

No. 1-13-3152

**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).

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IN THE INTEREST OF L.D.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellee,	)	Cook County
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee	)	No. 10 JA 593
v.	)	
	)	
TINA D.,	)	Honorable
	)	Thomas J. Hennelly,
Mother-Respondent-Appellant.)	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

### ORDER

¶ 1 *Held:* The trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 2 Respondent Tina D., appeals from an order of the circuit court of Cook County finding her unfit. The sole issue on appeal is whether the trial court's finding of unfitness was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the

circuit court.

¶ 3

### BACKGROUND

¶ 4 L.D., a minor, is the natural child of Tina D. and Wallace J.<sup>1</sup> She was born on July 3, 2010, in Chicago.

¶ 5 The Department of Children and Family Services (DCFS) took custody of L.D. on July 7, 2010, after it was discovered that Tina D. did not have custody of her other six children and that L.D.'s father was a registered sex offender. The State filed a petition for adjudication of warship on July 9, 2010, and alleged that L.D. was neglected in that her environment was injurious to her health (705 ILCS 405/2-3(1)(b) (West 2010)), and was abused in that her environment created a substantial risk of physical injury by other than accidental means which would likely cause death, disfigurement, impairment of emotional health or loss or impairment of bodily function (705 ILCS 405/2-3(2)(ii) (West 2010)). The State further alleged that Tina D. had six other children who were in the custody of the Minnesota Department of Children and Family Services because her parental rights had been terminated. It was further alleged that Tina D. had been diagnosed with major depressive and organic personality disorder and that she had a history of homicidal and suicidal ideation and that L.D.'s father is a registered sex offender in Illinois and Minnesota. The juvenile court granted DCFS temporary custody of L.D. L.D. was placed with a foster family.

¶ 6 On January 11, 2011, the court held an adjudication hearing. At the hearing, the parties stipulated as follows:

"(1) [L.D.] is a female born on July 3, 2010, and who resides or can be found in Cook

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<sup>1</sup> Wallace J. is not a party to this appeal.

County.

(2) Natural mother is Tina D.

(3) Natural father is Wallace J.

(4) If called to testify, Department of Child and Family Services, Department of Child Protection, Investigator Michael Booker, would state as follows:

a. DCP Booker interviewed [Tina D.] on July 3, 2010 at the University of Chicago Medical Center. During the interview, [Tina D.] stated as follows:

- i. She had two children who were involved in the Department of Protection in Minnesota. Her parental rights were terminated as to those children. [Tina D.] did not know why those minors were taken from her care, and stated that she would leave the hospital get (sic) her head clear.
- ii. She moved from Minnesota in order to keep [L.D] in her care.

b. DCP Booker interviewed [Wallace J.] on July 3, 2010 at the University of Chicago Medical Center. During the interview, [Wallace J.] stated as follows:

- i. He had a child in the Department of Child Protection in Minnesota. [Wallace J.'s] parental rights were terminated as to that child.
- ii. He is a registered sex offender in Illinois and Minnesota.

(5) If called to testify, Courtney Bowles, a social worker at the University of Chicago Medical Center, would state as follows:

- a. She met with [Tina D.] on July 8, 2010 at the University of Chicago Medical Center.
- b. [Tina D.] stated that [L.D.] would be discharged to [Tina D.'s] care that day. Ms. Bowles had previously informed [Tina D.] and again informed her, that DCFS was investigating the case, and a discharge plan would be arranged in conjunction with DCFS.
- c. [Tina D.] began yelling and cursing at the social worker. [Tina D.] backed the social worker into a corner with [L.D.] in a bassinette between [Tina D.] and Ms. Bowles. [Tina D.] was yelling over [L.D.], and stated things like Ms. Bowles was 'bullshitting' her.
- d. Ms. Bowles attempted to explain the DCFS investigatory process to her, but [L.D.] refused to allow Ms. Bowles to speak.
- e. At times, [L.D.'s] statements were incoherent.
- f. Ms. Bowles attempted to help [Tina D.] deescalate. [Tina D.] was unable to calm down. Security was notified, and [Tina D.] left prior to security's arrival."

The parties also stipulated to the admission of several exhibits including Wallace J.'s certified copy of conviction for aggravated criminal sexual assault, a certified copy of a termination order, L.D.'s records from University of Chicago Medical Center and records from the Minnesota court of appeals showing that the court had affirmed the termination of Tina D.'s parental rights for her daughter T.D

¶ 7 At the conclusion of the hearing, the court determined that L.D. was abused because she

was at substantial risk of physical injury and was neglected because she was subject to an injurious environment. A dispositional hearing occurred immediately thereafter. The court found that it was in L.D.'s best interest to be adjudicated a ward of the court. The court found that Tina D. was unable to care for L.D.

