2014 IL App (1st) 140292-U

FOURTH DIVISION
June 26, 2014

No. 1-14-0292

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).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re BRITTNEY W. and WARD W., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Cook County.
	)	
Petitioner-Appellee,	)	Nos. 00 JA 1411 &
v.	)	00 JA 1839
	)	
Manuel W.,	)	The Honorable
	)	Marilyn Johnson,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Howse and Justice Lavin concurred in the judgment.

ORDER

HELD: Trial court's determination that respondent-father was unfit was proper as based on his failure to make reasonable efforts and reasonable progress toward reunification; the court used an appropriate nine-month period of evaluation and employed the correct measure regarding fitness. In addition, the trial court's determination that it was in his children's best interest to terminate his parental rights was proper in light of the circumstances presented.

¶ 1 Respondent-appellant Manuel W. (respondent) appeals from the trial court's determinations in the instant cause finding him to be unfit under section 50/1(D)(m) of the Illinois Adoption Act (Adoption Act) (750 ILCS 50/1(D)(m) (West 2012)), and ordering the termination of his parental rights over Brittney W. and Ward W., his minor children. He contends that the trial court erred by identifying a 15-month, rather than a 9-month, period when finding him unfit; by using an incorrect measure to find him unfit; by finding him unfit based on a failure to make reasonable efforts and progress toward return home; and by declaring that it was in the children's best interest to terminate his parental rights. He asks that we enter an order vacating the termination order against him and any additional and appropriate relief. The State and the minors' public guardian have filed appellees' briefs. For the following reasons, we affirm the trial court's findings regarding unfitness and best interests.

¶ 2 BACKGROUND

¶ 3 Brittney was born on November 18, 1999, and Ward was born on October 13, 2000, to respondent and Melondy S.[1], their biological parents.[2] This cause was initiated in September 2000, when the State filed a petition for adjudication of wardship for Brittney, then nine months

[1]Melondy S. gave her consent for the adoption of Brittney and Ward. Accordingly, she is not a party to this appeal.

[2]We note for the record that there is a third child involved here, Ward C.W. Initially, it was believed that Ward W. Sr., respondent's cousin, was Ward W.'s biological father. Following a paternity test, respondent was determined to be Ward W.'s father, and Ward W. Sr. was determined to be Ward C.W.'s father. As can be gleaned from the record, the three children have consistently remained together as a unit, their causes have been dealt with together in the judicial system, and they currently all live together in a foster home. However, as this cause involves only respondent's parental rights over his biological children, neither Ward W. Sr. nor Ward C.W. are parties to this appeal.

old, alleging abuse. Brittney had been taken to the hospital for a fractured humerus, and it was discovered that she had old fractures of her left femur and tibia; medical personnel indicated that these injuries were inconsistent with her mother's explanation and consistent with abuse. The trial court gave the Department of Children and Family Services (DCFS) temporary custody of Brittney and she was placed with her maternal great aunt, Audrey S. Then, in November 2000, shortly after his birth, the State filed a petition for adjudication of wardship for Ward, alleging that he was neglected and abused and that his sister was in DCFS custody due to allegations of physical abuse. By January 2002, the trial court held an adjudicatory hearing and found both children were abused. It placed them in DCFS guardianship and entered a permanency goal of return home in 12 months. However, respondent was convicted of home invasion and became incarcerated in May 2003. Thus, by May 2004, the permanency goal was eventually changed to private guardianship, as both parents were refusing to participate in services and neither was making progress toward reunification. In January 2005, following a motion by the State, the trial court entered a private guardianship order, making Audrey S. the children's guardian.

¶ 4 Respondent was released from prison in April 2010. In June 2010, he filed a *pro se* motion to modify visitation with the children, seeking an increase in the number of visits from more than once per month. The matter went to mediation, but no resolution was reached.

¶ 5 Soon thereafter, on September 29, 2010, DCFS field an emergency motion to reinstate guardianship over the children, alleging sexual abuse and noting that Brittney, now 10 years old, was 6 months pregnant via Audrey S.'s 13-year-old son. The trial court vacated Audrey S.'s private guardianship and entered a modified dispositional order placing the children back into

DCFS guardianship. The court further ordered supervised visits for respondent, his evaluation for services, and psychological evaluations for the children, respondent and the biological mother. Caseworker Jennifer Velloz Howeler[3] was assigned to the children's cause and they were placed in the foster home of Ollie B., a nonrelative.

¶ 6 In December 2012, the State filed a supplemental petition for appointment of a guardian with the right to consent to adoption for Brittney and Ward. The State premised its allegations of respondent's unfitness on sections 1(D)(b) and 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(b), 1(D)(m) (West 2010)), asserting that he failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare, and that he failed to make reasonable efforts to correct the conditions that were the basis of removal and failed to make reasonable progress toward return of the children within any nine-month period following their adjudication. The State's petition noted four time periods at issue with respect to its allegations under ground (m): October 1, 2010 to July 1, 2011; January 1, 2011 to October 1, 2011; October 1, 2011 to July 1, 2012; and July 1, 2012 to October 1, 2013.

