Challenging Violence program at PAVE. She explained that Men Challenging Violence is a group for male perpetrators of domestic violence who are required to complete either a 24 or 48-week program. Carla testified that Sam was a participant in the program and had completed 45 out of the required 48 weeks by January 2017, at which time the program was terminated due to a budget impasse. Carla indicated that Sam participated in the group and she believed he took responsibility for his actions by being honest about his relationship with Jessica. Accordingly, he was successfully discharged and received a certificate of completion from the program based on his attendance and progress. Because she had been laid off at different times, Carla

could not recall Sam's lack of attendance in the program and she had no attendance records to refresh her recollection.

¶ 25 Laura Erwin testified that she is employed by the Centralia Police Department. While working on December 16, 2014, Laura became aware that Sam was texting Jessica, in violation of no-contact conditions of his bond on probation. Laura described two occasions when she was present when Sam called Jessica's phone. Laura testified that she answered the phone, explained to Sam that his calls constituted harassment, and instructed him to stop calling. The court took judicial notice of Sam's case file 14-CM-123, which included the no-contact conditions of bond on probation, a September 11, 2014, no-contact probation order, and a petition to revoke probation filed on December 9, 2014, alleging contact on November 20 and 28, 2014, in violation of the probation order. The circuit court further noted that Sam was readmitted to probation on June 18, 2015, for a period of one year. A petition to revoke probation was filed on July 6, 2015, alleging contact on June 22 and 23, 2015. The petition was granted and Sam was placed on probation for another year.

¶ 26 Jessica testified that she married Sam on October 5, 2000, and they had A.C. and her brother. When the Department first became involved with the family, Jessica signed releases of her medical and mental health records. She testified that she experienced a nervous breakdown in May 2015—after the case began—and admitted herself to the hospital. She further testified that she advised the Department when the hospitalization occurred but received no response. Jessica indicated that she made a number of phone

calls to the police during the course of the case because Sam continued to call and harass her.

¶ 27 Jessica testified that Kendra Shuler became her caseworker in October 2016 and that she had enrolled and engaged in parenting classes before that time, but was wait-listed until the classes resumed in February 2017. Jessica reported that she attempted to attend rehab in 2015 and 2016. In 2015 she was admitted to a 30-day program but only stayed for 12 days because "I believed it was not helping me." Thereafter she began outpatient substance abuse counseling at CRC, which she felt would be more successful. She admitted that her attendance was inconsistent and she was dropped from the program as a result, but she stated that she could not get off work at times to make the appointments. She added that she had been employed "pretty much" consistently throughout the case and she went to the substance abuse appointments if she was off work.

¶ 28 Jessica testified that she eventually reenrolled in treatment in August 2016 and had not completed it at the time of the fitness hearing but continued to participate. She later testified that she in fact did finish substance abuse counseling but continued to attend on a voluntary basis. Jessica admitted that A.C. was removed in November 2014 and part of the requirements of her return was for Jessica to remain clean and sober. However, she admitted that on October 19, 2016, she tested positive for benzodiazepines and alcohol.

¶ 29 Jessica testified that, per the requirements of the November 2015 service plan, she attended mental health counseling and successfully completed the program in February 2016. She did not know if the Department ever received proof of the completion, but

indicated that she signed all necessary releases and advised the Department she was attending the appointments.

¶ 30 Jessica testified that she and Sam are no longer together and have no intention to reconcile. However, she admitted that she loves Sam and at the beginning of the case she did not want to separate and wanted to work things out so their family could be together. She knew that to get A.C. back she could not have contact with Sam, but she admitted to sneaking around and interacting with him. She further admitted that her relationship with Sam was dysfunctional and she saw no changes in Sam's behavior toward her.

¶ 31 On June 28, 2017, the circuit court entered an order finding both of the respondents unfit as parents for failure to make reasonable efforts to correct the conditions that were the basis of A.C.'s removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and failure to make reasonable progress toward A.C.'s return during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)), specifically the time periods specified in the petition to terminate parental rights.

