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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> LANAVIA S., JERMI C., and JAKAI C.,	)	Appeal from the Circuit Court of Kane County.
Minors.	)	
	)	Nos. 11-JA-127, 11-JA-128, 11-JA-129
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Patrick C., Respondent-Appellant).	)	Honorable Linda S. Abrahamson, Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* A finding of unfitness for failure to make reasonable progress based on a service plan that was in effect for less than the applicable nine-month period does not toll the nine-month period set by the legislature; trial court's finding that respondent was unfit for failing to make reasonable progress toward the return of the children within the applicable nine-month period was not against the manifest weight of the evidence; affirmed.

¶ 2 Respondent, Patrick C., the natural father of the minors, Lanavia S., Jermi C., and Jakai C., appeals from the order of the circuit court of Kane County terminating his parental rights, after finding respondent unfit on three statutory grounds of the Adoption Act (750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2010)), and that it was in the minors' best interests that

respondent's parental right be terminated. Respondent contests the unfitness determination but not the best interests ruling. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 According to the narrative issued by the Department of Children and Family Services (DCFS), the case was referred for intact family services with the Children's Home and Aid Society (CHASI) on April 15, 2011, due to a hotline report that the mother, Alexandria S., threatened to commit suicide. At the time of the referral to CHASI, the presenting problem was that the mother suffered from bi-polar disorder and she was not being treated. After services were provided, DCFS received another hotline call due to the environmental conditions of the home, which were a result of Alexandria's intoxicated state. Alexandria went into a rage and pulled a sheet causing Jakai to fall off the bed. Respondent was unable to prevent or control the situation. It was learned, at that time, that respondent had a prior history involving a sexual allegation charge some 19 years ago. This, along with the fact that respondent admitted on November 30, 2011, that he would test positive for marijuana, left the children in a home without a safe caregiver.

¶ 5 A shelter care hearing was held on December 16, 2011, at which time the trial court determined that it was necessary to remove the children from their parents. Temporary custody of all three children was given to DCFS, and the children were placed into traditional foster care. At the time of the hearing, Lanavia was four years and three months, Jermi was 19 months, and Jakai was seven months.

¶ 6 At the adjudicatory hearing, which was held on March 29, 2012, the parents stipulated that each of the minors were neglected in that they were in an environment injurious to their welfare; "to wit: Mother and/or Father have an open Intact DCFS case and have failed to

cooperate fully with recommended Agency services, therefore placing the minor[s] at risk of harm, pursuant to 705 ILCS 405/2-3(1)(b).”

¶ 7 The factual basis stated that mother had an elevated alcohol level at the time of Jakai’s birth on May 30, 2011, and that the baby was born with acute alcohol intoxication. Social workers from CHASI offered services regarding the baby, but the parents failed to cooperate with all of the services that were offered by the agency, which placed the minors at risk of harm. Accordingly, on March 29, 2012, an adjudicatory order was entered by the court.

¶ 8 Around April 11, 2012, DCFS created a service plan for respondent to achieve a level of understanding of sexual abuse and develop methods of interacting with the children. The plan required respondent to, *inter alia*, complete a sex offender evaluation and to follow its recommendations. In addition, respondent was required to provide suitable housing for the family.

¶ 9 A dispositional hearing was held on April 24, 2012, during which the parents stipulated that they were temporarily unfit and unable to care for the minors due to a continuing need for services. The court ordered that the minors be made wards of the court.

¶ 10 The trial court conducted the first permanency review hearing on October 25, 2012. The court found that respondent had made reasonable efforts, but noted that, in order to be found to have made progress, respondent needed to have proof of employment and stable housing in order to have the minors returned home. Regarding the sex offender evaluation, respondent only needed to turn in a self-evaluation report. If the sex offender evaluation came back without any concerns, DCFS then would have discretion to order unsupervised visits with the children. The court established a goal of return home within 12 months.

¶ 11 At the next permanency hearing held on April 18, 2013, respondent still had not completed the self-evaluation report in order to have unsupervised visits. The court suspended visitation in accordance with the request of DCFS until the evaluation was completed. The court also withheld setting a goal for 60 days.

