2019 IL App (1st) 172938-U

FOURTH DIVISION
March 21, 2019

No. 1-17-2938

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re CHARLES J., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 15 JA 00411
v.	)	
	)	
E.J.,	)	Honorable
	)	Maxwell Griffin, Jr.,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where (1) the trial court's findings of unfitness were not against the manifest weight of the evidence, (2) the trial court did not improperly elicit adverse testimony from respondent, (3) neither the State nor the guardian made improper closing arguments, (4) the testimony of respondent's caseworker was not improperly bolstered by prior consistent statements, (5) respondent was not deprived of effective assistance of counsel, and (6) neither the trial court nor the agency overseeing respondent's case deprived her of due process during the best interest hearing.

¶ 2 Following a bench trial, respondent E.J. was found unfit pursuant to sections 50/1(D)(b),

50/1(D)(m)(i), and 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)) and section 405/2-29 of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2016)) and her parental rights were terminated.[1] On appeal, respondent contends the findings of unfitness were against the manifest weight of the evidence, a number of errors deprived her of due process and a fair hearing, and her counsel provided ineffective assistance. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The minor, Charles, was born on July 3, 2012. On April 24, 2015, the State filed a petition for adjudication of wardship and a motion for temporary custody concerning Charles. The State alleged that, pursuant to the Juvenile Court Act, Charles was (1) neglected based on an environment injurious to his welfare and a lack of care, and (2) abused because he was at substantial risk of injury. 705 ILCS 405/2-3(1)(a), 2-3(1)(b), 2-3(2)(ii) (West 2014). According to the State, in April 2015 Charles was discovered in a home which was in a deplorable condition with rotten food and garbage throughout the residence. He was found strapped in a harness that was tethered to the wall which restricted his movement. Respondent admitted to a Department of Children and Family Services (DCFS) investigator that she tied Charles to a harness on a daily basis when she cleaned the residence. Respondent had been diagnosed with depression and bipolar disorder, and she used marijuana to cure her migraines. Charles was subsequently

[1] This case was designated as "accelerated" pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2017) because it involves a matter affecting the best interests of a child. With respect to such cases, Rule 311(a)(5) provides in relevant part that "except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." In this case, respondent filed her notice of appeal on November 15, 2017. Thus, the 150-day period to issue our decision expired on April 14, 2018. We note, however, that respondent requested four extensions of time and ultimately filed her brief on September 14, 2018. The State's brief was filed on November 29, 2018, followed by the public guardian's brief on December 12, 2018. When respondent requested an extension of time to file her reply brief, we allowed the request, but only until January 18, 2019. The reply was filed on January 16, 2019. Since this matter was not ready for review until January 16, 2019, we find good cause of issuing our decision after the 150-day deadline. See *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 26.

adjudicated a ward of the court based on these facts. The trial court awarded guardianship to DCFS. Respondent's case was then assigned to Lutheran Child and Family Services (Lutheran), and Charles was placed in a foster home.

¶ 5 Lutheran recommended that respondent engage in various mental health, substance abuse, and parenting services. The record discloses that Lutheran did not initially provide respondent with the appropriate services from April 24, 2015, to June 24, 2015, and again from February 1, 2016, to April 11, 2016. As a result, the trial court found that Lutheran failed to make reasonable efforts to provide services for those dates.

¶ 6 As part of respondent's service plan, which was provided by Lutheran, she was to visit Charles weekly. In July 2016 Charles reportedly began to have behavioral issues that correlated with respondent's visits, and he ultimately became resistant to participating in the visits. In August 2016, Lutheran recommended to the trial court that Charles's therapist also attend the visits. On August 15, 2016, the trial court entered an order which stated, "mother has not been consistent in services or visitation. Charles's behavior regresses after visitation and he has trouble adjusting to his regular routine at school and in the foster home." The trial court then ordered "all parent/child visits to take place under Charles's therapist's supervision." The parties and the court agreed that it would not be appropriate to force Charles to attend visits if he was resistant.

¶ 7 Thereafter, Lutheran implemented a procedure to determine whether Charles would attend the visits. When it was time for a visit, Charles would communicate to his therapist whether he wished to attend the visit, and Charles's therapist would then determine whether or not Charles wanted to participate. Lutheran, however, would not force Charles to attend. Following this procedure, visits continued to be scheduled, but it was determined that Charles

did not want to attend. Charles did not attend visits after the August 15, 2016, order.

¶ 8 In January 2017, the State filed a petition to appoint a guardian with the right to consent to adoption (petition) pursuant to the Adoption Act (750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016)) and the Juvenile Court Act (705 ILCS 405/2-29) (West 2016)), which is the subject of this appeal. The petition alleged respondent was unfit in that she (1) failed to maintain a reasonable degree of interest, concern or responsibility as to Charles's welfare, in violation of section 50/1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), (2) failed to make reasonable efforts to correct the conditions which were the basis for Charles's removal from her within a nine-month period after the adjudication of neglect or abuse, in violation of section 50/1(D)(m)(i) (750 ILCS 50/1(D)(m)(i) (West 2016)), and (3) failed to make reasonable progress toward Charles's return to her within a nine-month period after the adjudication of neglect or abuse, in violation of section 50/1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West 2016)). A supplemental petition specified the State sought a finding of unfitness pursuant to sections 50/1(D)(m)(i) and (ii) from July 27, 2015, to April 28, 2016, and from February 14, 2016, to November 15, 2016. The petition filed by the State requested that the trial court terminate respondent's parental rights and find it was in Charles's best interest that a guardian be appointed with the right to consent to his adoption. The matter then proceeded to a hearing on the issue of respondent's unfitness and the termination of her parental rights. In addition to the State and respondent being present, Charles was represented through the Office of the Cook County Public Guardian (guardian).

¶ 9 A. Unfitness Hearing

¶ 10 At the hearing, the State presented the testimony of Rosanna Speranza (Speranza), a supervisor at Lutheran who oversaw a portion of Charles's case, and certain documentary

evidence.

¶ 11 1. Testimony of Rosanna Speranza

¶ 12 Speranza was the supervisor of Charles's case from February 29, 2016, through January 2017. Initially, respondent was in need of several services, including individual therapy, parenting classes, a psychiatric evaluation, a psychological evaluation, parent coaching, a substance abuse evaluation followed by treatment if needed, and visits with Charles. According to Speranza, all of the services were referred to respondent but she failed to complete or provide the requisite documentation for any of them.

¶ 13 With regard to respondent's weekly visits with Charles, Speranza testified that respondent's attendance was not consistent and that respondent's last visit with Charles was on July 25, 2016, after which Charles refused to attend. Speranza further testified that after the visits with respondent, Charles would misbehave at school by hitting and biting kids and he would throw fits and hit his foster parents. When the visits ceased, Charles's behavior improved. She further testified that part of the determination to discontinue the visits between Charles and respondent was the trauma and abuse respondent inflicted on Charles when she resided with him. Charles received individual therapy for this severe trauma. Speranza also testified respondent never sent Charles any cards, gifts, or letters.

¶ 14 2. Documentary Evidence

¶ 15 The foundation for several documents was provided through Speranza's testimony and the trial court subsequently admitted the documents into evidence without objection. The documents included certain service referrals from Lutheran, case notes authored by Thomas Harris (Harris) (another Lutheran caseworker), Lutheran's April 2016 and October 2016 service plans for respondent and Charles, visitation logs from June 3, 2015, until August 20, 2016, and a

November 2016 court report authored by Harris. Speranza did not testify to the contents of the documents submitted except two of Harris's case notes which memorialized discussions he had with respondent regarding her appointments at a drug treatment facility. Harris's case notes corroborated Speranza's testimony regarding respondent's failure to complete the recommended services.