¶ 32 A best-interest hearing was conducted on August 23, 2017. There, Kimberly (Kim) Whalen testified that she is employed at Caritas Family Solutions and was assigned to A.C.'s case in January 2017. Kim confirmed that A.C. was taken into custody by the Department in 2014 and was placed with her foster parents, Nori and Kyle Bilyew, in April 2015. Kim reported that A.C., who is currently six years old, is doing very well and her foster parents wish to adopt her. Kim testified that A.C. has bonded with her foster family, they love each other very much, and A.C. calls Nori and Kyle "mom and

dad." Kim noted that the doctors have no concerns with A.C.'s health and she is developing normally. Kim described A.C. as "a very intelligent little girl" who did very well in kindergarten.

¶ 33 Kim testified that, at the foster home, A.C. shares a room with Indie, Nori and Kyle's daughter, and gets along well with her. There is an additional room that is currently used as a playroom, but it can become another bedroom when the girls are older and want separate rooms. Kim testified that Nori and Kyle have sufficient income to provide financially for A.C., should they be allowed to adopt her. Kim testified that A.C. has a separate placement from her brother, but she currently receives a sibling visit once a month. Kim had watched A.C. interact with her brother and reported that the two get along well. She described A.C.'s brother as very good, patient, and loving with A.C.

¶ 34 Nori Stephens-Bilyew testified that she has lived in Robinson for 40 years and she wishes to adopt A.C., who has lived with her since April 15, 2015. She described her relationship with A.C. as very good and reported that her three-year-old daughter interacts well with A.C. and looks at her as her big sister. Nori testified that when A.C. first came to her house she was shy but she has "learned how to speak her mind," developed friendships in the neighborhood, and has good social skills.

¶ 35 Nori testified that A.C. attends school in Robinson and the family attends church there, where A.C. has also met new friends and participated in church group activities and soccer. There are extended family members such as grandparents, cousins, aunts, and uncles who A.C. visits quite often. Nori described A.C. as healthy and smart, and there have been no concerns with her development. A.C. was taken to counseling a few

times approximately one year prior to the hearing to address attachment issues, but since that time, no counseling has been needed. Nori testified that A.C.'s brother has been to her home to visit A.C. and, if allowed to adopt A.C., she will ensure that the visits continue because she loves A.C. and feels it is in her best interest to see her brother.

¶ 36 Nori recalled a recent visit at a park. She and her husband took A.C. to visit her brother, her grandmother, and Jessica. Nori reported that the visit did not go well because A.C. did not want to see Jessica. Nori testified that she told A.C. that she needed to see Jessica, so they went to the visit, but A.C. turned her back on her family and "was acting a little odd."

¶ 37 Kyle Bilyew testified that he and Nori married in 2011 and he has lived in Robinson for six years. He testified that A.C. has called him "dad" since the second week after she came to live with them in April 2015. Kyle attested that he loves A.C. and wishes to adopt her. He added that he has the means to financially provide for A.C. Kyle testified that A.C. and his daughter have a great relationship and described them as "best buds." He agreed that A.C. has come a long way socially and is forming friendships with other children and acting more confident. He added that she is doing "surprisingly well" in school, is a good student, and has teachers who comment on how great she is. Kyle has no concerns about A.C.'s health or development. He confirmed that A.C. has a positive relationship with her brother and he will do his best to keep them in touch with each other.

¶ 38 Kyle recalled the visit at the park when A.C. did not want to see her family. Kyle stated that A.C. did not talk, that the visit only lasted 10 or 15 minutes, and that A.C. was

quiet afterwards. Kyle recalled other visits when A.C. told him and Nori that she did not want to go home with Jessica and other times when she would say the same thing when visits were not imminent. Kyle indicated that he attempted to maintain contact between A.C. and Jessica throughout the case but not between A.C. and Sam. He further stated that A.C. does not talk about Sam but she willingly attended the visits with him that were facilitated by the Department.