¶ 7 The cause then proceeded to a bifurcated termination hearing. At the fitness portion, caseworker Howeler testified that when Brittney and Ward's case was reopened in 2010, she recommended that respondent complete several services, specifically a parenting capacity assessment, a psychological assessment and individual therapy, as well as visits with the

[3]There are discrepancies regarding the caseworker's name. At some points in the record, she is referred to as Jennifer Velloz Howeler and at other points as Jennifer Howard. However, the parties agree that this is one in the same person and that the children had only one caseworker from 2010 until the trial court's final determination.

children. With respect to visitation, Howeler noted that from September to December 2010, respondent made 20 out of 22 scheduled visits; these took place at a DCFS agency. From January to May 2011, the visits took place at respondent's mother's house; however, due to a lack of supervision, the visits were moved back to the agency. In 2011, respondent attended only 21 of 39 scheduled visits. In 2012, he attended only 2 of 48 scheduled visits and in 2013, he attended only 3 of 20 scheduled visits. Howeler stated that respondent attributed his absences to his work schedule. Noting the agency's flexibility, Howeler rescheduled the visits to Saturdays in order to accommodate him, but respondent again told her he had to work and could not make the visits. The agency did not offer visits on Sundays, respondent's day off from work. Initially, when the case was reopened, Brittney visited several times with respondent, but then refused to do so beginning in May 2011; Ward never refused visits. Respondent moved to Indianapolis in the summer of 2013. Howeler noted that since then, respondent has scheduled his visits with the children's foster mother, that he and the foster mother have a good relationship, and that respondent came to watch Ward play in a football game.

¶ 8 Howeler testified that, with respect to the other services recommended, respondent only submitted to a psychological evaluation, which resulted in a recommendation that he participate in individual therapy. The recommending psychologist noted that the therapy was more for respondent to address his relationship with his own father and his incarceration rather than relating to his ability to parent the children. However, respondent never participated in any type of therapy. Moreover, he never attended the recommended parenting class. Again, respondent told Howeler that he could not participate in these services due to his work schedule. Howeler

stated that she met with respondent to attempt to modify the class schedule; Howeler had initially referred respondent to a high risk parenting class due to his children's trauma but when he did not attend, she referred hm to a standard parenting class that met on Saturdays. Respondent still did not attend, telling Howeler that he also worked on Saturdays and that he had already completed a parenting class when he was incarcerated. Regarding the recommended parenting capacity assessment, Howeler gave respondent one referral and, again, respondent never completed it. Howeler did not persist in referring respondent with respect to this service, as she later determined it was not a necessary task for reunification.

¶ 9 Howeler further averred that, according to her independent analysis, respondent's parenting skills were adequate and that he was appropriate with the children. His visits were becoming seemingly more consistent, they were always appropriate, and he was demonstrating good parenting skills during them. However, Howeler testified that there was never a time in her management of the children's case that she could recommend returning them to respondent or even for respondent to have unsupervised overnight visits with them. With respect to all of the four time periods at issue, Howeler rated respondent's efforts and progress toward reunification as unsatisfactory.

¶ 10 Respondent testified that he was incarcerated from May 2003 to April 2010. He stated that in 2008 or 2009, while in jail, he completed anger management and parenting classes; he submitted certificates to this effect, which showed that the classes were DCFS approved. He averred that in 2010, when his children's cause came back into the system, he was employed by Ford Motor Company and worked from 4 p.m. to 4 a.m. At this time, his visitation with the

children was scheduled for after school, so in order to visit them, he would have to be late for work. With respect to the recommended parenting classes and therapy, he averred that he did not attend the high risk parenting classes because he would have had to miss work; he did not attend the standard parenting classes for the same reason. He tried to schedule therapy, but was told appointments could only be made for during the week and Howeler never arranged for a different option. He noted that he was willing to participate in therapy, but he was not willing to give up his job. He further disputed Howeler's testimony that he was offered 48 visits in 2012, and claimed that he visited the children more than twice that year; he disputed that he was offered 20 visits in 2013, and claimed he visited 12 times that year, including on the children's birthdays. He asserted that he had asked Howeler if she could schedule visits on Saturdays, but that he never heard back from her on this issue.

¶ 11 On cross-examination, respondent admitted that he was given the chance to do services prior to his incarceration to be reunified with the children but he did not participate, and that his incarceration interfered with his relationship with Brittney and Ward, although he had visited with them twice a month during while in prison. He stated he could not have found any time to participate in services during the hours he was not working, since he went to bed at about 5 a.m. and slept until he went to work at 4 p.m. Respondent asserted that he never put his work before his children, and he had a problem with the recommendation that he attend a parenting class after he had already completed one while in prison. He averred that he works to provide for his children, but admitted not specifically for Brittney and Ward; he has other children for whom he is responsible. He did note, however, that he bought shoes for Ward once, wrote Brittney two

letters during the time she refused visits with him, and that he bought them some other things, as well.

¶ 12 At the close of the hearing, the trial court found respondent unfit pursuant to ground (m).[4] The court noted that respondent had changed his life since being released from prison and had made positive efforts in "reconstructing his life and maintaining his employment." However, the court reasoned that, by doing so, "he made certain choices that resulted in his unavailability" to participate and complete the services that could have resulted in his reunification with Brittney and Ward. With respect to the particular recommended services, the court found that respondent refused to comply with the therapy requirement ordered of him; that it was not unreasonable for him to take another parenting class, since the one he took while in prison was completed years before his release; and that his inconsistent visits were inadequate. The court noted that the record was a bit unclear with respect to the number of visits afforded to respondent from year to year, but "it is clear" that in 2012 "there were a number of visits scheduled and only two were made." Ultimately, the court stated that it found it "really impossible to believe that [respondent's] scheduling difficulties could not have been resolved at least in part for him to have performed the required services and maintain some consistency with visitation." Accordingly, while the court found that he had made "some efforts and progress" during the periods from October 1, 2010 to July 1, 2011, and from January 1, 2011 to October 1, 2011, it held that

[4]The trial court determined that respondent was not unfit with respect to the allegations regarding ground (b), involving reasonable degree of interest, concern and responsibility, as he "displayed obvious[] interest and concern" and made "an almost immediate effort to try and regain a relationship with them when he was released."

respondent made "insufficient efforts in progress" during the periods from October 1, 2011 to July 1, 2011 and from July 1, 2012 to October 1, 2013.