¶ 16 In addition, the visitation logs indicated that, from June 2015 to August 2016, respondent was offered 36 visits with Charles.[2] The logs indicated Lutheran cancelled two visits, respondent attended 17 visits, and she cancelled 17 visits. Eight of respondent's cancelled visits were due to her lack of transportation or illness. The logs generally described positive interactions between respondent and Charles.

¶ 17 Records from respondent's service providers were admitted into evidence. Records from a facility not related to Lutheran were included and demonstrated that respondent sought out services from the DuPage County Health Department (DuPage) in August 2016. An August 15, 2016, note from DuPage stated, "Client also reports that she was arrested ~1 month ago for 'disorderly conduct' and that her charges were temporarily dropped but would be reinstated if she does not demonstrate to the Court that she is seeking mental health services." Respondent reported to DuPage a history of depression, manic symptoms, self-injury and thoughts of suicide, and that she was diagnosed with bipolar I disorder. Finally, a November 2, 2016, treatment plan from DuPage prescribed medication and continued counseling.

¶ 18 The State and guardian then rested their case regarding respondent's unfitness. Respondent then presented her own testimony and that of Harris in her case-in-chief.

¶ 19 3. Testimony of Respondent

[2] The record does not include visitation logs for April 2016 and contains only one log for May 2016. It is unclear if visits were scheduled during that time.

¶ 20 Respondent testified her first caseworker was assigned in June 2015, and referred her to the Juvenile Court Assessment Program (JCAP), which she completed. JCAP recommended outpatient drug treatment services, but respondent admitted she did not follow up with the drug treatment program because the provider informed her she "didn't really need" the service.

¶ 21 Respondent explained why she did not complete individual therapy. Respondent testified she commenced individual therapy in April 2016 and attended weekly sessions for two months. She then missed two sessions and unsuccessfully attempted to contact her therapist to reschedule. Speranza subsequently cancelled the service and referred respondent to a different therapist. Respondent attended those sessions through May 2016. In June 2016, respondent's therapist missed a visit and informed respondent she would be referred to a different therapist. No one ever contacted respondent regarding a new therapist. Respondent testified she sought services at DuPage on her own in August 2016. She met with a therapist twice per month and a psychiatrist, who reviewed her medication, once per month. The DuPage psychiatrist prescribed her medication which she had taken since August 2016. Respondent testified that she was still engaged in psychiatric treatment and individual therapy at DuPage.

¶ 22 Respondent further testified she visited Charles once a week beginning in July 2015. She bought him food or snacks, toys, and gifts, and they interacted through puzzles and games.

¶ 23 On questioning by the court,[3] respondent testified that this case arose in April 2015, but she was not referred to any services until February 2016. Respondent contacted her attorney regarding the delay, and was advised that her caseworker had been removed. In October 2015, Harris, a caseworker from Lutheran, contacted respondent to evaluate her progress regarding the services. Respondent informed him that she had not been referred to any services. Harris stated he would contact her with more information, but he failed to do so.

[3] The State and guardian initially declined to cross-examine respondent.

¶ 24 Respondent denied knowing what services she was supposed to complete between April 2015 and January 2016, and she denied receiving a service plan during that time. Instead, respondent testified she first received a service plan in January 2016 from Harris. Respondent informed the court that although Lutheran's service plan included psychiatric treatment, parenting classes, and a psychological referral, she was never contacted by those providers and thus did not receive treatment.

¶ 25 4. Testimony of Thomas Harris

¶ 26 Harris testified he was a Lutheran caseworker assigned to this case from January 2016 through December 2016. He testified consistently with Speranza's testimony regarding respondent's completion of the service plan requirements and with the documentary evidence. Harris further testified that he supervised the visits between Charles and respondent, and the last visit on July 25, 2016, "went well."

¶ 27 On cross-examination, Harris testified he visited respondent monthly and discussed with her the services and referrals that were in place. In February 2016 respondent informed him that she had not taken her psychotropic medication for two years. Harris stated the psychiatric evaluation referral was in part to address whether respondent needed to take medication.

¶ 28 Regarding respondent's contact with Charles, Harris testified that in July 2016 Charles began communicating that he did not wish to attend the visits and if he was going to attend he would throw a tantrum when it was time for a visit. After respondent's last visit with Charles, Harris commenced discussing Charles with respondent during their monthly visits and respondent inquired about Charles at least once a month.

¶ 29 Harris also testified that Charles exhibited negative behavior after his visits with respondent, and that Charles's behavior improved when the visits with respondent ceased. In

addition, Harris testified he received reports from the various service providers which consistently indicated that they had difficulty contacting respondent and as a result those services were terminated.

¶ 30 On redirect examination, Harris testified that Charles never stated why he did not want to visit respondent. Harris further testified he could not recall when he provided respondent with information regarding the parenting classes. Respondent then rested her case.

¶ 31 5. Closing Arguments and Ruling

¶ 32 In closing, the State argued respondent should be found unfit because the testimony and documentary evidence demonstrated respondent failed to complete any of the services Lutheran recommended within a nine-month period. The State noted that some of the service providers were unable to contact respondent, respondent engaged in individual therapy and only took her psychiatric medication when it was required by her probation, and her visits with Charles were sporadic. The State acknowledged the trial court's previous finding of no reasonable efforts by Lutheran from February 1, 2016, to April 11, 2016, but argued there were referrals in place during that time and respondent was able to engage in services, which she failed to do.

¶ 33 The guardian agreed respondent should be found unfit. He argued the testimony reflected that Charles suffered from posttraumatic stress disorder (PTSD) resulting from his being found in a filthy residence tethered to a wall. The guardian also argued that respondent's prior actions traumatized Charles and, as a result, he could no longer be around respondent. The guardian maintained that respondent had been diagnosed with mental health issues that were left untreated because she failed to engage in the recommended services. The guardian further argued respondent's testimony was not credible because it was contradicted by the documentary evidence, Speranza's testimony, and Harris's testimony. Finally, the guardian requested that the

trial court conform the pleadings to the facts and find that respondent failed to make reasonable progress and effort toward Charles's return home between April 12, 2016, and January 12, 2017.

¶ 34 Respondent argued she should not be found unfit because Lutheran's ineptitude during the initial stages of the case was never remedied. Moreover, respondent was compliant with therapy until a new therapist was assigned, and respondent had difficulty contacting that therapist. Further, Lutheran's referral for parent coaching coincided with its decision that Charles should no longer visit respondent. Finally, respondent argued she complied with the recommended services by seeking those services at DuPage.

¶ 35 Following closing arguments, the trial court found the State proved by clear and convincing evidence that respondent was unfit pursuant to section 50/1(D)(b) of the Adoption Act in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to Charles throughout the case, and pursuant to section 50/1(D)(m)(i) and (ii) in that she failed to make reasonable efforts to correct the conditions which were the basis for Charles's removal and failed to make reasonable progress toward Charles's return to her care between July 27, 2015, and April 28, 2016, and between April 12, 2016, and January 12, 2017.

¶ 36 B. Best Interest Hearing

¶ 37 Having found respondent unfit, the trial court held a best interest hearing wherein the State presented the testimony of Sharon Franklin (Franklin), a permanency and child welfare specialist for Lutheran, and Rebecca Calhoun (Calhoun), Charles's foster mother.

¶ 38 Franklin's testimony established that she was assigned to Charles's case in June 2017. Charles had been with his foster parents, the Calhouns, since March 2016. Franklin visited the Calhoun home once per month and found Charles's placement there safe and appropriate. Charles had bonded with both of his foster parents and called them mommy and daddy. Charles

had developmental issues and attended a therapeutic day school that catered to his special needs. The Calhouns were involved in the education provided to Charles and met those needs. Finally, Franklin testified it was in Charles's best interest to terminate respondent's parental rights and appoint a guardian with the right to consent to his adoption. The guardian and respondent declined to examine Franklin.