¶ 8 On July 27, 2011, the court conducted a permanency hearing for L.D. and entered a goal of return home pending status. The court noted that L.D. had formed a bond with her foster parent and that her parents had not made any substantial progress despite the agency's efforts to provide services. That goal was changed to substitute care pending court determination on termination of parental rights at a March 20, 2012 permanency hearing. The court indicated that neither of L.D.'s parents had made substantial progress despite the agency's efforts to provide services and that L.D. was two years old and needed permanency.

¶ 9 On October 9, 2012, the goal was maintained and it was noted that Tina D. was living in Minnesota with L.D.'s father who is a registered sex offender and that neither parent was engaged in services despite the agency's efforts to provide them. On the same day, L.D.'s father signed consent to her adoption.

¶ 10 On January 11, 2013, the State filed a motion to permanently terminate Tina D.'s parental rights under sections 1(D)(m)(i), 1(D)(m)(ii), 1(D)(m)(iii), 1(D)(b), and 1(D)(c) of the Act. 750 ILCS 50/1(D)(m)(i), 1(D)(m)(ii), 1(D)(m)(iii), 1(D)(b), 1(D)(c) (West 2010). The motion alleged that under ground (b), Tina D. failed to maintain a reasonable degree of interest, concern or responsibility for L.D.'s welfare, under ground (c) Tina D. deserted L.D. for more than three months prior to the filing of the petition to terminate Tina D.'s parental rights and under ground (m), Tina D. failed to make reasonable efforts to correct the conditions that were the basis of

L.D.'s removal and she failed to make reasonable progress toward L.D.'s return home.

¶ 11 A fitness hearing took place on September 6, 2013. Tina D. was not present but was allowed to testify over the phone. The State requested that the court take judicial notice of several documents including the January 11, 2011, adjudication and disposition orders, the termination motion filed January 11, 2013, and Wallace J.'s consent to adoption. The State also requested to admit 25 exhibits into evidence.

¶ 12 Kylynn Brown, the foster care and permanency supervisor at Lutheran Child and Family Services (LCFS), testified that she was the supervisor for Tina D.'s case. LCFS was assigned to L.D.'s case in July 2010.

¶ 13 Tina D. was assessed for services at the end of July 2010 and it was recommended that she complete individual therapy, a psychological evaluation, a psychiatric assessment, anger management services and parenting classes. Brown testified that individual therapy was recommended because Tina D. "chose to remain in a relationship with a person she knew to be a sex offender" and because none of Tina D.'s seven children were in her care. Tina D. moved back to Minnesota on September 29, 2010. Prior to Tina D.'s move, Brown met with Tina D. and informed her that moving to Minnesota would make it difficult for her to complete the services required of her in Chicago.

¶ 14 Brown referred Tina D. to individual therapy and parenting classes at a facility in Chicago for the days that Tina D. would take the bus into Chicago to visit L.D. Tina D. attended parenting classes in February 2011, but did not complete the program. Brown testified that she referred Tina D. for individual therapy, and the therapist sent Tina D. a letter requesting that she call the clinic to begin counseling. Tina D. never responded. Brown testified that LCFS referred

Tina D. for a psychological evaluation in 2011 but it was not completed because the agency could not offer that service in Minnesota.

¶ 15 Brown testified that she tried to find resources for Tina D. in Minnesota within a five-mile radius of where Tina D. lived. Brown consulted her supervisor and the Minnesota Department of Health and Human Services and then found various providers in Minnesota for the services in which LCFS recommended Tina D. participate. Brown testified that she sent the information to Tina D. regarding the various service providers and it was up to her to select a resource and go to that resource. After the initial visit with a service provider, Tina D. "would have to sign a consent for release of information, so that [the agency] could have contact with that service provider; and at that time, our agency would then write a contract to contract services for [the parents] in Minnesota." Brown testified that LCFS was responsible for paying for Tina D's services.

¶ 16 Brown stated that she referred Tina D. for a psychological evaluation in both Chicago and Minnesota and provided resources for her to participate in anger management and psychiatric treatment through the Minnesota Department of Health and Services but Tina D. did not participate in any of these services. Tina D. did not complete any of the services recommended by LCFS and never contacted Brown or LCFS regarding participating in any services.