¶ 39 Jessica testified that she lives in Centralia, works full-time at a paint recycling factory, has rented her own two-bedroom home for the last two months, and she and Sam are not currently having a relationship. She stated that A.C. was four years old when she was taken into protective custody. At the time, Jessica and A.C. were staying with Jessica's mother because of the relationship issues with Sam. Jessica indicated that while living with her mother, she allowed Sam to visit A.C. Before living with her mother, Jessica lived with Sam for 15 years.

¶ 40 Jessica testified that A.C.'s brother was 10 years old when A.C. was born. Jessica described her son as "ecstatic" to have a baby sister, and he wanted to hold her, play with her, and help care for her. Jessica noted that the family celebrated holidays together every year and she interacted with her children on a daily basis. Before A.C. was taken into protective custody, on a typical day Jessica woke up with A.C., got her dressed, and took care of her. Jessica knew that A.C. felt loved by her because she told her "all the time that I loved her."

¶ 41 Jessica testified that after A.C. was taken into protective custody, she saw her on weekly visits, they wanted to see each other, she remained a figure in A.C.'s life, and

A.C. continued calling her "mom." A.C.'s brother also participated in the visits and he and A.C. always expressed love and care for each other. She testified that during the visits she and A.C. would eat, read, play games, watch movies, and "love on each other." She added that A.C. was always willingly affectionate with her. Jessica indicated that at the visits—most recently in March—A.C. told her she wanted to come home. Jessica agreed that the recent visit at the park did not go well. She opined that A.C. "was just wanting to be by herself and play with the other kids, not have to deal with us. [*sic*]" Jessica stated that she is ready, willing, and able to take A.C. back home with her. She acknowledged that the school district where she lives is different from where A.C. currently attends.

¶ 42 Jessica confirmed that A.C. attends school in Robinson and plays soccer. Over the last two years, Jessica was invited by A.C.'s foster parents to attend activities to spend more time with A.C., but Jessica did not get to go very often because she relies on her mother for transportation and her mother is not fit to drive very much. She added that it is a 2½-hour drive to A.C.'s home. Although she was invited to A.C.'s soccer games, Jessica stated that she could never go because she was working. She was also invited to attend church with A.C. but had only gone once.

¶ 43 Sam testified that he is employed at the Corp of Engineers and Burr's Tree Service and he owns and has resided at the same residence for 18 years. He added that his residence is where A.C. lived when she was taken into protective custody and that her room and the home remains as it was when she left. Before A.C. was taken into protective care, Sam recalled that she "always stuck right beside[] me."

¶ 44 Sam testified that he was unable to visit with A.C. during the first six months after she left due to a "misunderstanding that C[aritas] thought the judge put a restraining order to seeing my kids, and there was never an order in place. It was between me and the mother." He further testified that he attended a funeral and Jessica told him the kids wanted to see him so he went to visit them for awhile, after which the guardian *ad litem* found out and the kids were removed from Jessica. Sam reported that he visited with A.C. once a week at his home, until the visits were changed to supervised at the beginning of 2017 and reduced to once a month. He had not visited with her at all since the last court date.

¶ 45 Sam testified that when he visited with A.C. at his home they worked puzzles and he cooked for her, and at the end of the visits "she usually would wrap her arms tightly around my neck. She didn't want to leave." He added that she would sometimes go to her room, cover up, and pretend to be asleep, "thinking *** maybe she wouldn't have to leave if she was asleep." Sam stated that A.C. "always asked me why me and her mom [*sic*] didn't want her anymore, and when she was going to come home or why she couldn't stay." He responded to her that "it was the way it had to be." Sam stated that A.C. "would usually end up crying, and I'd have to carry her like a baby and put her in the seat or bribe her to get her to go." Sam denied ever talking to A.C. about coming home because the visits would be terminated if they discussed that topic. Sam opined that A.C.'s connection to her home, to her brother, and to him and Jessica as her parents is important. He denied ever telling A.C. that he did not want her, and claimed he always

told her that he loves her. He speculated that if A.C. ever felt like he did not want her it was because she did not want to leave and "I was kind of forced to make her leave."