¶ 39 Calhoun testified that as of the hearing, Charles had been with her and her husband for 18 months. When he was first placed there, Charles was aggressive and had behavioral issues such as biting or kicking at school. Charles's behavior, however, had improved since living with her, and Charles also has a good relationship with her husband.

¶ 40 Calhoun further testified that Charles has a sensory processing disorder and Calhoun learned what triggered the disorder and how to help him. Charles also has attention deficit hyperactivity disorder which Calhoun helps him manage. She testified she and her husband understand Charles's special needs, are committed to advocating for those needs, and are committed to adopting Charles.

¶ 41 On cross-examination, Calhoun testified that Charles used to wet his bed, have nightmares, and talk in his sleep. She described the behavior as PTSD which was triggered after he attended visits with respondent. After these visits, Charles would become very upset and would take several days to return to his normal behavior. Charles's behavior was better during the weeks when respondent cancelled a visit, and after the visits were discontinued the negative behaviors ceased. Respondent declined to examine Calhoun, presented no evidence, and rested.

¶ 42 Following closing arguments, the trial court granted the State's petition, finding the State proved by a preponderance of the evidence that it was in Charles's best interest to terminate respondent's parental rights and appoint a guardian with the right to consent to Charles's

adoption. Specifically, respondent was found unfit based on three statutory violations: (1) her failure to maintain a reasonable degree of interest, concern, or responsibility as to Charles's welfare, in violation of section 50/1(D)(b) of the Adoption Act, (2) her failure to make reasonable efforts to correct the conditions that were the basis for Charles's removal during any nine-month period following the adjudication of neglect or abuse, in violation of section 50/1(D)(m)(i) of the Adoption Act, and (3) her failure to make reasonable progress toward Charles's return during any nine-month period following the adjudication of neglect or abuse, in violation of section 50/1(D)(m)(ii) of the Adoption Act. 750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016). The findings rendered by the trial court under sections 50/1(D)(m)(i) and (ii) of the Adoption Act related to two nine-month periods: July 27, 2015, through April 28, 2016, and April 12, 2016, through January 12, 2017. This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On appeal, respondent argues (1) the trial court's findings of unfitness were against the manifest weight of the evidence, (2) she was deprived of due process when the trial court improperly elicited extensive adverse testimony from her, (3) she was prejudiced and deprived of due process when the State and guardian made numerous improper arguments and the guardian elicited improper opinion testimony, (4) she was prejudiced when Harris's testimony was improperly bolstered by the admission of prior consistent statements, (5) she was deprived of effective assistance of counsel, and (6) she was deprived of due process during the best interest hearing where a court order allowed Lutheran to bar her from visiting Charles. We address each of respondent's contentions in turn below.

¶ 45 A. Sufficiency of the Evidence at the Unfitness Hearing

¶ 46 Respondent contends the trial court's findings of unfitness were against the manifest

weight of the evidence. The Juvenile Court Act provides a two-stage process whereby parental rights may be terminated. 705 ILCS 405/2-29(2) (West 2016); *In re Jamarqon C.*, 338 Ill. App. 3d 639, 649 (2003). In the first stage, the trial court must determine by clear and convincing evidence that the parent is unfit as defined by section 50/1(D) of the Adoption Act. 705 ILCS 405/2-29(2) (West 2016); 750 ILCS 50/1(D) (West 2016); *Jamarqon C.*, 338 Ill. App. 3d at 649. If the trial court makes a finding of unfitness, it then must consider whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2016); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). A trial court's determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re Richard H.*, 376 Ill. App. 3d 162, 165 (2007). Moreover, each case involving parental unfitness is *sui generis* and requires a close analysis of its individual facts. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Factual comparisons to other cases are of little value. *Id*. We therefore defer to the trial court's findings, which will not be disturbed unless they are against the manifest weight of the evidence. *Jamarqon C.*, 338 Ill. App. 3d at 649. A decision is against the manifest weight of the evidence where the opposite result is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented. *Id*.

¶ 47 Here, respondent was found unfit under three provisions of the Adoption Act (750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016)) over two nine-month periods. The trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds. *Richard H.*, 376 Ill. App. 3d at 165. The record here contains ample evidence to support the trial court's finding of unfitness pursuant to section 50/1(D)(m)(ii) of the Adoption Act. 750 ILCS 50/1(D)(m)(ii) (West 2016). We therefore need not address the trial court's findings regarding the remaining grounds alleged in the State's petition. See *Richard H.*, 376 Ill.

App. 3d at 165.

¶ 48 Under section 50/1(D)(m)(ii) of the Adoption Act, the State was required to demonstrate respondent failed to make reasonable progress toward Charles's return to her in a nine-month period. 750 ILCS 50/1(D)(m)(ii) (West 2016). Reasonable progress is an objective standard, focusing on the amount of progress toward the goal of reunification one can reasonably expect from the parent under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164 (1999). Reasonable progress may be measured by reviewing a respondent's compliance with the court's directives, the DCFS service plan, or both. *In re J.A.*, 316 Ill. App. 3d 553, 564 (2000). A parent, however, may make reasonable progress by reaching the DCFS's goals without following its specific directives. *Id*. at 565. "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 49 Respondent contends the trial court's finding of unfitness pursuant to section 50/1(D)(m)(ii) of the Adoption Act was against the manifest weight of the evidence where she engaged in individual therapy and psychiatric services when her attendance was not impeded by her lack of transportation; engaged in parenting services until the visits ceased; inquired about Charles's wellbeing; attended a substance abuse evaluation; and failed to pursue the recommended substance abuse treatment because the provider indicated further treatment was unnecessary. Respondent further notes that the trial court found Lutheran failed to make a reasonable effort to provide services to her.

¶ 50 We initially observe that the trial court's finding that Lutheran failed to make a reasonable effort to provide services to respondent only overlaps with the first of the two nine-month periods where the trial court found respondent unfit pursuant to section 50/1(D)(m)(ii) of

the Adoption Act.[4] Even if we disregard the finding of unfitness with regard to those dates (July 27, 2015, to April 28, 2016), the record supports the trial court's finding of unfitness during the second nine-month period (April 12, 2016, to January 12, 2017) and the State need only prove respondent failed to make reasonable progress towards Charles's return during one nine-month period. See 750 ILCS 50/(D)(m)(ii) (West 2016).

¶ 51 Contrary to respondent's assertions, the record supports the trial court's determination that she failed to engage in a majority of the services recommended by Lutheran between April 12, 2016, and January 12, 2017. With regard to individual therapy, the record demonstrates respondent commenced the services on April 13, 2016, and attended sessions for approximately two months before she ceased attending. Two of respondent's therapists unsuccessfully attempted to contact her for three months. As a result, her services were placed on hold and ultimately terminated. There is no indication in the record that respondent's failure to attend therapy at this time was due to her lack of transportation. Although respondent claims she later engaged in individual therapy through DuPage, she admitted her therapy sessions were half as frequent as those recommended by Lutheran. Furthermore, the DuPage records indicate respondent attended only three sessions from August 2016 to March 2017, and there is no indication her nonattendance was due to her lack of transportation.

¶ 52 With regard to the recommended substance abuse treatment, the record reveals respondent attended a drug treatment assessment in 2015 and intensive outpatient treatment was recommended. Respondent attended one three-hour session and testified she was informed she "didn't really need the service," so she declined to attend additional sessions. Respondent provided no documentary support for her belief that she did not need to attend drug treatment.

[4] The trial court found Lutheran failed to make a reasonable effort to provide services from April 24, 2015 to June 24, 2015, and from February 1, 2016, to April 11, 2016.