¶ 17 In April 2012, Brown spoke with the Genesis Program in Minnesota regarding sex offender counseling and anger management. Despite initial contact with both Tina D. and Wallace and sending referrals to them near their home, Brown noted that the Geneiss caseworker reported "both parents continue to provide reasoning and or barrier(s) for not being able to

follow through on the resources already provided to each of them in the state of Minnesota."

¶ 18 From January 2011 to March 2012, Tina D. participated in most weekly visits with L.D. LCFS had offered to reimburse Tina D. for her travel expenses from Minnesota to Chicago to visit L.D. Despite being informed of the procedure for obtaining reimbursement for travel expenses, Tina D. never requested reimbursement.

¶ 19 After March 2012, when the goal changed, Tina D. visited L.D. monthly and only missed one visit through August 2012. After August 2012, Tina D. never visited again nor did she contact LCFS regarding visitation. When she did visit L.D., Tina D. carried out basic tasks like feeding L.D. and changing her diaper. However, Tina D. did not hold L.D. very much and became frustrated when she cried. Brown characterized the visits as "unengaged."

¶ 20 Tina D. testified via speakerphone from Minneapolis, Minnesota. She last worked 12 or 13 years ago and receives about \$400 per month in general assistance. Tina D. testified that the cost of a bus trip from Minnesota to Chicago is between \$60 and \$80. She never asked to be reimbursed because no one told her she was entitled to seek reimbursement. She stated that the last time she saw L.D. was in May 2013 and that she did not visit L.D. after that because she could not afford the bus ticket to Chicago. Tina D. stated that she visited L.D. from September 2012 to February 2013

¶ 21 Tina D. testified that she was never referred for services in Minnesota and was never told to go to the Minnesota Department of Human Services. She did not complete individual counseling, a psychological evaluation or parenting classes. She stated that she received 20 to 30 letters from LCFS but did not read them. She stated that she was admonished by the court previously about how important it was for her to complete the recommended services. However,

she stated that she was not told that failure to complete the services would be a barrier to the return of her children. Tina D. stated that she attended five or six parenting classes. She called LCFS several times and on the eighth time she was told that Ms. Brown was not in. She loved L.D. dearly and missed her every day.

¶ 22 Following closing argument, the trial court found that Tina D. was unfit under all grounds alleged ((b), (c) and (m)). The court found that Tina D. "decided to stay in Minnesota, and also decided that she really wasn't going to do services, unless she was actually ordered to by the Court. So, she wasn't really interested in doing them for the sake of reunifying [with] her child."

¶ 23 A best interests hearing was held immediately thereafter. L.D.'s foster parent, Cheryl E., testified that L.D. was placed with her shortly after her birth in July 2010. L.D. is enrolled in preschool and ballet and calls Cheryl "mom." L.D. is involved with Cheryl's extended family and they do family activities together. Cheryl wants to adopt L.D. because she loves her.

¶ 24 Kylynn Brown also testified that L.D.'s placement was safe and appropriate and that L.D. and Cheryl are well-bonded. Brown also testified that her agency recommended that Tina D.'s parental rights be terminated because she failed to participate in services in Illinois and Minnesota. Brown also testified that it would be in L.D.'s best interest to be adopted by Cheryl because L.D. has been with Cheryl since she left the hospital in July 2010 and L.D. is thriving in Cheryl's care. The parties stipulated that Brown would testify that this was in L.D.'s best interest.

¶ 25 After argument, the trial court found that it was in L.D.'s best interest for Tina D.'s parental rights to be terminated and to allow Cheryl to adopt L.D..

¶ 26 Tina D. now appeals the trial court's finding that she is unfit.

¶ 27

## ANALYSIS

¶ 28 Tina D. argues that the trial court's finding that she is unfit under sections 1(D)(m)(i), 1(D)(m)(ii), 1(D)(m)(iii), 1(D)(b), and 1(D)(c) of the Act (750 ILCS 50/1(D)(m)(i), 1(D)(m)(ii), 1(D)(m)(iii), 1(D)(b), 1(D)(c) (West 2010)), is against the manifest weight of the evidence.