¶ 13 The cause then proceeded to a best interest hearing. Caseworker Howeler testified that Brittney and Ward had been living in the same foster home with Ollie B. since September 2010; she had visited them recently and there were no signs of abuse or neglect, nor did the children express any concern about the care they were receiving. Ward is participating in an individualized education program, but he is doing well in school and does not need any specialized services. Brittney was diagnosed with depression in December 2010, but she attended and completed therapy; she has been successfully discharged and does not need to see a therapist on a regular basis. Both children told Howeler that they wished to be adopted by their foster mother and to stay in her home. With respect to respondent, Ward has expressed that he wishes to continue having contact with him, while Brittney seems more unsure, which Howeler explained could well be because she is a teenager. Howeler stated that the children's recent visits with respondent were positive, though the relationship between Brittney and him needs to be rebuilt. Howeler opined that, while it was in both Brittney and Ward's best interest that visits with respondent continue, it was also in their best interest that respondent's rights be terminated and that consent be given for their adoption by their foster mother.

¶ 14 Respondent testified that he did not agree that it was in Brittney and Ward's best interest to terminate his parental rights. His children "mean the world" to him, and he denied that he put his job before them. He explained that he moved to Indianapolis because he had to and he worked so much because he needed to take care of himself and his other children. Respondent

stated that Ward has told him he wants to go home with him, but also averred that Ward has expressed that he wants to be adopted. Respondent also stated that he and his current wife are trying to have a relationship with Brittney, but that she is angry at him because she believes what happened to her would not have had he not gone to prison. He agreed that, while he wants a relationship with his children, their foster mother is doing a good job raising them.

¶ 15 Ollie B. testified that Brittney and Ward have lived in her home since September 2010. Also living in the home is her fiancé, who helps care for the children; Ollie B. has two adult children who live outside the state. Her fiancé and biological children all support her adoption of Brittney and Ward. Ollie B. stated that when Brittney first came to her home, she was shy and rebellious, refused to speak and did not want anyone touching her. Now, however, Brittney is very affectionate, participates in cheerleading, dance and school sports, and attends church. She is also doing well in school. Similarly, Ward loves his teachers and going to school, where he does well; he is in an individualized education program and is getting straight As. He plays football, basketball and tennis. Both children have learned to consistently attend school, they have many friends in the neighborhood and they have no behavioral problems. They no longer need to participate in any services.

¶ 16 Ollie B. further testified that she supports, and actually encourages, the children's visits with respondent. Currently, when respondent wants to visit, he calls her and lets her know what days he is available, and she lets him know if these are possible; then, they set up a time and place to meet. Ollie B. averred that Ward, especially, looks forward to his visits with respondent, and that Brittney has just recently agreed to visit with him. Ollie B. has not had any problems

with respondent, who has been respectful. She also stated that she would be open to the children visiting respondent in Indiana, and to continuing visits in general according to a schedule. Ultimately, she wants to adopt Brittney and Ward, as they have become part of her life, she has grown to love them as her own children, and they have expressed to her their desire to be adopted by her. She testified that she will give the children permanency while fostering their relationship with respondent.

¶ 17 At the close of the hearing, the court concluded that it was in Brittney and Ward's best interest to terminate respondent's parental rights. The court acknowledged that respondent clearly loves his children and that they all should maintain a relationship. However, it noted that the focus was on the children and their permanency, which included familial ties, security, stability, education and sense of community. Thus, the court examined all the statutory factors related to Brittney and Ward's best interest, and considered the positive impact of their relationship with respondent, finding that Ollie B.'s testimony that she would encourage the children's continued contact with respondent to be credible. Accordingly, the court appointed guardianship to DCFS with the right to consent to their adoption.

¶ 18 ANALYSIS

¶ 19 Respondent presents four contentions for review. We address each of them separately.

¶ 20 I. Time Period Regarding Unfitness Finding

¶ 21 Respondent's first contention on appeal focuses on the time periods at issue during the fitness hearing. He asserts that the trial court exceeded its authority when identifying the period from July 1, 2012 through October 1, 2013, a 15-month rather than the statutorily mandated 9-

month period, for examination, and that it erred in using this longer period to find him unfit pursuant to ground (m) of the Adoption Act. He further asserts that, because of this, the trial court's order terminating his parental rights must be reversed. While it is true that the cited period was considered by the trial court during the unfitness hearing, we disagree that reversal is required.

¶ 22 As a threshold matter, the State and the public guardian argue that respondent has waived this issue. Characterizing it as a defect in notice, and citing the recent supreme court decision of *In re S.L.*, 2014 IL 115424, they claim that it is improper for respondent to raise an issue regarding the applicable nine-month period for the first time on appeal. Respondent, meanwhile, admits he did not raise the issue earlier, but characterizes it as the trial court's misapplication of the law when finding him unfit, which may be raised at any time. The State and the public guardian are correct that, in *S.L.*, our supreme court made clear termination proceedings, though involving fundamental liberty interests, are still civil in nature and any defect in the pleadings in this context not raised before the trial court are waived on review. See *S.L.*, 2014 IL 115424, ¶¶ 17, 27 (holding that State's failure to identify specific nine-month period for unfitness was pleading defect that was waived because mother did not raise issue in trial court where it could have been remedied). At the same time, however, respondent is correct that the facts in the instant cause are markedly different than those of *S.L.*, since a period of time longer than the statutory mandate was considered regarding the determination of fitness. Therefore, and because waiver is a limitation on the parties and not on the court (see *In re D.F.*, 208 Ill. 2d 223, 238-39 (2003)), we choose to review respondent's contention.