¶ 46 Kim Whalen again took the stand and testified that she reduced Sam's visits with A.C. to once a month because it is agency policy for that to occur when the Department files for substitute care pending a court determination of adoption. Kim indicated that she attempted to explain that to Sam but he was angry and she was unsure whether he heard what she told him. She further testified that she changed the visits from private to public because the agency suspected that Sam had moved to his new girlfriend's residence with a new baby and Sam was not allowing the girlfriend or baby to be involved in the case. Nor did Sam ever advise the agency of the address of his girlfriend's residence. Kim denied ever instructing A.C. not to discuss certain topics with the respondents. She stated that the respondents' last visits with A.C. occurred in July 2017, but Kim did not observe those or any other visits because once the status of the case was switched to substitute care pending termination, she saw no need to do so.

¶ 47 Marsha Holzhauser testified that the court appointed her as guardian *ad litem* (GAL) in the case in July 2014. Before that time, she was involved as a GAL in an order of protection case with the respondents. Marsha did not have a clear recollection of monitoring any visits between Jessica and A.C. during the course of the case. She had the opportunity to observe one or two visits between Sam and A.C., however, and reported that Sam "minimally interacted" as a father figure.

¶ 48 At the conclusion of the testimony, the GAL recommended that it would be in A.C.'s best interest for the respondents' parental rights to be terminated and for A.C. to be

adopted by her foster family. On September 6, 2017, the circuit court entered an order finding it in A.C.'s best interest to terminate the respondents' parental rights. The respondents filed timely notices of appeal. Additional facts will be provided as needed throughout the remainder of this disposition.

¶ 49

ANALYSIS

¶ 50 The respondents raise the following issues on appeal: (1) whether the circuit court erred in finding them unfit as parents; and (2) whether the circuit court erred in finding it in A.C.'s best interest to terminate their parental rights.

¶ 51

I. Unfitness

¶ 52 The first issue on appeal is whether the circuit court erred by finding the respondents unfit as parents. " '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).

¶ 53 The Juvenile Court Act of 1987, as amended, provides a two-stage process whereby parental rights may be involuntarily terminated. 705 ILCS 405/2-29 (West 2016). Under this bifurcated procedure, the Department must make a threshold showing of parental unfitness based upon clear and convincing evidence and, thereafter, a showing in a separate hearing that it is in the children's best interest to sever the parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990). The grounds that support a finding of unfitness are set forth in section 1(D) of the Adoption Act (Act). 750 ILCS 50/1(D) (West 2016). Although section 1(D) provides various grounds under which a parent may be deemed unfit, a finding of unfitness may be entered if there is sufficient evidence to satisfy any one statutory ground. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). "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.*

¶ 54 1. *Failure to Make Reasonable Progress*

¶ 55 Although the circuit court found the respondents unfit for failure to make reasonable progress during the time periods specified in the petition to terminate parental rights, we can affirm on any basis in the record. See *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002). Accordingly, we observe the first nine months after the adjudication of neglect, specifically November 6, 2014, to August 5, 2015, to determine if the respondents made reasonable progress.

¶ 56 Section 1(D)(m)(ii) of the Act provides that a ground for a finding of unfitness is failure by a parent "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor ***." 750 ILCS 50/1(D)(m)(ii) (West 2016). "[R]easonable progress requires measureable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). "The benchmark for measuring a parent's progress under *** the *** Act encompasses *** compliance with the service plans and the court's directives in light of the condition[s] that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody *** to the parent." *Id.* "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.*

¶ 57 Here, A.C. was adjudicated neglected in an order entered on November 5, 2014. As previously mentioned, we observe the first nine months thereafter—November 6, 2014, to August 5, 2015—to determine whether reasonable progress was made. Kaci Beal evaluated the respondents' progress on their service plan for the first six months post-adjudication. Jessica rated unsatisfactory during that time period for substance abuse. Jessica argues in her brief that she was taking measurable steps toward reunification with A.C. by completing her service plan. She pointed out that for substance abuse, she signed a release, completed an assessment, and cooperated with any requested drug tests. We acknowledge the same, but observe that she failed to follow the recommendations from the assessment, failed to maintain regular attendance to her

treatment appointments, and failed to cease using alcohol and other substances. She also self-reported that she was still using alcohol. Per Shelby Edwards' testimony, Jessica's case for substance abuse treatment was closed due to a lack of attendance in treatment sessions between November 18, 2014, and July 23, 2015. Even after Jessica was referred back to the program in October 2015—which is beyond the nine months following the adjudication—she still only showed up to about every other treatment session.

