

in her becoming pregnant with A.K. Respondents appealed the courts' judgment separately, each challenging the court's finding of unfitness and the best-interest determination. We have consolidated the appeals and, after a careful review of the record before us, we affirm the court's judgments.

¶ 4

I. BACKGROUND

¶ 5 On July 25, 2011, the State filed a petition for adjudication of neglect as to the minor A.K. (born May 25, 2010) in the Macon County circuit court. In support of the petition, the State claimed respondent mother (hereinafter referred to as Misty), age 18, and A.K. were removed from Misty's boyfriend's (hereinafter referred to as Zach) residence in Decatur because, due to Zach's status as a registered juvenile sex offender, she and A.K. were not authorized to live with him in agency housing as she previously had been warned. Further, Misty was asked to leave a shelter for not complying with its rules and she refused other shelter opportunities. Both Misty and A.K. were diagnosed with scabies. These allegations were the bases for two counts of neglect—medical and environmental. The petition further alleged respondent father (hereinafter referred to as Jerry) was Misty's stepfather and that he had charges pending against him for the alleged sexual abuse against Misty, an incident which resulted in Misty's pregnancy and A.K.'s birth. After the shelter-care hearing, the Illinois Department of Children and Family Services (DCFS) was awarded temporary custody of A.K.

¶ 6

On September 23, 2011, the trial court entered an adjudicatory order after Misty and Jerry stipulated to a finding of neglect. The court immediately proceeded to a dispositional hearing. After determining that Misty (1) was living with Zach, a sex offender, (2) had unresolved issues related to mental health and behavior, and (3) had engaged in medical neglect of A.K., and that Jerry

was "facing incarceration for [aggravated] sexual abuse/assault of [Misty]," the court entered a dispositional order, finding both parents unfit and unable to care for, protect, train, or supervise A.K. and making her a ward of the court.

¶ 7 On August 28, 2012, the State filed a petition to terminate respondents' parental rights, alleging each (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from the parents (750 ILCS 50/1(D)(m)(i) (West 2010)); and (3) failed to make reasonable progress toward the return of the minor to the parents with nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 8 On October 12, 2012, the trial court conducted a fitness hearing. The State first called Whitney Welch, the assigned foster-care caseworker at Webster-Cantrell Hall, who testified she had worked with the family since May 2012, after Misty and Zach had moved to Paris, Illinois, in February 2012. Welch said Misty's case plan set forth goals addressing parenting, mental health, domestic violence, and individual counseling. Substance-abuse counseling was added as a required task in January 2012, after Misty tested positive for marijuana while pregnant with another baby. Misty had not successfully participated in all of her prescribed tasks, only completing a substance-abuse evaluation and the parenting course and participating in visitation. In August 2012, she was discharged unsuccessfully from individual counseling at Human Resources Center in Paris for not attending. Welch required Misty to get herself re-registered, but she failed to do so.

¶ 9 According to Welch, Misty was aware that Zach was required to perform services as well. Zach had participated in a mental-health assessment. His evaluator did not recommend further

services for mental health, but did recommend he participate in substance-abuse counseling. Zach had begun a parenting course and participated in a sex-offender assessment, but, according to Welch, he did not follow through on either task.

¶ 10 Welch further testified that Jerry had not been offered services or a case plan. He was a registered sexual predator based upon his past abuse of Misty. He began participating in sex-offender treatment in July 2012, but his treatment provider recommended he have no contact with A.K. According to Welch, at the beginning of this case, in July 2011, Jerry was offered services, but he refused to participate. Welch assumed the sole reason Jerry was participating in treatment at this time was because it was a condition of his probation.

¶ 11 Welch testified she recently attended a visit between Misty and A.K. Zach attended as well. Welch had no concerns about their interactions. In general, Misty was consistent with her visits, after the visits were moved to her home in Paris. Zach usually participated as well. Both acted appropriately. However, Welch said it would not be possible to return A.K. to Misty with Zach "not having completed anything." The prosecutor posed the following question:

"Q. With things the way they are, with [Misty] not having completed treatment, counseling, [Zach] not having engaged in services plus being a sex offender, and [Jerry] being a sexual predator, would you consider it safe or in the best interest of [A.K.] to be returned to any of these people?