Respondent subsequently attended an additional drug treatment assessment in July 2016, which also recommended outpatient treatment and yet respondent again failed to engage in the recommended treatment.

¶ 53 The record further establishes that respondent failed to engage in parenting classes following two separate referrals in this nine-month period. The testimony and documentary evidence demonstrates respondent was informed of the date, time, and location of the classes, and the clinicians providing the service attempted to contact respondent, yet respondent failed to attend the classes. Respondent further failed to comply with her random drug tests and failed to engage in a psychological evaluation. Moreover, the record demonstrates respondent's visits with Charles were sporadic even considering her lack of transportation.

¶ 54 Even if we recognize respondent's participation in ongoing psychiatric care at DuPage, given the facts discussed above, the record demonstrates that the State proved by a preponderance of the evidence that respondent failed to make reasonable progress toward Charles's return during the nine-month period of April 12, 2016, to January 12, 2017. Accordingly, we conclude the trial court's finding of unfitness pursuant to section 50/1(D)(m)(ii) was not unreasonable, arbitrary, or not based on the evidence in the record. See 750 ILCS 50/1(D)(m)(ii) (West 2016); *Daphnie E.*, 368 Ill. App. 3d at 1067; *Jamarqon C.*, 338 Ill. App. 3d at 649; *J.A.*, 316 Ill. App. 3d at 564-65; *C.M.*, 305 Ill. App. 3d at 164.

¶ 55 B. Trial Court's Elicitation of Testimony from Respondent

¶ 56 Respondent next contends the length and character of the trial court's examination of her exceeded the proper bounds of a neutral arbitrator and deprived her of due process. She does not challenge any specific questions posed by the trial court or any responses that were elicited. Instead, she asserts that a majority of the trial court's questions were related to matters which had

already been testified to and were not aimed at clarification. Respondent further maintains the trial court's examination laid the foundation for her impeachment and functioned to undermine her credibility. Finally, respondent argues the trial court admitted its questions were "directed at committing [respondent] to propositions and confronting her with inconsistencies which is the essence of cross-examination."

¶ 57 Initially, we acknowledge respondent's contention that although she failed to object to the trial court's examination, the forfeiture rule should be relaxed. Typically, an issue that was not objected to during trial and raised in a posttrial motion is forfeited on appeal. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 25. Application of the forfeiture rule, however, is less rigid when the basis of the objection is the trial court's conduct. *Id*. "Specifically, where the trial court departs from its role and becomes an advocate for the State's position, no objection by opposing counsel is necessary to preserve the issue for review." *In re Maher*, 314 Ill. App. 3d 1099, 1097 (2000). We therefore find respondent has not forfeited her claim and turn to consider its merits. *Id*.

¶ 58 Generally, a trial judge may question witnesses to elicit truth, clarify ambiguities in the testimony, or shed light on material issues. *Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26; Ill. R. Evid. 614(b) (eff. Jan. 1, 2011). Additionally, the Juvenile Court Act provides that "[i]n all proceedings under this Act the court may direct the course thereof so as to promptly ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act." 705 ILCS 405/1-2(2) (West 2016). Thus, under the Juvenile Court Act, "unlike its customary role in civil or criminal proceedings, the court cannot sit passively and await the parties' presentation of evidence. Instead, the Act requires that it must act affirmatively, and perhaps at times aggressively, to ferret out information before it can decide

that a child's interest is better served by removal from the family." *In re Patricia S.*, 222 Ill. App. 3d 585, 592 (1991). The trial court is given wider latitude in examining witnesses in a bench trial where there is less risk of prejudice and the court's inquiries are compatible with its role as fact-finder. *Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26. Although the trial court "must not depart from its function as a judge and may not assume the role as an advocate for either party" (*id.*), "[t]he fact that the judge's questions brought out information damaging to respondent does not mean the judge was acting as an advocate" (*Maher*, 314 Ill. App. 3d at 1098).

¶ 59 The propriety of the trial court's examination of a witness is reviewed for an abuse of discretion. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41. Under an abuse of discretion standard, we must determine whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored principles of law so that substantial prejudice resulted. *Id.*

¶ 60 Here, our review of the record demonstrates that respondent's short direct examination testimony was ambiguous and lacking in detail. Respondent was referred to numerous services, yet during her direct examination she testified only regarding substance abuse treatment, individual therapy, and the services she received at DuPage. She provided no testimony regarding parent coaching, her psychological evaluation referral, or her psychiatric care prior to seeking treatment at DuPage. Her sole testimony regarding parenting classes was that she was not contacted for the service. Moreover, her testimony contradicted Speranza's testimony and the documentary evidence produced by the State.

¶ 61 After respondent's direct examination testimony, the trial court posed a number of questions that elicited details regarding her efforts to engage in the services recommended by Lutheran. Many of the questions elicited favorable responses from respondent. For example, on

direct examination respondent testified that most of her referrals were made in 2016. Because Charles's case was opened in April 2015, the trial court sought clarification regarding this eight-month delay and respondent's attempt to engage in services in order to be reunited with her son. Respondent clarified that she questioned her attorney and the individual who transported Charles to the visits about her lack of referrals. She further testified that she did not, in fact, receive a service plan until Harris was assigned to the case in 2016. In another instance, on direct examination respondent testified she missed two therapy sessions and attempted to contact her therapist to schedule the following appointment. The trial court inquired as to why respondent needed to schedule the following appointment when the sessions were already scheduled. Respondent clarified that she had found new employment which conflicted with the scheduled appointments.

¶ 62 In yet another instance, the trial court sought clarification regarding respondent's psychiatric referrals through Lutheran, which she did not testify to during her direct examination. The trial court elicited testimony that the service never commenced because Harris, and the provider Harris referred respondent to, failed to contact her regarding treatment. Similarly, respondent's sole direct examination testimony regarding parenting classes was that she was not contacted regarding the service. Given Speranza's testimony that respondent had failed to attend the service, the trial court sought to elicit information from respondent regarding the matter. Respondent explained that she failed to complete the service because she was informed it would occur during her visits with Charles, which ceased before the service commenced. In another line of questioning, the trial court elicited testimony that although respondent sought psychiatric treatment at DuPage as a requirement of her criminal case unrelated to this matter, she was still engaging in that service at the time of the hearing.

¶ 63 The trial court's examination and respondent's testimony demonstrates that the trial court sought clarification regarding matters respondent did not testify to on direct examination or matters on which she failed to elaborate. The trial court's examination sought to elicit truth, clarify ambiguities in respondent's testimony, and shed light on material issues, and therefore was not an abuse of discretion. See 705 ILCS 405/1-2(2) (West 2016); *N.T.*, 2015 IL App (1st) 142391, ¶ 41; *Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26.

¶ 64 Respondent maintains, however, that the trial court's examination laid the foundation for her impeachment and that the trial court admitted its questions were directed at committing her to certain propositions and confronting her with inconsistencies. We reiterate that the fact that the trial court's examination elicited some information damaging to respondent does not mean the judge was acting as an advocate. *Maher*, 314 Ill. App. 3d at 1098. Moreover, the fact that the State and guardian impeached respondent based on the trial court's examination is irrelevant. See *Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26. Finally, respondent's contention that the trial court admitted its questions were directed at committing her to certain propositions and confronting her with inconsistencies is not supported by the record. We can find no such statement by the trial court in the record. Accordingly, for the reasons stated above, we conclude the trial court did not abuse its discretion in examining respondent. See 705 ILCS 405/1-2(2) (West 2016); *N.T.*, 2015 IL App (1st) 142391, ¶ 41; *Tamesha T.*, 2014 IL App (1st) 132986, ¶ 26.