¶ 58 Kaci also rated Jessica unsatisfactory for the first six months post-adjudication on mental health for failure to complete an assessment, failure to follow the recommendations from the assessment, and failure to demonstrate any skills learned therefrom. She was also rated unsatisfactory on parenting because, although she signed releases, she failed to complete parenting classes and failed to demonstrate appropriate care of A.C. because she was not enrolled in the classes. Jessica was also rated unsatisfactory six months post-adjudication on employment because she was not working during that time. Jessica did receive satisfactory ratings on housing and domestic violence for the first six months. She signed releases for domestic violence, completed an assessment, and followed the recommendations of the assessment by completing PAVE counseling. Notwithstanding the satisfactory rating for domestic violence, Kaci Beal testified that Jessica was not applying what she learned at PAVE to her relationship with Sam, with whom she maintained contact although there were active orders of protection forbidding the same. We reiterate that, in determining reasonable progress, we observe compliance with the service plans and the court's directives in light of the condition—here domestic violence—that gave rise to A.C.'s removal. See *In re Daphnie*

E., 368 Ill. App. 3d at 1067. These facts illustrate that, by continuing to interact with Sam, Jessica was not complying with the overall goal to eliminate domestic violence in an effort to bring A.C. home.

¶ 59 Sam was rated unsatisfactory on substance abuse for the first six months post-adjudication because, although he signed releases, completed an assessment, and cooperated with drug testing, he failed to attend appointments for treatment regularly, failed to follow the recommendations from the assessment, and failed to abstain from drinking. Moreover, he received a DUI in November 2014 right after the adjudication. Sam also rated unsatisfactory for mental health during the first six months for failure to complete an assessment and follow the recommendations therefrom. He rated unsatisfactory on domestic violence during the first six months for failure to complete the 48-week treatment program for second offenders. He rated satisfactory on employment and maintaining adequate housing.

¶ 60 Beth Volk evaluated the respondents' progress on their service plan for the second six months post-adjudication. For that time period, Jessica rated unsatisfactory on mental health for failure to complete an assessment, failure to demonstrate skills from the assessment, and failure to follow recommendations from the assessment. Per Beth's testimony, Jessica did not provide documentation that she was participating in treatment, and she failed to take prescribed medications.

¶ 61 Jessica also rated unsatisfactory during the second six months on substance abuse for failure to complete an assessment, failure to follow recommendations from the assessment, and failure to stop using alcohol and/or other substances. Beth testified that

Jessica was appearing to substance abuse counseling appointments while under the influence. Accordingly, she was referred to in-patient treatment, to which she was admitted on August 14, 2015, but left the facility two weeks later.² Jessica rated unsatisfactory on parenting during the second six months for failure to consistently attend the classes, resulting in a failure to demonstrate any skills learned. She also rated unsatisfactory on housing during the second six months. She rated satisfactory on employment and domestic violence during this time period.

¶ 62 Sam rated unsatisfactory during the second six months on mental health, substance abuse, and domestic violence. He rated satisfactory on housing and employment. Clearly in this case the respondents' progress was not reasonable, as demonstrated by a lack of compliance with their service plan. See *In re Daphnie E.*, 368 Ill. App. 3d at 1067. Indeed, the reason for A.C.'s removal was that domestic violence was occurring in her presence, and we look at the respondents' efforts to complete the service plan in light of this condition. See *id.* Sam never rated satisfactory on domestic violence during the relevant time period under the Act, and Jessica admitted that she continued to sneak around to see Sam, notwithstanding orders of protection forbidding the same and the service plan's conditions of A.C.'s return.