A. Not at this time."

¶ 12 The State next called Amanda Gant-Taylor, an adoption specialist at Webster-Cantrell Hall, who testified she was Welch's predecessor as caseworker. She testified that Jerry *was* initially

included in a case plan and was required to "rectify all legal obligations." He was to participate in sex-offender treatment before he could participate in other services, including visitation.

¶ 13 Gant-Taylor testified that Misty and Zach were married only a couple of months after the case was opened. Misty successfully completed a parenting course and participated in a mental-health assessment. According to that assessment, Misty was placed on antidepressants and was referred to individual counseling at ABC Counseling. After she moved to Paris, Help at Home provided transportation for Misty to counseling and visits in Decatur. Toward the end of Gant-Taylor's time as caseworker, Misty began missing both counseling appointments and visitation. Gant-Taylor said she included Zach in the case plan. He attended visits and completed a mental-health assessment, but he did not complete any other goal. Jerry had one visit with A.K. at the beginning of the case. However, because he had not participated in his sex-offender treatment, he was not allowed further visits.

¶ 14 The State also called Lindsay Sites, the foster-care supervisor at Webster-Cantrell Hall, who testified she has been the case supervisor since September 2011. She prepared the three case plans involved in this case: those dated (1) October 7, 2011; (2) February 24, 2012; and (3) July 30, 2012. Sites also confirmed that Jerry was to participate in a sex-offender assessment before he could proceed with other services. He had not done so until July 2012, which "caused some problems." Sites said Misty had "not successfully completed a service plan" and that Zach's participation in services was critical to Misty's success as well. Sites informed both Misty and Zach that their "dual participation in services was critical to the return home of the child." When they lived in Decatur, they cooperated and their motivation seemed "pretty consistent." After their move to Paris, "the priority kind of changed" for reasons unknown. The communication slowed and

motivation decreased. According to Sites, a return of the child in six months was unreasonable "unless there was substantial consistent participation." The State rested.

¶ 15 Misty testified on her behalf. She said she and Zach moved to Paris in January 2012. She testified she participated in a substance-abuse assessment and "did a few counseling groups, but being pregnant [she] sort of lost attendance." She stopped attending in August 2012. She planned to resume participation after her baby was born in November 2012. She acknowledged she tested positive for marijuana during her pregnancy, but all other drops had been negative. She said she mistakenly thought she was smoking a tobacco cigarette but later discovered it was marijuana. She participated in a mental-health assessment and "did some counseling" while living in Paris at ABC Counseling through April 2012. She said on three occasions she waited "outside for the transportation and they wouldn't show up." She insisted she did participate in one session of domestic-violence counseling, but she stopped "because they put [her] on a waiting list." She planned to renew those sessions as well after her baby was born. She said she and Zach completed their parenting course in January 2012. (However, the caseworkers had no record of Zach's completion.)

¶ 16 Misty said Zach was required to participate in counseling and substance-abuse group therapy. He had not done so, but, according to her, he was willing in order to have A.K. returned home. He was employed full time at Paris Metals. She said they live in a two-bedroom home that is suitable for children. She agreed she was "willing to do anything that is asked of [her] to get the service plan up to speed." Since the filing of the State's petition to terminate, her visitation with A.K. had been reduced from once-a-week to once-a-month, supervised at her home. Misty said she would be willing to live apart from Zach if he were unable to complete his recommended services

in order to have A.K. returned to her care.