¶ 65 C. Improprieties by the State and Guardian

¶ 66 Respondent next contends she was prejudiced and denied due process where the State and guardian made numerous improper comments during closing arguments at both the unfitness and best interest hearings. Respondent requests that we reverse the trial court's termination of

her parental rights or remand for a new trial based on these improper arguments.[5] For the reasons set forth in more detail below, we find that no error occurred and, even if there was error, respondent cannot demonstrate sufficient prejudice.

¶ 67 Generally, attorneys are afforded wide latitude in closing arguments. *People v. Williams*, 192 Ill. 2d 548, 573 (2000). Closing arguments must be reviewed in their entirety, and the challenged remarks must be viewed in context. *People v. Gonzalez*, 388 Ill. App. 3d 566, 587 (2008). Improper remarks will not merit reversal unless they result in substantial prejudice, considering the context of the language used, its relationship to the evidence, and its effect on a party's rights to a fair and impartial trial. *People v. Smith*, 141 Ill. 2d 40, 60 (1990). Substantial prejudice means that absent the remarks, the outcome of the case would have been different. *People v. Simms*, 192 Ill. 2d 348, 397 (2000).

¶ 68 Although counsel is given wide latitude to argue reasonable inferences from the evidence in closing arguments (*Williams*, 192 Ill. 2d at 573), it is improper to argue assumptions or facts not based upon the evidence (*People v. Johnson*, 208 Ill. 2d 53, 115 (2003)). When respondent chooses to present a defense, however, the State may comment on the persuasiveness of respondent's theory of the case and the strength of the evidence presented to support that theory, including comments on respondent's credibility. *People v. Williams*, 2015 IL App (1st) 122745, ¶ 12; *People v. Herrera*, 257 Ill. App. 3d 602, 619 (1994). Where a theory is unsupported by direct evidence, the State may comment on that lack of evidence. See *People v. Williams*, 274 Ill. App. 3d 598, 612 (1995); *People v. Bell*, 343 Ill. App. 3d 110, 117 (2003). However, "[t]o inform a jury that to believe the defense's witnesses the jury must find that each of the State's

[5] The State and guardian argue respondent has forfeited these claims where she failed to object during the hearings or include the claims in a posttrial motion. Because the doctrine of forfeiture serves as an admonition to the litigants rather than a limitation on the reviewing court, we will address the merits of respondent's claims. See *Pinske v. Allstate Property and Casualty Insurance Co.*, 2015 IL App (1st) 150537, ¶ 19.

witnesses was lying is a misstatement of law that denies a defendant a fair trial." *People v. Wilson*, 199 Ill. App. 3d 792, 796 (1990).

¶ 69 Furthermore, where the trial court sits without a jury, we presume the court recognized and disregarded improper arguments or evidence in reaching its conclusion. *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 37; *People v. Bowen*, 241 Ill. App. 3d 608, 621-22 (1993). Such a presumption is only overcome when the record affirmatively demonstrates the trial court considered improper arguments or evidence. *People v. Koch*, 248 Ill. App. 3d 584, 592 (1993); *Bowen*, 241 Ill. App. 3d at 621-22. We therefore will not reverse the trial court's decision "unless it affirmatively appears that the court was misled or improperly influenced by such remarks" and that the remarks resulted in a judgment contrary to the law and the evidence. *People v. Mays*, 81 Ill. App. 3d 1090, 1097 (1980).

¶ 70 Prior to addressing the merits of respondent's claims, we acknowledge the State and guardian contend improper arguments are reviewed for an abuse of discretion, while respondent maintains that whether improper remarks are reviewed *de novo* or for an abuse of discretion is unsettled. Regardless, under either standard, respondent cannot demonstrate an error occurred and that prejudice resulted from that error.

¶ 71 1. The State and Guardian's Reliance on Testimony Regarding Charles's PTSD

¶ 72 Respondent contends the guardian improperly relied on facts that were not based on evidence when she argued at the unfitness hearing, "the testimony reflects that [Charles] still suffers from PTSD from those incidents so much so that his mother is a traumatizing person for him to be around, and visits had to stop." Respondent further maintains that during the best interest hearing, the State and guardian improperly relied on Calhoun's lay witness opinion testimony that Charles had PTSD and that it was caused by respondent. According to respondent,

there was no competent evidence establishing that Charles suffered from PTSD, and the guardian and the State's reliance on the improper "PTSD testimony" requires reversal.

¶ 73 We initially observe that respondent's challenge to the State's and guardian's closing arguments during the best interest hearing is meritless because neither party mentioned Charles's alleged PTSD during that hearing. During closing arguments, the State and guardian referenced Charles's special needs and negative behavior which improved since he ceased contact with respondent. Such references were based on testimony elicited from Speranza, Harris, and Calhoun during the unfitness and best interest hearings regarding Charles's behavior. Accordingly, respondent cannot demonstrate that counsels' references to Charles's general behavior were not based on the evidence.

¶ 74 We further observe that respondent relies solely on *Young v. McDonald*, 766 F.3d 1348, 1353 (Fed. Cir. 2014), for her proposition that a lay witness is not competent to identify PTSD. Although it may be of persuasive value, *Young* is a lower federal court decision and therefore is not binding on this court. See *People v. Loferski*, 235 Ill. App. 3d 675, 689 (1992). Moreover, the sole issue in *Young* was "whether lay evidence alone can establish the effective date for an award of service connection due to PTSD or whether a medical diagnosis attesting to the existence of PTSD on the claimed effective date is necessary because of 38 C.F.R. § 3.304(f)." *Young*, 766 F.3d at 1350. *Young* is inapposite where here the allegations of the State's petition did not relate specifically to a diagnosis of PTSD, but rather to the abuse and neglect Charles experienced.

¶ 75 We find that the guardian's reference to Charles's PTSD during the unfitness hearing was a reasonable inference from the evidence. See *Williams*, 192 Ill. 2d at 573. Specifically, Speranza testified Charles engaged in therapy due to "the sever[e] trauma that he went through with [respondent]." Speranza further testified that Charles was having behavioral problems that

correlated with respondent's visits, and Charles's behavior improved when the visits ceased. Harris provided similar testimony. The record further indicates Charles's foster family reported bedwetting, irritability, anger, inability to sleep well, and other violent behaviors such as hitting and throwing items following his visits with respondent. The record therefore contains ample evidence demonstrating Charles's trauma and reactive behavior. The guardian's single reference to Charles's PTSD at the unfitness hearing therefore was not improper. See *id*.

¶ 76 2. The Guardian's Characterization of Respondent's Defense

¶ 77 Respondent next contends the guardian accused her of fabricating a theory of defense that respondent blamed Charles for the decision to terminate the visits. Respondent cites *People v. Emerson*, 97 Ill. 2d 487, 497 (1983), for the proposition that "[u]nless based on some evidence, statements made in closing arguments by the prosecution which suggest that defense counsel fabricated a defense theory *** are improper." Respondent's argument and proposition is misplaced, as her contention is based on a strained reading of the record.

¶ 78 The statement respondent complains of, in context, is as follows:

> "The visitation logs reflect that over the course of the case until August of 2016, [respondent] had at least 66 opportunities to visit weekly; and she visited for 19 of those. That's less than a third, your Honor. She says before you she's interested in Charlie and she cares about him; but where is the proof?
>
> *And, yes, Charlie eventually did not want to go to those visits; but he should not be blamed for having a traumatic reaction based on the care or, frankly, the lack of the care he was receiving while in his mother's custody prior to coming into DCFS.* And, your Honor, if [respondent] was so concerned, after it was explained to her the visits

were stopping because of Charlie's reaction, why didn't she do anything to engage in services then?" (Emphasis added.)