¶ 63 In his brief, Sam emphasizes the testimony of Carla Manion in an attempt to support his argument that he made progress in domestic violence and that the delay in completing the program was due to a lack of available services. A review of this

²Although these dates are past the relevant time period of the first nine months following the adjudication, these facts demonstrate that substance abuse was continuous.

testimony indicates, however, that it was in January 2017 when Sam had completed 45 of the 48 treatment sessions and the availability of the classes ceased. This is far beyond the applicable nine months post-adjudication, which expired on August 5, 2015. The evidence shows that Sam simply did not make progress during the first nine months post-adjudication. Any evidence of improvements the respondents made to complete the service plan occurred at a time significantly past the first nine months after the adjudication of neglect and, notably, as the fitness hearing was approaching. We further note that many of the conditions the service plan meant to correct continued beyond the first nine months after the adjudication and the respondents received unsatisfactory ratings beyond that time period to reflect the same.

¶ 64 Because we find that the circuit court could not have ordered A.C. returned to parental custody in the near future (*In re Daphnie E.*, 368 Ill. App. 3d at 1067), and because the evidence reflects that the respondents failed to make reasonable progress toward A.C.'s return within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)), we find it was not against the manifest weight of the evidence for the circuit court to find them unfit on this basis. Because a finding of unfitness may be entered if there is sufficient evidence to satisfy any one statutory ground (*In re Donald A.G.*, 221 Ill. 2d at 244), we need not consider any additional grounds of unfitness. See *In re M.S.*, 302 Ill. App. 3d at 1002.

¶ 65 II. Best Interest

¶ 66 The second issue on appeal is whether the circuit court erred in finding it in A.C.'s best interest to terminate the respondents' parental rights. "Once the circuit court has

found by clear and convincing evidence that a parent is unfit ***, the State's interest in protecting the child is sufficiently compelling to allow a hearing to determine whether the termination of parental rights is in the best interest[] of the child." *In re D.M.*, 336 Ill. App. 3d 766, 771 (2002). "[D]uring a [best-interest] hearing, the court focuses upon the child[ren]'s welfare and whether termination would improve the child[ren]'s future financial, social[,] and emotional atmosphere." *Id.* at 772. The standard of review for the circuit court's best-interest determination is whether the finding is against the manifest weight of the evidence. See *In re B.R.*, 282 Ill. App. 3d 665, 670 (1996). Section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)) contains the factors to be considered by the court in a best-interest proceeding according to the age and developmental needs of the children.

¶ 67 Here, the evidence supports the circuit court's judgment that it was in A.C.'s best interest to terminate the respondents' parental rights. Testimony showed that A.C. had been with her foster family over two years at the time of the best-interest hearing and has adjusted very well. There are no concerns with A.C.'s health or development. Her foster mother took her to counseling a few times, but there is no longer a need for it. A.C. has bonded well with her foster family, they love each other very much, and A.C. calls her foster parents mom and dad. A.C. is doing well in school, has friends in her neighborhood, attends church, plays soccer, and visits with the extended family of her foster parents. The foster home is conducive to raising children, there is enough income for the foster parents to support A.C., and the foster parents' three-year-old daughter gets along well with A.C. and interacts with her as a sister. The foster parents intend to

continue visits between A.C. and her biological brother because they feel it is in A.C.'s best interest to see him.

¶ 68 We note the respondents both desire to have A.C. returned, they each have adequate homes and live separate from each other, and A.C. interacted well with them during the visits. However, the evidence is overwhelming that A.C. has a healthy attachment, permanence, stability, security, and familiarity with her foster family. She has been there for over two years and is thriving there. The GAL—who had been on the case since before July 2014—reported the same and recommended the circuit court to find it in A.C.'s best interest to terminate the respondents' parental rights and to allow her to be adopted by her foster family. The circuit court followed this recommendation and we find it was not against the manifest weight of the evidence. Accordingly, we affirm the order that found it in A.C.'s best interest to terminate the respondent's parental rights.

¶ 69 **CONCLUSION**

¶ 70 For the foregoing reasons, we affirm the orders entered by the circuit court of Marion County on June 28, 2017, and September 6, 2017.

¶ 71 Affirmed.