¶ 17 On cross-examination, Misty agreed her "life kind of stopped" when she became pregnant. She explained she had not *actually* attended a session of the domestic-violence counseling in April 2012 when she was placed on a waiting list, nor had she met with a counselor at that time. Instead, she spoke with a person in the office who evaluated her situation. She said Zach had been employed for one week and two days, making \$10 per hour and working 68 hours per week. She said she had been employed at a plastics factory "around May" 2012, but her pregnancy interfered with the job. She also said Jerry had been paying the \$300 rent on their home in Paris but, now that Zach was employed, they planned to reimburse him. She said she and Zach moved to Paris to live with her mother and Jerry because they could not afford to live on their own. Misty also admitted she had failed to inform her caseworker that the transportation service did not arrive on three occasions. According to Misty, Zach had attended all but one session of his mental-health counseling because on that occasion, the transportation service failed to arrive. Finally, Misty denied she had been informed that her continued relationship with Zach would negatively impact her ability to have A.K. returned home.

¶ 18 Misty also called her mother, Cora Fitzsimmons, as a witness, who testified she was at Misty's home on three occasions when Help At Home failed to provide transportation to Decatur. She said the service had been picking Misty up on a weekly basis until "they no longer came to pick her up." She said Misty called and they advised "the funds had run out."

¶ 19 Jerry testified in his case as follows. He and his wife have lived in Paris for six to seven months. He said (1) no caseworker had spoken to him about this case, (2) he was not involved in any case meetings, and (3) he received "papers" from Misty approximately seven months ago, not

from a caseworker. He said he participated and completed six months of basic counseling, which began in April 2012, when he pleaded guilty and was sentenced to two-and-a-half years' probation. He knew successful completion of this counseling was a prerequisite for him to begin sex-offender treatment, but he wanted to resolve his criminal case first. He began treatment in July 2012. No further evidence was presented.

¶ 20 After considering the evidence and arguments of counsel, the trial court took the case under advisement. On October 25, 2012, the court removed the case from advisement and entered a written order. First, the court found the State had proved by clear and convincing evidence that both respondents had failed to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the minor. 750 ILCS 50/1(D)(b) (West 2010). The court noted it found the testimony of the State's witnesses to be credible. Their testimony that (1) Misty failed to successfully complete her required services, (2) Jerry failed to complete sex-offender treatment prior to the fitness hearing, and (3) Misty's and Zach's apparent lack of motivation to engage in services after moving to Paris, supported the court's finding.

¶ 21 Second, the trial court found the State had failed to prove by clear and convincing evidence that both respondents had failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal. The court found the bases for A.K.'s removal was that Misty and A.K. were living in an unauthorized residence with a juvenile sex offender and that Jerry had pending criminal charges for the sexual abuse of Misty. Because Misty's "living arrangements have changed" and Jerry "no longer has pending criminal charges," the court concluded the State had failed to carry its burden of proof.

¶ 22 Finally, the trial court found the State had proved by clear and convincing evidence

that Misty and Jerry were unfit because each had failed to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect in September 2011. The court held:

"As previously discussed, the parents have failed to comply with the terms of their service plans. The court further concludes that what little progress has been made is not sufficiently demonstrable and is of such little quality that the child cannot be returned within the near future. The parents are therefore unfit."

¶ 23 On December 21, 2012, the trial court conducted a best-interest hearing. The State presented the testimony of Whitney Welch, the current caseworker. She said A.K., who is two years old, "is doing very well" in her foster placement. A.K. had significant motor-skills and speech delays when she was placed in foster care, but due to the foster parents' commitment and attentiveness, she had since made great progress. She has bonded with her foster parents, with whom she has lived since being taken into shelter care, and they have expressed their willingness to adopt her. Welch said that Webster-Cantrell Hall "feels that it is in her best interest to remain in the foster home that she's in" and that both respondents' parental rights be terminated.

¶ 24 On cross-examination, Welch said A.K. is bonded with Misty and knows that Misty is her mother. At the end of visits, A.K. is upset that she has to leave Misty's company. However, when A.K. is taken from the foster parents for visitation, "she's highly upset."

¶ 25 The State also called Lindsay Sites, the foster-care supervisor. She testified her observations in the foster home have been minimal, but she had attended the most recent visit and saw that A.K. was "very much getting upset when she was taken from the foster parent to go to the

visit." She said A.K. "did not become upset after the visit" when she was taken from Misty. Sites also opined that remaining in her placement and achieving permanency through adoption was in A.K.'s best interests.