¶ 12 On the continued date, the caseworker testified that respondent had been indicated for sexual abuse pursuant to a hotline report that he had been criminally charged with aggravated domestic battery and predatory criminal sexual assault in another matter. Defense counsel argued that before his client had been criminally charged, he had complied with his service plan, except completing the self-evaluation report. The court found the parents' progress to date had not been substantial and changed the goal to substitute care pending a determination of termination of parental rights.

¶ 13 The State subsequently filed petitions for termination of parental rights on August 8, 2013. The petitions alleged the following three grounds of unfitness against respondent: (1) the failure to make reasonable efforts and progress during the period from March 30, 2012, to December 30, 2012 (750 ILCS 50/1(D)(m)(i), (m)(ii) (West 2010)); (2) the failure to maintain a reasonable degree of interest, concern, or responsibility as to each minor's welfare (750 ILCS 50/1(D)(b) (West 2010)); and (3) repeated incarceration as a result of criminal convictions (750 ILCS 50/1(D)(s) (West 2010)).

¶ 14 Following the close of the State's case at the unfitness hearing, the trial court entered a directed finding in favor of respondent regarding the allegation of repeated incarceration (750 ILCS 50/1(D)(s) (West 2010)). At the close of the hearing, the trial court found that respondent had not made either reasonable efforts or progress pursuant to sections 1(D)(m)(i) and (m)(ii) and that, although he showed interest and concern, he failed to maintain responsibility as to the

children's welfare. In particular, the court based its findings on respondent's failure to complete the self-report portion of the sex offender evaluation and his failure to establish stable housing. A best interest hearing was held on June 3, 2014, at which time the trial court terminated respondent's parental rights. Respondent only appeals the unfitness determination. The mother is not involved in this appeal.

¶ 15

## II. ANALYSIS

¶ 16 On appeal, respondent presents several arguments challenging the trial court's finding of unfitness. Because we choose to dispose of this case on the basis of respondent's argument relating to the finding of unfitness for failure to make reasonable progress, pursuant to section 1(D)(m)(ii), we need not address respondent's other arguments. See *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005) ("[a] parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence"); *In re Angela D.*, 2012 IL App (1st) 112887, ¶ 29 (where State met its burden of proving unfitness on one ground, court declined to consider whether the parent was also unfit on other grounds).

¶ 17 Section 1(D)(m)(ii) provides that a parent may be declared unfit if he fails "to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor." "The 'initial nine-month period' begins upon the entry of the court's order of adjudication." *In re Veronica J.*, 371 Ill. App. 3d 822, 828 (2007) (citing *In re D.F.*, 208 Ill. 2d 223, 241-42 (2003)). In this case, the order of adjudication was entered March 29, 2012. Therefore, the relevant the nine-month period began March 30, 2012, and ended December 30, 2012.<sup>1</sup>

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<sup>1</sup> In the petitions for termination, the State identified the nine-month period from March 30, 2012, through December 30, 2012.

¶ 18 Respondent maintains that he cannot be found unfit on the basis of his failure to make reasonable progress toward the return of the children during the relevant nine-month period because his service plan began two weeks after the adjudication was entered, and therefore, he was shorted two weeks in his attempt to establish his progress. Respondent argues that, because the service plan was not in effect for the full nine-month period alleged in the termination petition, this means that the State did not prove that he failed to make reasonable progress during that period. This is an issue of statutory construction, which we review *de novo*. *In re C.N.*, 196 Ill. 2d 181, 208 (2011).

¶ 19 The State asserts that respondent forfeited his right to raise this issue since he failed to object in the trial court. Even if we agreed with the State, forfeiture is a limitation on the parties and not the court, the issue raised concerns a clear question of statutory interpretation, and we choose to address the merits. See *Oshana v. FCL Builders, Inc.*, 2013 IL App (1st) 120851, ¶ 18.