¶ 23 Turning to the merits, we first note that the State has the burden of proving a parent unfit by clear and convincing evidence. See *In re R.C.*, 195 Ill. 2d 291, 302 (2001); accord *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010) ("proof of parental unfitness must be clear and convincing"). The Adoption Act mandates the trial court to examine the parent's fitness in nine-month intervals. See 750 ILCS 50/1(D)(m) (West 2010). Thus, the State must show that the parent is unfit during any nine-month period of time after there has been an adjudication of abuse or neglect. See 750 ILCS 50/1(D)(m) (West 2010). Significantly, just as a finding under any one of the statutory unfitness grounds, standing alone, is sufficient to establish such unfitness (see *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005)), so too is a finding based on any one nine-month period (see *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 27 (finding that trial court's unfitness determination could stand on either one of two asserted nine-month periods)). See also 750 ILCS 50/1(D)(m) (West 2010).

¶ 24 In the instant cause, the State's allegations of unfitness against respondent involved four different time periods: October 1, 2010 to July 1, 2011; January 1, 2011 to October 1, 2011; October 1, 2011 to July 1, 2012; and July 1, 2012 to October 1, 2013. During the unfitness hearing, caseworker Howeler testified that she rated respondent's efforts and progress toward reunification as unsatisfactory during all four of these. In its colloquy at the close of the hearing, the trial court stated that it believed respondent had made at least some reasonable efforts and progress during the first two periods, but that his efforts and progress were unsatisfactory during the second two periods. The court made clear, then, that its finding of respondent's unfitness was based on these latter two periods.

¶ 25 Technically, the trial court here did, as respondent claims, base its declaration of his unfitness on a period of time outside the confines of the Adoption Act. Admittedly, the period of July 1, 2012 to October 1, 2013, comprises 15 months, 6 months longer than the statutory mandate. However, contrary to respondent's assertions, we need not address his point and there is no requirement for reversal here, based on the particular circumstances of this cause. This is because, as the trial court's colloquy makes clear, it based its decision on not one, but two, operable periods of time. In addition to the 15 months between July 1, 2012 and October 1, 2013, it also found respondent unfit based on the period between October 1, 2011 and July 1, 2012, which, undeniably, comprises 9 months in direct accordance with the statutory mandate. Thus, even if the trial court should not have considered the longer time period as respondent suggests, it still properly based its decision on another, and wholly different, nine-month period of examination–one, incidentally, that respondent does not contest in any manner on appeal. As noted earlier, such a finding, standing alone, is sufficient under the Adoption Act. Accordingly, we find that respondent's contention is without merit and that this issue is, based on the circumstances presented, moot.

¶ 26 II. "Measure" of Unfitness

¶ 27 Respondent's next contention on appeal is that the trial court used an "incorrect measure" when finding him unfit. Comparing the trial court's use of the phrase "insufficient efforts in progress" to the statutory language of "failure to make reasonable efforts" and "failure to make reasonable progress," he claims that the trial court did not adhere to the proper standards and, thus, the order terminating his parental rights should be reversed. Based on our review of the

record, we disagree.

¶ 28 In finding respondent unfit, the trial court held:

> "With regard to [respondent], for the period October 1, 2010, to July 1, 2011, there was some efforts *and* progress during that period. From January 1, 2011, through October 1, 2011, again there were some efforts *and* progress particularly related to visitation. With respect to October 1, 2011 through July 1, 2012, there were insufficient efforts *in* progress. And similarly July 1, 2012, through October 1, 2013, insufficient efforts *in* progress." (Emphasis added.)

¶ 29 Respondent's argument essentially attempts to pit two prepositions the trial court used in the same phrase against each other: "in" versus "and." However, from our review of the record, we find no merit in his distinction, as it is one without a difference. First, none of the parties, and specifically not respondent, objected to or raised an issue regarding the trial court's use of the phrase "efforts in progress" at the time it spoke the words–a time during which it could have easily clarified the phrase, what it meant, and its relation to the statutory language of ground (m). Next, a trial court is presumed to know and apply the proper and applicable law in a cause and, without an affirmative and definitive showing to the contrary, we assume it entered its decision based on the correct standards. See *In re N.B.*, 191 Ill. 2d 338, 345 (2000). Other than a misnomer in the preposition used, and one that is quite inconsequential and devoid of any essential differential meaning, respondent presents us with nothing to suggest the trial court contemplated an incorrect standard here. We are not dealing with a situation involving, for instance, "and" versus "or," which have diametrically opposed meanings and connotations.

Moreover, and quite significantly, upon our review of the cited passage above, which respondent himself quotes in his brief on appeal, there is much evidence to prove that the trial court undoubtedly did apply the proper statutory standard here. For example, in the sentence immediately preceding the one at issue, in which the trial court commented on the first two nine-month periods, it used the preposition "and" to find that respondent had made some "efforts and progress" during those periods. It repeated this phrase twice, directly tracking the language of the Adoption Act. It is hard to conceive that the trial court would specifically state the proper standard twice during an examination of four periods of time and then, immediately thereafter, when examining the last two periods, suddenly apply a different or improper standard. Instead, it is much more reasonable that what occurred here was a typographical or transcription error; after all, the words "in" versus "and" are incredibly similar when pronounced orally, especially out loud in the middle of a courtroom. Most importantly, that the trial court indeed used the proper standard is evident in Brittney and Ward's written termination orders. On these, the trial court wrote that:

> "THE COURT FINDS AS TO THE FATHER:
>
> 6. The (legal/putative) father ***:
>
> ***
>
> h. by clear and convincing evidence is unfit *** on the following specific grounds: m) no reasonable progress/efforts."