Respondent contends the italicized portion of the guardian's argument improperly suggested respondent's defense was to blame Charles for the visits ceasing. We disagree. The guardian's argument that "Charles should not be blamed for having a traumatic reaction" merely suggests that his reaction was not unjustified and was supported by "the lack of care he was receiving while in his mother's custody." Accordingly, the guardian's argument was not an improper suggestion that respondent fabricated a defense. See *id*.

¶ 79 3. Shifting the Burden of Proof and the Guardian's Argument that Respondent Was Not Credible Due to Her Status as a Respondent

¶ 80 Respondent next argues the guardian improperly shifted the burden of proof to her during the unfitness hearing by arguing "[respondent] says before you she's interested in Charlie and she cares about him; but where is the proof?" Respondent further challenges the guardian's argument at the unfitness hearing that "[respondent's] asking the court to believe her testimony over every single service provider on this case. And it's not just the agency, your Honor. The providers have no stake in this case, but [respondent] does." According to respondent, the guardian's remarks shifted the burden of proof, improperly argued respondent was not credible due to her status as a respondent, and improperly argued the service providers were credible because they had no stake in the case. We disagree.

¶ 81 The record reveals that during closing arguments, the guardian noted respondent had not sought treatment for substance abuse, she failed to attend parenting classes, and she failed to engage in psychiatric or psychological care that addressed the issues pertinent to her case with DCFS. The guardian further argued that respondent claimed no one returned her calls regarding therapy sessions at Lutheran, but the documentary evidence demonstrated the Lutheran therapist

sent multiple letters and kept the case open for two months before closing it. The guardian argued respondent claimed she was compliant with her medication, but her DuPage therapist's notes indicated she was not compliant. Finally, the guardian argued that the visitation logs demonstrated respondent failed to visit Charles on a regular basis. The guardian then reiterated respondent failed to engage in any of the recommended services before making the comment, "[s]he says before you she's interested in Charlie and she cares about him; but where is the proof?"

¶ 82 We are not persuaded that the guardian's comments suggested respondent was required to present evidence. Respondent's theory of the case was that she attended some of the services recommended by Lutheran and failed to attend other services due to Lutheran's failure to make a referral or due to the service providers' failure to communicate with her. She supported that theory with her own testimony, which was at times contradicted by the testimony of Harris and Speranza, and by the documentary evidence. We conclude that the guardian's comment regarding the absence of proof that respondent was interested in Charles was a proper comment on the persuasiveness of respondent's theory of the case and the lack of the evidence presented to support that theory. See *Bell*, 343 Ill. App. 3d at 117; *Herrera*, 257 Ill. App. 3d at 619.

¶ 83 We next address respondent's claim that the guardian further shifted the burden of proof at the unfitness hearing by arguing "[respondent's] asking the court to believe her testimony over every single service provider on this case." We reiterate that respondent's theory included the notion that her service providers failed to contact her. The guardian's closing argument referenced the service providers' notes which demonstrated their unsuccessful attempts to contact respondent and respondent's failure to attend services. The guardian further referenced the notes of respondent's DuPage therapist which demonstrated respondent failed to take any

medication prior to seeking treatment at DuPage. Finally, the guardian referenced the service providers' lack of bias. The challenged remark was therefore a proper comment on respondent's credibility, the persuasiveness of her theory of the case, and the strength of the evidence to support that theory. See *Williams*, 2015 IL App (1st) 122745, ¶ 12; *Herrera*, 257 Ill. App. 3d at 619.

¶ 84 Respondent next contends the guardian improperly argued that respondent should not be believed due to her status as a respondent and the credibility of the caseworkers or service providers should be enhanced because they "have no stake in this case." Respondent relies solely on *People v. Crowder*, 239 Ill. App. 3d 1027, 1030-31 (1993), and *People v. Ellis*, 233 Ill. App. 3d 508, 510-11 (1992). Our supreme court addressed and rejected the holdings in *Crowder*, *Ellis*, and similar cases in *People v. Barney*, 176 Ill. 2d 69 (1997). In *Barney*, our supreme court found that comments suggesting a defendant's testimony is biased because he or she has an interest in the outcome of the case were not improper because the prosecutor was not telling the jury something it did not already know. *Id*. at 73-74. Similarly, the guardian's argument here did not tell the trial court something it did not already know: that respondent had an interest in the outcome of the case, and the service providers did not. See *id*. Accordingly, the comments were not improper. See *id*.

¶ 85 4. The Guardian's Elicitation of Opinion Testimony From Respondent Regarding the Veracity of her Therapist's Notes

¶ 86 Respondent argues the guardian improperly elicited testimony from her that her therapist at DuPage would accurately report his notes. Respondent further maintains the guardian improperly referenced respondent's testimony when she argued the therapist's notes reflected respondent failed to take her medication.

¶ 87 Respondent relies solely on *People v. Young*, 347 Ill. App. 3d 909, 926 (2004), for the

proposition that, "[t]he prosecution's practice of asking a criminal defendant to comment on the veracity of other witnesses who have testified against him has consistently and repeatedly been condemned by this court because such questions intrude on the jury's function of determining the credibility of witnesses and serve to demean and ridicule the defendant." Respondent's reliance on *Young* is misplaced and the case is inapposite where here, respondent's DuPage therapist did not testify against her and the outcome of the hearing was determined by the trial court. *Id*. Respondent's comments went to the veracity of her therapist's notes, a document in evidence, not his testimony, and therefore we find this claim to be unpersuasive.

¶ 88 5. Prejudice

¶ 89 Even assuming error occurred as argued by respondent, she has failed to demonstrate she was prejudiced by any of these errors. We reiterate that the trial court, sitting without a jury, is presumed to recognize and disregard improper arguments or evidence in reaching its conclusion. *Charles W.*, 2014 IL App (1st) 131281, ¶ 37; *Bowen*, 241 Ill. App. 3d at 621-22. This presumption is overcome only when the record affirmatively demonstrates the trial court considered improper arguments or evidence. *Koch*, 248 Ill. App. 3d at 592; *Bowen*, 241 Ill. App. 3d at 621-22. We will not reverse the trial court's decision unless it affirmatively appears the trial court was misled or improperly influenced by the challenged remarks. *Mays*, 81 Ill. App. 3d at 1097.

¶ 90 Here, there is no indication in the record that the trial court relied on any of the challenged comments in reaching its conclusion. Moreover, the record affirmatively demonstrates that the trial court applied the correct burden of proof at the unfitness hearing. Specifically, the trial court stated, "as to the mother, the Court finds that the State has met its burden of proof by clear and convincing evidence that she is unfit on the following specific

grounds." Accordingly, respondent has failed to demonstrate sufficient prejudice to warrant reversal. See *Smith*, 141 Ill. 2d at 60; *Charles W.*, 2014 IL App (1st) 131281, ¶ 37; *Bowen*, 241 Ill. App. 3d at 621-22; *Mays*, 81 Ill. App. 3d at 1097.

¶ 91 D. Prior Consistent Statements

¶ 92 Respondent next contends the trial court abused its discretion by admitting Harris's prior consistent statements to bolster his testimony. According to respondent, the State introduced Harris's case notes regarding his conversations with respondent about drug treatment, and Harris later testified to those same conversations.

¶ 93 The State and guardian again argue respondent has forfeited the issue by failing to object at the hearing. We, however, choose to address the merits of respondent's claim. See *Pinske*, 2015 IL App (1st) 150537, ¶ 19.

¶ 94 Generally, proof of a prior consistent statement made by a witness cannot be used to corroborate that witness's testimony on direct examination. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 42. Such a statement is inadmissible hearsay that cannot be used to bolster a witness's credibility. *Id*. When, however, a statement is offered at trial as substantive evidence under an exception to the hearsay rule, the mere fact that the statement is consistent with the declarant's subsequent trial testimony does not render the prior statement inadmissible. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 100; *Watt*, 2013 IL App (2d) 120183, ¶ 43. That is the case here.