¶ 26 The State presented the best-interest report prepared by Welch and Sites dated December 14, 2012, to conclude its presentation of evidence. The report supported the testimony that, in July 2011, when A.K. was placed in her current foster home, her "developmental growth was significantly delayed. According to the report, [A.K.] was barely walking and was not beginning to develop her speech." However, with her ongoing therapy, she "has made great progress. [A.K.] has adjusted well to her placement and the [foster parents] are willing to provide a permanent placement for [A.K.]"

¶ 27 Misty presented the testimony of Zach, who testified he had been in a relationship with Misty since January 2011. They were married a week after A.K. was taken into shelter care in July 2011. He said he now lives with Misty's mother and Jerry in Paris, Illinois, separately from Misty who lives with his father and stepmother in Flora, Illinois. They live apart because, according to DCFS, as a juvenile sex offender, Zach was not allowed to be around his new son. He said he participated in a sex-offender assessment, which, according to him, indicated his risk of reoffending was "very, very low." Zach said he has participated in visits between A.K. and Misty. He said at first, A.K. is "very hesitant" to go to Misty, but eventually "all she wants is Misty."

¶ 28 Cora Fitzsimmons, Misty's mother, also testified on her behalf. She said she has been involved in her new grandson's life. Fitzsimmons described the interaction between Misty and her son as "really good." She said Misty is a good mother and treats her son well. She testified she would support and assist Misty in complying with counseling and class requirements if A.K. was

returned to her care.

¶ 29 Finally, Misty testified on her own behalf that if the caseworkers would allow her more time, she would comply with all of her case-plan requirements. She was residing with Zach's family, separate from Jerry and Zach. She said her visits with A.K. have gone perfectly. Misty acknowledged the weekly visitations "were going relatively smoothly until the move to Paris." Misty said she loves A.K. and is willing to do whatever it takes to successfully complete her services. She thinks it is in A.K.'s best interests that she be afforded more time to do so and to deny the State's petition to terminate her parental rights.

¶ 30 Jerry testified on his own behalf. He said he has been regularly participating in sex-offender treatment for 7 months of a 12- to 14-month program.

¶ 31 After considering the evidence, the best-interest report, the statutory best-interest factors, and arguments of counsel, the trial court determined it was in A.K.'s best interests that both respondents' parental rights be terminated. The court emphasized the importance of the statutory factors relating to the child's "sense of attachment, where the child actually feels love and a sense of attachment, the child's sense of security, sense of familiarity and continuity, and the least disruptive placement alternative for the child." Further, the court found the child's need for permanence, stability, and continuity as "very important factors." The court noted the significant improvements made in A.K.'s developmental delays. It also considered the facts that (1) the child had been in the foster parents' care for 17 months, and (2) the foster parents were willing to adopt her, as important points favoring termination of parental rights.

¶ 32 On December 21, 2012, the trial court entered a written judgment terminating both respondents' parental rights. These consolidated appeals followed.

¶ 33

II. ANALYSIS

¶ 34 First, respondents challenge the trial court's findings of unfitness. In particular, each claims the evidence demonstrated they made progress toward the return of the child between the applicable dates of September 2011 and June 2012. Misty claims she "completed everything that was asked of her. She was successful in her visits, completed parenting, attended her prenatal visits, and obtained a mental-health assessment." Likewise, Jerry insists he "made reasonable progress the only way that he knew how, and that is by making phone calls to the agency requesting visits."

¶ 35 When considering the State's petition to terminate parental rights, the trial court must first determine whether any of the statutory grounds of unfitness alleged in the petition have been proved by clear and convincing evidence. *In re D.C.*, 209 Ill. 2d 287, 296 (2004). "A parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence." *D.C.*, 209 Ill. 2d at 296. "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). A reviewing court will not overturn a trial court's finding of unfitness unless it is against the manifest weight of the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 495 (2002).

¶ 36 Section 1(D)(m)(ii) of the Adoption Act provides, in pertinent part, as follows:

"The grounds of unfitness are any *** of the following ***:

* * *

(m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor ***." 750 ILCS

50/1(D)(m)(ii) (West 2010).