¶ 30 From all this, it is clear to us that the trial court applied the proper standard or measure when determining respondent's fitness. The court's colloquy, caseworker Howeler's testimony,

and all the evidence as presented demonstrate that respondent's efforts and progress were consistently measured disjunctively throughout the entire proceeding, just as the statute dictates. Accordingly, we find no merit in respondent's contention here which would warrant reversal of the fitness or termination orders.

¶ 31 III. The Unfitness Finding

¶ 32 Respondent's third contention on appeal is that the trial court's determination of his unfitness was against the manifest weight of the evidence. He claims that no evidence was presented to demonstrate that he was at all deficient in his parenting skills, and that the ordered services requiring him to complete a parenting class and individual therapy bore no relation to his ability to parent. He further asserts that he visited Brittney and Ward consistently, and that the trial court disregarded all the reasonable efforts and reasonable progress toward their return that he accomplished since his release from prison. Again, we disagree.

¶ 33 The Juvenile Court Act provides a bifurcated system in which a parent's rights to his children can be terminated. See *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008); see also 705 ILCS 405/2-29(2) (West 2010). As noted earlier, under the first arm of this system, the State must show by clear and convincing evidence that the parent is unfit. See *R.C.*, 195 Ill. 2d at 302; accord *Deandre D.*, 405 Ill. App. 3d at 952 ("proof of parental unfitness must be clear and convincing"). Unfitness may be determined under any ground listed in section 1(D) of the Adoption Act, which includes subsection (m) examining the "reasonable efforts" and "reasonable progress" a parent must make toward the return of the children. See 750 ILCS 50/1(D)(m) (West 2010); *In re S.J.*, 407 Ill. App. 3d 63, 67 (2011). "Reasonable efforts" relates to the correction of

the conditions that led to the children's removal from the parent and are adjudged on a subjective basis upon a consideration of what is reasonable for that particular parent. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21; *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). Under this analysis, the court must determine whether he has made earnest and conscientious strides toward making the cited corrections. See *In re D.F.*, 332 Ill. App. 3d 112, 125 (2002). Separately, "reasonable progress" relates to the amount of progress measured from the conditions existing at the time of removal and, thus, is adjudged on an objective basis. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21; *Daphnie E.*, 368 Ill. App. 3d at 1067. It focuses on the steps the parent has taken toward the goal of reunification. See *D.F.*, 332 Ill. App. 3d at 125; accord *In re C.N.*, 196 Ill. 2d 181, 214-16 (2001) . Under this analysis, a court examines the parent's compliance with the service plans and directives in light of the conditions that led to removal, as well as subsequent conditions that would prevent the court from returning custody to the parent. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21. It is when it can be concluded that the children's return to their parent in the near future is feasible that reasonable progress may be determined to have been achieved by the parent. See *Daphnie E.*, 368 Ill. App. 3d at 1067; accord *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 21.

¶ 34 In examining a decision to terminate parental rights based on questions regarding reasonable efforts and reasonable progress, the reviewing court will defer to the trial court's disposition, as this involves factual findings and credibility assessments that the trial court is in the best position to determine. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19; *Deandre D.*, 405 Ill. App. 3d at 952. Thus, the trial court's decision will not be disturbed unless it is against the

manifest weight of the evidence. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19; *Deandre D.*, 405 Ill. App. 3d at 952; accord *C.N.*, 196 Ill. 2d at 208. This occurs only when the opposite conclusion is clearly evident from a review of the evidence presented. See *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19; *Deandre D.*, 405 Ill. App. 3d at 952; accord *Gwynne P.*, 215 Ill. 2d at 354. In addition, we note that " ' "[e]ach case concerning parental unfitness is *sui generis*, requiring a close analysis of its individual facts; consequently, factual comparisons to other cases by reviewing courts are of little value." ' " *Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19, quoting *Konstantinos H.*, 387 Ill. App. 3d 203, quoting *Daphnie E.*, 368 Ill. App. 3d at 1064; accord *Gwynne P.*, 215 Ill. 2d at 354. Ultimately, there is a "strong and compelling presumption in favor of the result reached by the trial court" in child custody cases. *Connor v. Velinda C.*, 356 Ill. App. 3d 315, 324 (2005).

¶ 35 Based upon our thorough review of the record in the instant cause, we cannot conclude that the trial court's decision finding respondent unfit for his failure to make reasonable efforts and reasonable progress toward the return of Brittney and Ward was against the manifest weight of the evidence. Rather, we find that the trial court's determination was wholly proper.

¶ 36 Respondent was ordered, via multiple service plans, to participate and complete three requirements in order to regain custody of his children. That is, he was to complete a parenting class, participate in individual therapy, and maintain consistent visitation with Brittney and Ward. It is these three specific areas which respondent contests had nothing to do with his parenting abilities and, thus, he asserts they were not relevant grounds for a finding of unfitness. Respondent is correct in his citation to decisions acknowledging DCFS requirements should bear

some relationship to a parental shortcoming that would otherwise inhibit the return of a child to a parent. See *In re A.J.*, 296 Ill. App. 3d 903, 913-14, citing *In re S.J.*, 233 Ill. App. 3d 88, 120 (1992). However, simultaneously, there must, at the very least, exist some measurable or demonstrative movement toward reunification on the part of the parent in order to avoid a finding of unfitness. See *Daphnie E.*, 368 Ill. App. 3d at 1067. As the trial court found here, no such movement took place on respondent's part in the instant cause.