¶ 95 Errors of this nature are typically reviewed for an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 110 (2001). The trial court abuses its discretion only when its decision is arbitrary, fanciful, unreasonable, or where no reasonable person would take the trial court's view. *Id*. at 89.

¶ 96 Here, Harris's prior statements at issue, introduced through Speranza, were properly admitted as substantive evidence under the business records exception to the hearsay rule during

the State's presentation of its case-in-chief. See Ill. R. Evid. 803(6) (eff. Apr. 26, 2012). Respondent makes no argument that the prior statements were inadmissible as exceptions to the hearsay rule. Further, the prior statements here were not introduced for the improper purpose of corroborating or bolstering Harris's subsequent testimony—in fact, the State did not even call Harris as a witness. See *Watt*, 2013 IL App (2d) 120183, ¶ 42. Because the statements were admitted as substantive evidence during the respondent's case-in-chief, it is of no consequence that they happened to be consistent with Harris's subsequent testimony. *Stull*, 2014 IL App (4th) 120704, ¶ 100; *Watt*, 2013 IL App (2d) 120183, ¶ 43. Accordingly, the trial court did not abuse its discretion in admitting the prior statements. *Caffey*, 205 Ill. 2d at 89, 110; *Stull*, 2014 IL App (4th) 120704, ¶ 100; *Watt*, 2013 IL App (2d) 120183, ¶ 43. Furthermore, even if the evidence was improperly introduced, as previously discussed respondent cannot demonstrate prejudice where there is no indication in the record that the trial court relied on the consistent statements in reaching its conclusion. See *Koch*, 248 Ill. App. 3d at 592; *Mays*, 81 Ill. App. 3d at 1097.

¶ 97 E. Ineffective Assistance of Counsel

¶ 98 Respondent next raises numerous arguments as to why her counsel was ineffective during the unfitness and best interest hearings. Although there is no constitutional right to counsel in proceedings pursuant to the Juvenile Court Act, the Act grants a statutory right to counsel. 705 ILCS 405/1-5(1) (West 2016); *In re S.G.*, 347 Ill. App. 3d 476, 478-79 (2004). "Illinois courts apply the standard utilized in criminal cases to gauge the effectiveness of counsel in juvenile proceedings" and are guided by the standards set out in *Strickland v. Washington*, 466 U.S. 668 (1984). *Id*. at 479. Generally, in order to establish ineffective assistance of counsel, a respondent must demonstrate both that (1) counsel's representation was so deficient as to fall below an objective standard of reasonableness and (2) but for counsel's error, there is a reasonable

probability that the result of the proceeding would have been different (*i.e.*, prejudice). *Id.*; *People v. Bates*, 2018 IL App (4th) 160255, ¶ 46.

¶ 99 To establish deficiency a respondent must overcome the strong presumption that counsel's conduct was the product of sound trial strategy. *Simms*, 192 Ill. 2d at 361; *Charles W.*, 2014 IL App (1st) 131281, ¶ 32. A reviewing court is highly deferential to trial counsel on matters of trial strategy and must make every effort to consider counsel's performance from his perspective at the time, rather than in hindsight. *People v. Perry*, 224 Ill. 2d 312, 344 (2007). Decisions concerning whether to call certain witnesses are matters of trial strategy, reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). This general rule is predicated on our recognition that the right to effective assistance of counsel refers to competent, not perfect representation. *People v. West*, 187 Ill. 2d 418, 432 (1999).

¶ 100 In addition, the issue of deficient performance is determined from the totality of counsel's conduct, not from isolated incidents. *People v. Spann*, 332 Ill. App. 3d 425, 430 (2002). Mistakes in trial strategy, tactics, or judgment do not themselves render the representation incompetent. *West*, 187 Ill. 2d at 432. The only exception to this rule is when counsel's strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing (*id.* at 433; *People v. Reid*, 179 Ill. 2d 297, 310 (1997)) or the strategy appears irrational and unreasonable in light of the circumstances (*People v. Faulkner*, 292 Ill. App. 3d 391, 394 (1997)). "The fact that in retrospect a tactic proved unsuccessful does not demonstrate incompetence." *People v. Gonzalez*, 238 Ill. App. 3d 303, 332 (1992).

¶ 101 Further, respondent must satisfy both prongs of the *Strickland* test in order to prevail on a claim of ineffective assistance of counsel. *In re K.O.*, 336 Ill. App. 3d 98, 111 (2002). The prejudice prong of the *Strickland* test requires respondent to demonstrate that absent counsel's

deficient performance there is a reasonable probability, not just a mere possibility, that the result of the proceeding would have been different. *Id*. A reasonable probability is defined as a probability sufficient to undermine confidence in the outcome of the case. *Strickland*, 466 U.S. at 694. We review respondent's claim of ineffective assistance of counsel *de novo*. *People v. Wilson*, 392 Ill. App. 3d 189, 197 (2009).

¶ 102 We initially acknowledge that respondent's ineffective assistance of counsel claims based on counsel's failure to object to the issues previously discussed are meritless where we have already found no error occurred, no prejudice resulted, or both. See *People v. Pitsonbarger*, 205 Ill. 2d 444, 465 (2002).

¶ 103 Respondent also contends counsel was deficient for calling Harris to testify. Specifically, she challenges counsel's elicitation of damaging testimony from Harris, including the testimony that (1) respondent failed to follow up with Harris's referrals, (2) respondent did not inform him of why she could not make her drug treatment appointments, (3) respondent was sporadic in her attendance at weekly visits with Charles, (4) respondent only informed him she was having difficulty contacting her therapist after she had been discharged, (5) respondent did not inform him she was taking medication prescribed by her providers at DuPage, and (6) the service providers informed him respondent had not made contact or had missed appointments. Respondent further maintains counsel's failure to object to Harris's hearsay testimony regarding statements made by the service providers constituted ineffective assistance. She additionally argues, without further explanation, that counsel opened the door for damaging testimony during cross-examination of Harris.

¶ 104 As we noted above, decisions concerning whether to call certain witnesses on a client's behalf are matters of trial strategy, reserved for the discretion of trial counsel. *Enis*, 194 Ill. 2d at

378. Such a presumption may only be overcome if counsel's decision appears so irrational and unreasonable that no reasonably effective attorney, facing similar circumstances, would pursue such a strategy. *People v. Bryant*, 391 Ill. App. 3d 228, 238 (2009). Moreover, the issue of ineffective assistance is determined from the totality of counsel's conduct, not from isolated incidents. *Spann*, 332 Ill. App. 3d at 430.

¶ 105 Here, given the inconsistencies between Speranza's and respondent's testimonies, and the fact that Speranza was not assigned to the case until February 29, 2016, counsel's decision to call Harris was not unreasonable. See *Bryant*, 391 Ill. App. 3d at 238. Importantly, Harris was assigned to the case when the court issued its finding that Lutheran failed to make reasonable efforts to provide services and he corroborated a portion of respondent's testimony by indicating he did not refer her to any services until March or April 2016. Furthermore, counsel elicited a number of responses from Harris that were favorable to respondent. Specifically, Harris testified on direct that (1) respondent could not commence parent coaching due to Charles's refusal to attend visits, (2) respondent completed the substance abuse assessment, (3) respondent's last visit with Charles "went well," (4) respondent attended individual therapy for longer than one month, (5) respondent's new therapist was supposed to contact her, (6) respondent made an appointment to see a psychiatrist at Lake Cook, (7) respondent reported she had difficulty contacting her therapist, (8) Charles never explained why he did not want to visit respondent, and (9) Harris did not recall when he provided the information regarding parenting classes to respondent. We further observe that the complained-of testimony described above was not elicited by counsel's questions. See *People v. Vasser*, 331 Ill. App. 3d 675, 685 (2002).