¶ 37 In *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2010)):

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

¶ 38 The standard for determining whether reasonable progress has been made is an objective one. It may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future. *In re B.W.*, 309 Ill. App. 3d 493, 499 (1999). Minimally, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999).

¶ 39 In this case, between September 2011 and June 2012, while Misty completed parenting class and attended various counseling sessions, the evidence indicated she had made slow progress, if any, during those sessions. A.K. was removed from her care because of her continued relationship with Zach, a sex offender. Misty was herself a victim of sexual abuse at the hands of Jerry, A.K.'s father. Given the unusual circumstances of this case, it was especially imperative that,

before the child could conceivably be returned to Misty's care, she engage in counseling sessions to address the issues of her being a victim and to develop skills to prevent her child from becoming a victim. Despite the importance of therapy, Misty stopped going to counseling and was unsuccessfully terminated.

¶ 40 Misty also failed to participate in domestic-violence counseling and substance-abuse treatment. The caseworkers testified that, upon her move to Paris in February 2012, her priorities, determination, and cooperation decreased. Though Misty expressed her desire at the fitness and best-interest hearings to successfully complete her tasks, she had failed to make reasonable progress toward the return of A.K. during the applicable nine-month period. The caseworkers testified she failed to cooperate with them, failed to communicate with them, and she maintained close relationships with both Jerry and Zach.

¶ 41 Further, Misty was advised by caseworkers that Zach's lack of progress would negatively impact her progress as well. Zach, like Misty, seemingly changed his priorities upon their move to Paris. He failed to successfully complete any of his required services. Rather than distancing herself from Zach during the applicable time frame, Misty remained committed to their relationship at the expense of her relationship with A.K. The caseworkers testified that the return of A.K. to Misty in a reasonable amount of time was not likely given the lack of progress.

¶ 42 The trial court's finding of unfitness as to Jerry was likewise supported by the evidence. During the applicable nine-month period, between September 2011 and June 2012, Jerry was prohibited from visiting A.K. due to his failure to engage in sex-offender treatment. He did not start counseling, a prerequisite to sex-offender treatment, until April 2012, after he pleaded guilty to his pending offense. He was sentenced to probation and ordered to engage in treatment. Only

then, did he willingly engage in services. Jerry had made little, if any, progress during the applicable nine-month period. He did not begin individual counseling until April 2012, and did not begin sex-offender treatment until July 2012, after the applicable nine-month period ended.

¶ 43 We find the manifest weight of the evidence supports the trial court's decision that both respondents failed to make reasonable progress toward the return of the child between September 2011 and June 2012, the initial nine-month period following adjudication. See 750 ILCS 50/1(D)(m)(ii) (West 2010). We affirm the court's fitness determination.

¶ 44 Next, with regard to the trial court's best-interest determination, we note that courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *In re M.H.*, 196 Ill. 2d 356, 363 (2001). Once the court finds the parent unfit, the parent's rights are no longer of concern. The parent's rights must yield to the best interest of the child. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). The court's best-interest finding will not be reversed unless it is against the manifest weight of the evidence. *H.D.*, 343 Ill. App. 3d at 494.

¶ 45 The evidence produced during the best-interest hearing demonstrated that A.K. was residing in a home where she was loved, secure, and well cared for. Her foster parents had bonded with her and were willing to adopt her. A.K. had been placed in their home since she was taken into protective custody in July 2011. When she was placed, she suffered significant developmental and speech delays. During her time in the foster parents' home, A.K. made great progress and has overcome many of those delays. We find the evidence clearly demonstrated that it was in the A.K.'s best interests to afford her the opportunity to seek permanency in a caring and thriving environment. For these reasons, we find that the trial court's order terminating respondents Missy's and Jerry's parental rights to A.K. was not against the manifest weight of the evidence.

¶ 46

III. CONCLUSION

¶ 47

For the foregoing reasons, we affirm the trial court's judgments.

¶ 48

Affirmed.