¶ 29 The involuntary termination of a party's parental rights is a drastic measure because it "permanently and completely" severs the parent-child relationship. *People v. Brenda T.*, 212 Ill. 2d 347, 356 (2004)). The involuntary termination of parental rights is a two-step process governed by the Juvenile Court Act (705 ILCS 405/1-1 et seq. (West 2010)) and the Illinois Adoption Act (705 ILCS 50/0.01 et seq. (West 2010)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Once a petition to terminate parental rights is filed, the cause proceeds to a fitness hearing. 705 ILCS 405/2-29 (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63. At the conclusion of the fitness hearing, if the court finds by clear and convincing evidence that the parent is unfit, the cause proceeds to a hearing to determine whether it is in the best interests of the child that the parental rights be terminated. 705 ILCS 405/2-29(2), (4) (West 2010); 750 ILCS 50/1(D) (West 2010); *In re J.L.*, 236 Ill. 2d at 337; *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 30 Because parents have superior rights against all others to raise their children, the State must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *In re G.W.*, 357 Ill. App. 3d 1058, 1059-60 (2005). A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. See *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. A trial court's finding regarding the best interest

of the child will not be reversed on appeal unless such findings are against the manifest weight of the evidence. *In re J.L.*, 236 Ill. 2d at 344. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the lower court's determination is "unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70.

¶ 31 Respondent argues that the trial court's findings of unfitness on three grounds are against the manifest weight of the evidence. We disagree.

¶ 32 Proof of any one ground is sufficient to find a parent unfit. *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29. Because we determine that the trial court's finding of unfitness was not against the manifest weight of the evidence under section 1(D)(m)(ii) of the Act (750 ILCS 50/1(D)(t) (West 2012)), we need not consider whether Tina D. was also unfit under sections 1(D)(m)(i), 1(D)(m)(iii), 1(D)(b), 1(D)(c). 750 ILCS 50/1(D)(m)(i), 1(D)(m)(iii), 1(D)(b), 1(D)(c) (West 2010).

¶ 33 Pursuant to section 50/1(D)(m)(ii), failure to make reasonable progress toward the return of the child to the parent "includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care within 9 months after adjudication." 750 ILCS 50/1(D)(m)(ii) (West 2010). Reasonable progress is judged by an objective standard "based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). Reasonable progress requires some measurable or demonstrable movement toward the goal of unification. *In re Y.B.*, 285 Ill. App. 3d 385, 392 (1996). The standard for measuring a parent's progress is to consider compliance with the service plan and

court directives in light of the conditions that lead to removal and any subsequent conditions that would prevent the court from returning custody to the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 34 In this case, the State presented clear and convincing evidence to establish that Tina D. failed to make reasonable progress to correct the conditions that caused L.D. to be removed from her custody and failed to make reasonable progress toward L.D.'s return home during any time period. The record demonstrates that L.D. was born on July 9, 2010, in Chicago, so as to avoid child welfare services in Minnesota where Tina D. lived with L.D.'s father, a registered sex offender. Minnesota child welfare services had previously taken custody of Tina D.'s six other children. Although she claimed at one point that they were not living together, letters sent to Tina D. and Wallace at the same address were returned signed by both Tina D. and Wallace. Tina D. provided the address for and received mail where Wallace resided. She never separated from him even though he failed to complete sex offender therapy and was a registered sex offender in both Illinois and Minnesota.

¶ 35 In addition, Tina D. never completed any of the services that were recommended other than attending a few parenting classes. Brown testified that it was recommended that Tina D. participate in individual therapy, a psychological evaluation, a psychiatric assessment, anger management and parenting classes. The court noted at the fitness hearing that "[a]s we stand here now \* \* \* after about two and a half years after the date of trial, each and every service that was being recommended right from July 2010, that occurred 3 years ago, is still outstanding."

¶ 36 We reject Tina D's argument that she was never offered any services and LCFS never provided any referrals or resources for her to participate in services in Minnesota. Brown

testified that she informed Tina D. that moving back to Minnesota would make it difficult to complete services in Chicago. When Tina D. moved, Brown found service providers within a 5-mile radius of Tina D.'s residence in Minnesota. Brown sent all of the information regarding the service providers to Tina D. and included a simple procedure for the service provider in Minnesota to contact LCFS. Tina D. testified that she received approximately 20 letters from LCFS but did not read any of them.

¶ 37 Tina D. claims that Brown set her up to fail by setting up parenting classes and individual counseling for Tina D. in Chicago on the days Tina D. visited L.D. We find this argument to be meritless. Brown went above and beyond in this case and attempted to accommodate Tina D. at every turn. The bottom line is that it was Tina D.'s responsibility to follow through with the resources she was provided. She chose not to. The evidence in the record supports our conclusion that the trial court's finding of unfitness was not against the manifest weight of the evidence. Consequently, we affirm the court's finding that Tina D. was unfit under section 50/1(D)(m)(ii), where she failed to substantially fulfill her obligations under the service plan and correct the conditions that brought the child into care within 9 months after adjudication. As previously stated, we need not determine whether the trial court's finding of unfitness on the other ground was against the manifest weight of the evidence.

¶ 38 **CONCLUSION**

¶ 39 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 40 Affirmed.