¶ 106 Given the facts discussed above and counsel's elicitation of favorable testimony from Harris, counsel's decision to call Harris was not irrational or unreasonable. See *Bryant*, 391 Ill.

App. 3d at 238. Given the totality of counsel's direct examination and his elicitation of favorable testimony, respondent has failed to overcome the presumption that counsel's direct examination was the product of sound trial strategy. See *Charles W.*, 2014 IL App (1st) 131281, ¶ 32; *Spann*, 332 Ill. App. 3d at 430; *Vasser*, 331 Ill. App. 3d at 685. Accordingly, counsel's decision to call Harris and his direct examination did not fall below an objective standard of reasonableness so as to render his assistance ineffective. See *id.*; *S.G.*, 347 Ill. App. 3d at 479.

¶ 107 Respondent next argues counsel was deficient for failing to object to the scope of the State's cross-examination of Harris when Harris testified he provided respondent's phone number to the director of Arch Angel. Respondent's contention is meritless where our review of the record reveals Harris offered the same testimony during his direct examination. See *Beard v. Barron*, 379 Ill. App. 3d 1, 17-18 (2008).

¶ 108 Respondent also argues counsel's performance was deficient where he elicited testimony from Speranza that she had concerns regarding what she observed during respondent's visits with Charles, which opened the door for Speranza's redirect examination testimony that respondent did not interact much with Charles when her boyfriend was present.

¶ 109 Here, the record reveals that many of the case notes regarding visits between Charles and respondent indicate that the visit "went well," that respondent and Charles were "excited to see each other," and generally described other positive interactions. Because counsel's question could have elicited a favorable response, we presume it was the product of sound trial strategy. See *Charles W.*, 2014 IL App (1st) 131281, ¶ 32. Moreover, counsel elicited testimony from respondent that clarified Charles would play with her boyfriend so he would have male interaction, and respondent only used her phone during visits to take pictures of Charles. Even if the tactic of inquiring whether Speranza was concerned regarding what she observed during

visits was a mistake, given the totality of counsel's conduct and his elicitation of mitigating testimony from respondent, the mistake did not render counsel's representation incompetent. *West*, 187 Ill. 2d at 432; *Spann*, 332 Ill. App. 3d at 430.

¶ 110 In her final claim, respondent argues that counsel was ineffective because he failed to present a closing argument. The court in *Charles W.* considered and rejected the same argument, noting that proceedings pursuant to the Juvenile Court Act are not intended to be adversarial in nature; rather, the focus is the best interests of the minor. *Charles W.*, 2014 IL App (1st) 131281, ¶ 47. Accordingly, respondent has failed to establish that counsel's performance was deficient. *Id*.

¶ 111 Because we have concluded that each of respondent's claims were the product of sound trial strategy (see *id*. ¶ 32), respondent has failed to demonstrate counsel's representation fell below an objective standard of reasonableness. See *id*; *S.G.*, 347 Ill. App. 3d at 479. Accordingly, respondent cannot state a claim for ineffective assistance of counsel. *Id*.

¶ 112 F. Best Interest Hearing

¶ 113 Lastly, respondent contends that the trial court's order which allowed Lutheran to bar respondent from visiting Charles tainted the best interest hearing and deprived her of due process. The State and guardian maintain that no such order was entered by the trial court.

¶ 114 Our review of the record reveals that the order referenced by respondent provided in pertinent part, "all parent/child visits to take place under Charles's therapist's supervision." It did not contain any language prohibiting respondent from visiting Charles. In fact, when ruling after the unfitness hearing, the trial court clarified that its order merely required Charles's therapist to also attend the visits. Indeed, respondent's counsel even acknowledged he was not arguing that the trial court ordered the visits to cease. Respondent's argument that "the trial court entered an

order which allowed the agency to bar [respondent] from any visits with [Charles]" is not based on the record and respondent therefore fails to establish her due process rights were violated.

¶ 115 The facts of record notwithstanding, respondent analogizes this case to that of *In re O.S.*, 364 Ill. App. 3d 628 (2006). In that case, the minor was removed from the care of the respondent (his mother) at the age of ten months and the respondent was subsequently incarcerated. *Id*. at 630. The agency overseeing the case, and later the trial court's order, barred in-person visits during the respondent's two-year incarceration. *Id*. at 631-32. When respondent was released from incarceration and the trial court finally allowed visits, the court required the parties to refer to the respondent as a relative of the minor rather than the minor's mother. *Id*. at 632. The respondent never missed a scheduled visit with her son and demonstrated substantial compliance with the requirements imposed by the State both during her incarceration and after her release. *Id*. at 631-32, 636. Nevertheless, as a result of the agency's policy and the trial court's order, the minor was not bonded to his mother and the trial court found it was in the minor's best interest to terminate the respondent's parental rights. *Id*. at 631-33.

¶ 116 On appeal, the court observed that "a major component of the court's function is to assess the relative degree to which the child has bonded to his foster parents and his biological parent, taking into consideration the natural harm to the relationship caused by the parent's dereliction. [Citation.] However, it seems that any harm to the parent's relationship with the child must be assessed absent artificial or coercive intervention of others into the bonding process." *Id*. at 637 (citing 750 ILCS 5/602 (West 2004) (best interest factors)). The court further observed that for two years of the respondent's incarceration and two years following her release, she was denied the opportunity to visit with her son, as his mother, and attempt to nurture a familial bond with him. *Id*. at 638-39. The actions of the agency and the trial court therefore made the best interest

hearing a futile gesture, violated the respondent's due process rights, and tainted the constitutionality of the termination of the respondent's parental rights. *Id*. at 638.

¶ 117 Respondent's reliance on *O.S.* is misplaced where the facts and issues are readily inapposite. First, the court orders in *O.S.* expressly barred the respondent from visiting her son and from identifying herself as the minor's mother. *Id*. at 631-32. That is not the case here, where the trial court's order merely stated that Charles's therapist was required to be present during his visits with respondent. Second, the minor's refusal to attend visits was not at issue in *O.S.* and therefore was not considered by the court when it determined the trial court and agency violated the respondent's due process rights.

¶ 118 The remaining facts are further distinguishable. The respondent in *O.S.* never missed a scheduled visit with her son and substantially complied with the required services imposed by the State. By contrast, the record here reflects that respondent's visits were sporadic even if we consider her lack of transportation. In one instance, respondent failed to visit Charles for over one month, and she declined to reschedule the visits that she cancelled. In addition, respondent failed to commence or complete many of the recommended services. The record also reveals that Lutheran had a procedure in place to determine whether a visit would occur. No such procedure was utilized in *O.S.* Moreover, Harris testified Charles would "tell me he wasn't going with me" even when Harris saw Charles for a home visit at his foster home. Harris would have to explain that he was not taking Charles to visit with respondent. In addition, Charles would act out and throw tantrums following visits with respondent, which was not the case in *O.S.* Finally, although the record demonstrates respondent continued to request visits after they ceased, there is no indication she sent letters or requested to speak to Charles via telephone. Based on these facts, we find Charles's attitude towards respondent, and ultimately his resistance to attending

visits, was not based on "artificial or coercive intervention by others" as in *O.S.* See *id*. at 637. Moreover, Lutheran's conduct did not make the best interest hearing a futile gesture, especially where respondent's attendance at the visits was sporadic prior to Charles's refusal to attend. See *id*. at 367-68. Accordingly, respondent's due process rights were not violated. See *id*.

¶ 119 III. CONCLUSION

¶ 120 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 121 Affirmed.