¶ 37 Before we examine each of the three requirements ordered of respondent, we note for the record that the essence of his claims lie within his reliance on an Integrative Assessment (IA) that was completed in January 2011. For example, he repeatedly cites to this IA and states that, because it never specifically mentioned he should complete a high risk parenting class or individual therapy, the trial court inherently erred in finding unfitness based on his failure to participate in these services. The IA is included in the record before us. However, it was never admitted into evidence during the fitness hearing; Howeler testified about it briefly, but it was not submitted to the court. Accordingly, we should not consider the IA upon our review. See *In re J.G.*, 298 Ill. App. 3d 617, 629 (1998) ("the trial court's decision as to whether a parent is unfit should be based only upon evidence properly admitted at the unfitness hearing"); accord *In re C.M.*, 305 Ill. App. 3d 154, 166 (1999) (when order setting forth steps parent must take to correct problems has not been entered into evidence, underlying reasons for adjudication cannot later be conjured up based on mere recollection in lieu of what was competent evidence). Rather, what was admitted into evidence in the instant cause, and what formed the basis of the trial court's unfitness determination, in addition to Howeler's testimony, was other documentary evidence,

including her reports and several of respondent's client service plans. Thus, we focus primarily on these.

¶ 38 Turning to respondent's arguments, he first attacks the requirement that he attend a parenting class. He claims that because Howeler consistently found his parenting abilities to be appropriate during his visits with Brittney and Ward, and because he already took a DCFS-approved parenting class while in prison, the trial court should not have considered his failure to attend as evidence of unfitness. However, we find the trial court's determination that the requirement was a reasonable one to have been proper under the circumstances presented. Respondent is correct that Howeler testified his behavior during visits with the children was always deemed appropriate. Yet, these were observations of his behavior during visits with them, not necessarily his full-time parenting of them. It was with respect to the latter that Howeler initially ordered respondent to participate in a high risk parenting class, particularly because of the unique and profound trauma experienced by the children here, specifically Brittney. When respondent complained that he could not (and indeed failed to) attend this class, Howeler lessened the requirement and referred him to a standard parenting class, one the was more flexible for his schedule. Yet, he failed to attend this one as well, testifying that he did not understand why he had to since he already completed such a class in 2008 while in prison.

¶ 39 We find no error, manifestly or otherwise, in the trial court's determination that respondent's failure to participate in a parenting class exhibited unfitness, nor do we find that this requirement amounted merely to "administrative hoop jumping," as he asserts. Rather, it was a reasonable requirement and one directly related to the situation at hand. First and foremost, the

record demonstrates that Brittney and Ward never, at any point in their lives, lived with respondent, nor does it show that he ever cared for or had physical custody of them. When Brittney was first removed at nine months old, respondent was absent; he then refused to participate in any services. Ward was removed shortly after birth, and the children went to live with Audrey S. for the next 10 years while respondent went to prison. Thus, respondent has never actually parented these children. Next, while respondent did submit proof to the trial court that he completed a DCFS-approved parenting class while in prison, he completed it long ago, in 2008. Since that time, the children's cause has changed dramatically. Brittney's trauma of being impregnated at the age of 10 by a 13-year-old relative took place in 2010, years after respondent took that class. Also, the children faced additional trauma when they were removed from a very long-term placement with a relative–the only home they ever knew and where they were found to be neglected–and placed with a nonrelative foster parent–essentially, a stranger. This, too, occurred well after respondent completed his parenting class. In fact, Howeler explained that it was these traumas, which occurred later and which were the reason why the children's case was reopened for a second time, that formed the basis of the order for respondent to participate in a parenting class. In addition, respondent himself admitted during his testimony that prison interfered with his relationship with Brittney and Ward, that Brittney blames him for her tragedy, and that she refuses to visit him, perhaps because of her feelings and perhaps because she is a teenager now–no longer the little girl she was in 2008. From all this, and having considered his claims, we, just as the trial court, conclude that the requirement that respondent complete a parenting class was reasonable and that his failure to do so was a proper basis for a finding of

unfitness here.

¶ 40 Respondent next attacks the requirement that he participate in individual therapy which, he claims, was not based on his ability to parent but, instead, was recommended for him to deal with his experience of being incarcerated, with his relationship with his own father, and with his difficulties related to reading. Thus, he asserts, the trial court erred in considering his failure to participate in therapy as a ground for unfitness. Again, we disagree. It is true that Howeler testified the IA did not recommend respondent participate in therapy. But, as we noted earlier, the IA was not admitted into evidence.

¶ 41 Instead, there was much other evidence presented demonstrating, contrary to respondent's insistence, that therapy was indeed recommended for him and that it clearly related to his ability to parent these children. As the record shows, respondent submitted to a psychological assessment in August 2011. While the IA may not have indicated he needed therapy with respect to parenting, the psychologist-evaluator, as Howeler testified, later sent her a full report about the assessment, clarifying that he did recommend respondent participate in therapy–to process his feelings about his incarceration and his absence from his family. These feelings, which echo respondent's very own testimony that his incarceration negatively affected his relationship with his children and that he knows Brittney blames his absence for what happened to her, obviously are not only respondent's personal issues, but have now become part of his ability to parent the children. Morever, the evaluator's report states that respondent "could benefit" from therapy "relative to the emotional[,] academic and social needs of his children," and that particularly with respect to Brittney's "distress[]" and "visitation refusals," he "could benefit" from therapy

"relative to ways that his children can be assisted and supported"–topics undeniably related to his ability parent the children. In addition, respondent's client service plans, as prepared by Howeler throughout her observations of respondent and as admitted into evidence, made clear that therapy was necessary for respondent's relationship with Brittney and Ward. For example, respondent's March 8, 2012 service plan, as evaluated by Howeler during the prior six months, stated that respondent needed to participate in individual therapy to "understand the trauma the children have experienced and how to communicate with them appropriately." This same recommendation of individual therapy, and the same reason for it, was again made in respondent's September 18, 2012 service plan. Howeler testified with respect to this, at length. Based on the record, we find that the trial court had a proper basis for its unfitness finding in light of respondent's failure to participate in recommended therapy.