¶ 20 Our primary objective in construing a statute is to give effect to the intention of the legislature. *In re J.L.*, 236 Ill. 2d 329, 339 (2010). The most reliable indicator of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Id.* Where the language is clear and unambiguous, it will be given effect without resort to other aids of construction. *Id.* We may not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express. *Id.*

¶ 21 While the service plan may have been submitted two weeks after the nine-month period began to run, it does not change the relevant time period that the statute clearly and unambiguously prescribes. In *In re A.S.*, 2014 IL App (3d) 140060, ¶ 21, the appellate court rejected the respondent's argument that the nine-month period should have started when the court entered its order requiring her to complete certain tasks, not when the minor was

adjudicated neglected. The court held that the “ ‘clear and unambiguous’ language of section 1(D)(m)(ii) of the Adoption Act provides that the relevant nine-month period used to determine if a parent has made ‘reasonable progress toward the return of the child’ begins on the date the court enters its adjudication of neglect, abuse or dependency.” *A.S.*, 2014 IL App (3d) 140060, ¶ 23. It noted that Illinois courts, including our supreme court, have consistently rejected attempts to lengthen or toll the nine-month period set forth in section 1(D)(m)(ii). *A.S.*, 2014 IL App (3d) 140060, ¶ 23 (citing *In re D.F.*, 208 Ill. 2d 223, 239 (2003) (nine-month period begins on date of adjudication order, not dispositional order); and *In re Cheyenne S.*, 351 Ill. App. 3d 1042, 1049-50 (2004) (nine-month period is not tolled while parent has custody of children)). The court further noted that a trial court may consider a parent’s lack of progress during the statutory nine-month period even if a service plan was not yet in place. *A.S.*, 2014 IL App (3d) 140060, ¶ 23 (citing *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004) (court considered father’s positive tests for cocaine occurring prior to issuance of father’s service plan)).

¶ 22 Respondent acknowledges that, as a general matter, the applicable statute allows a finding of unfitness for a parent’s failure to make reasonable progress to rest on noncompliance with service plans. However, respondent notes the additional provision in the statute, which states:

“If a service plan has been established \*\*\* then, for purposes of this Act, ‘failure to make reasonable progress toward the return of the child to the parent’ includes (I) the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the condition that brought the child into care within 9 months after the adjudication under Section 2-3 or 2-4 of the Juvenile court Act of 1987.” 750 ILCS 50/1(D)(m)(ii) (West 2010).

Respondent takes this language to mean that a parent should have the full nine months to complete the service plan. The problem with respondent's assertion is that the statute does not change the nine-month period that begins with the adjudication of neglect. As the State points out, the legislature specified that the nine-month period was to begin on the date of adjudication of neglect, not at the dispositional date or the date when respondent received the first service plan. A finding of unfitness for failure to make reasonable progress based on a service plan that was in effect for less than the applicable nine-month period does not toll the nine-month period set by the legislature. We reject respondent's argument that the service plan must have been in effect for the entire nine-month period.

¶ 23 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). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *Id.* The benchmark for measuring a parent's progress under section 1(D)(m) encompasses the parent's compliance with the service plans and the court's directives in light of the conditions that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 24 A trial court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114 (2002). A finding is contrary to the manifest

weight of the evidence only where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, and not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890.

¶ 25 In this case, respondent had ample time and opportunity to complete the sex offender evaluation within the relevant period. He additionally had plenty of time to obtain appropriate, stable housing for himself and his children; the other basis upon which the court found that respondent had not made reasonable progress.

¶ 26 The tasks of completing the evaluation and finding appropriate, stable housing were extremely important to the goal of returning the children to respondent. Without doubt, the court would not have returned the children absent stable, appropriate housing. Additionally, respondent would not have been afforded unsupervised visitation until the sex offender evaluation was fully completed and showed no issue of potential risk to the children. Based on this evidence, the trial court concluded that it could not order the children returned to respondent's custody in the near future. The trial court's finding of unfitness was not against the manifest weight of the evidence and the opposite conclusion is not clearly evident; nor is the determination unreasonable, arbitrary, or not based on the evidence. As previously noted, we need not address any of the other grounds under which the trial court found respondent unfit, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the trial court's finding. *In re Gwynne P.*, 215 Ill. 2d at 349.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 29 Affirmed.