¶ 42 Respondent's final attack here relates to visitation. As before, he claims that the trial court erred in basing its unfitness finding on a lack of his consistent visitation with the children. He asserts that he demonstrated a continuing desire to visit them and did all that he could under the circumstances considering that he lives in Indiana, he has a hectic work schedule, the children are in school and visits were not allowed on the weekends. He also points to contradictory testimony regarding evidence that was presented regarding the number of visits offered him, and he complains that the court disregarded all that he has done to rebuild his life, including not reoffending, avoiding drugs and maintaining good mental health.

¶ 43 However, while respondent may have always desired to visit his children and while he has turned his life around, we find no error in the trial court's unfitness finding here. With

respect to visitation, Howeler testified that respondent made 20 of 22 visits in 2010; these visits were held at her DCFS agency. In 2011, the visits were moved to respondent's mother's home; however, when that arrangement was discontinued in May of that year, respondent visited less frequently, only 21 of 39 times. Howeler then testified that respondent was offered 48 visits in 2012 and visited only twice. It was admitted later that there may have been a discrepancy in her testimony with respect to the number of visits offered, since the custody goal was changed. However, as the trial court found, the evidence showed that, regardless of the exact number of visits offered, respondent only visited the children twice in 2012 and three times in 2013. In addition, while respondent averred that he could not attend regular visits because of his schedule, Howeler clearly testified that her agency was always flexible in scheduling visits around his needs. It was respondent who chose to leave the Chicago area where the children live and move to Indiana, and it was respondent who chose, according to his own testimony, to sleep for 12 hours a day Monday through Saturday, from the moment he got off of work at 4 a.m. until the moment he started work at 4 p.m.

¶ 44 We by no means make light of what respondent has accomplished here, nor do we believe the trial court did either. As it noted, respondent has overcome a long period of incarceration to become gainfully employed and the model of a good work ethic. From what the record shows, he has stayed away from any sort of recidivism and is clean and sober. He works long hours six days a week, all in an effort to provide for himself and his children. And, he clearly has demonstrated interest and concern for Brittney and Ward. These are all sweeping and impressive accomplishments when one considers where respondent was in life when the children first

entered DCFS custody all those years ago.

¶ 45 However, with that said, we do not find, based on the evidence contained in the record before us, that the trial court erred in considering his lack of consistent visitation as a basis for its unfitness finding. As the years progressed, his visits have become scant, with only two in 2012. Respondent admits that his inconsistent visits have had a negative effect on Brittney and Ward. His explanation has always been that he cannot visit the children because of his work schedule, but that he does not put his job before his children. Yet, respondent fails to account for the 12 hours between 4 a.m. and 4 p.m. Mondays through Saturdays when he does not work, other than that he sleeps during that entire time and does not even have time to visit with his wife who, according to his testimony, he sees only once or twice a month. And, respondent has made clear that he feels the need to work so much to support his *other* children, not necessarily Brittney and Ward who are not in his custody. Howeler certified in her testimony that there was never any point in this cause when she believed she would be able to, at some point, recommend that respondent be granted even unsupervised overnight visits with the children, let alone their return home to him. Based on all this, the trial court's finding of unfitness based on lack of visitation was proper.

¶ 46 In sum, while we acknowledge all the positive strides respondent has made in his life, we find that the trial court's determination of his unfitness based on his failure to complete the recommended parenting class, to participate in the recommended individual therapy, and to maintain consistent visitation was not against the manifest weight of the evidence.

¶ 47 IV. The Best Interest Finding

¶ 48 Respondent's final contention on appeal is that the State failed to prove by a preponderance of the evidence that it was in the children's best interest for his parental rights to be terminated. In a brief argument, respondent cites Howeler's testimony that it was in Brittney and Ward's best interest to keep seeing respondent and the trial court's comment that it was in their best interest to maintain a relationship with him, and points out that termination of his parental rights results also in the termination of his legal right to visit them. Thus, respondent asserts, the court's ultimate finding terminating his parental rights was against the manifest weight of the evidence. For the final time, we disagree.

¶ 49 Once a trial court finds a parent unfit pursuant to any one of the grounds of section 1(D) of the Adoption Act, the minor's cause proceeds to a hearing where the court is to determine whether it is in the best interest of the minor to terminate the parent's parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-3 (West 2012)). See *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). In this phase, the burden is upon the State to show that termination is proper based on a preponderance of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 261. Regardless, in all guardianship cases, " 'the issue that singly must be decided is the best interest of the child.' " *In re Austin W.*, 214 Ill. 2d 31, 49 (2005) (quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991) (this "is not part of an equation" but, rather, the main factor that "must remain inviolate and impregnable from all other factors")); see also *In re Violetta B.*, 210 Ill. App. 3d 521, 533 (1991). A child's best interest takes precedence over any other consideration, including the natural parent's right to custody. See *In re S.J.*, 364 Ill. App. 3d 432, 442 (2006) (the superior

right of a parent to custody of his minor child is not absolute and must always yield to the minor's best interest); *In re J.L.*, 308 Ill. App. 3d 859, 864-65 (1999).

¶ 50 In assessing a minor's best interest, the trial court is to look to all matters bearing on her welfare. See *Violetta B.*, 210 Ill. App. 3d at 534. These include several factors delineated in the Juvenile Court Act itself which take into consideration the minor's age and developmental needs, including:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued ***;
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) the child's need for permanence which includes the child's need for

stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

See also *Austin W.*, 214 Ill. 2d at 49-50; *In re Desiree O.*, 381 Ill. App. 3d 854, 865-66 (2008). Additionally, the court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being. See *Austin W.*, 214 Ill. 2d at 50; *Desiree O.*, 381 Ill. App. 3d at 865-66; accord *J.L.*, 308 Ill. App. 3d at 865. The court's best interest determination not need contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the trial court below in affirming its decision. See *Deandre D.*, 405 Ill. App. 3d at 955; accord *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004); *Jaron Z.*, 348 Ill. App. 3d at 263.

¶ 51 Ultimately, the trial court's final determination regarding a minor's permanency lies within its sound discretion and that decision will not be overturned unless it is against the manifest weight of the evidence. See *Jaron Z.*, 348 Ill. App. 3d at 261-62. The court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent (see *In re Faith B.*, 359 Ill. App. 3d 571, 573 (2005)), and it abuses its discretion only when it acts arbitrarily without conscientious judgment (see *Connor*, 356 Ill. App. 3d at 324). Again, there is a "strong and compelling presumption in favor of the result reached by the trial

court" in child custody cases. *Connor*, 356 Ill. App. 3d at 323.

¶ 52 Pursuant to our thorough examination of the record in the instant cause, we cannot conclude that the trial court's decision here to terminate respondent's parental rights to Brittney and Ward is against the manifest weight of the evidence. To the contrary, we agree with the trial court that the evidence clearly shows that it is in their best interest to allow them to be adopted by their foster parent, Ollie B.

¶ 53 Again, we wish to acknowledge the improvements respondent has made in his life. He is, quite apparently, not the same man he was when Brittney and Ward's cause was first introduced into the system almost a decade and a half ago. He served his time in prison and has overcome his long term therein to become a hard working member of society and to create a prosperous life for himself and his family. And, he clearly loves his children. He has admitted that his behavior in the past affected Brittney and Ward negatively, and he has attempted to remedy that through visits and contact with them. Such a genuine turn-around in one's life can never be understated.

¶ 54 However, the bulk of the evidence overwhelmingly supports the trial court's decision here. Following their long-term placement with their great aunt Audrey S., which resulted in serious trauma and neglect, Brittney and Ward went to live with Ollie B, where they have been since 2010. This home has been evaluated and has been found to be safe and appropriate; the children have been thriving there. Neither child is in need of services any longer. Brittney, who was diagnosed with depression, first arrived at Ollie B.'s home shy, rebellious, and refusing to speak or be touched. Currently, she is a very affectionate 14-year-old who has successfully completed therapy and now participates in cheerleading, dance and sports. Ward, now 13 years

old, also participates in various activities, including football, basketball and tennis, and he is in an individualized education program. Both children are attending school consistently and are doing well academically, exhibiting no behavioral problems. They have many neighborhood friends and attend church. Both children have also expressed that they want to continue living with Ollie B. and want to be adopted by her.

¶ 55 In addition, caseworker Howeler testified that while the children's recent visits with respondent have been positive and that it would be in their best interest for these to continue, it was also in their best interest that respondent's rights be terminated so that they can be adopted by Ollie B. Respondent testified that he wants, and is trying, to maintain a relationship with Brittney and Ward, but at the same time acknowledged that his past actions have had negative effects on them and that Ollie B. is doing a good job raising them. Moreover, Ollie B. testified that she supports and encourages the children's visits with respondent, with whom she has had no problems. She acknowledged that Ward looks forward to his visits with him and that Brittney has even recently agreed to visit with him. Currently, when respondent wants to visit, he calls Ollie B. and lets her know when he is available, and Ollie B. works with him to set up a time and place to meet. Ollie B. also made clear that she would be open to the children visiting respondent in Indiana. While she loves the children, wants to adopt them and has the support of her family to do so, she stated that she will continue to foster Brittney and Ward's relationship with respondent while giving them the permanency they need.

¶ 56 The trial court in the instant cause was both careful and thorough in its examination of the testimony presented and the best interest factors at play. In its colloquy, it mentioned these

factors and acknowledged that the children would benefit from a continued relationship with respondent. And, it found, based on its observation of Ollie B. and her credibility, that she was "genuine and sincere in her statements that she would encourage the children's continued contact" with respondent. However, permanency for Brittney and Ward is key and, just as the trial court discussed, it is our view that respondent simply cannot provide that here when it comes to parenting and raising these children. It cannot be ignored that respondent knew exactly what he needed to do to be reunited with Brittney and Ward but has chosen not to participate and complete the required services. According to his own testimony, between work and his obligations to his family, including other children, he just does not have the time to be a full-time father to Brittney and Ward. These children are now teenagers; their sense of community and consistency are vital and, while they have indicated that they like to spend time with respondent, they affirmatively want to be adopted by Ollie B., who took them in at a time of extreme trauma and has nurtured them to become happy, well-functioning and behaved children who are no longer in need of any services. Although maintaining a relationship with respondent may most definitely benefit them, that cannot, in light of the record before us, be made to take precedence over Brittney and Ward's best interest, which, clearly, is the termination of respondent's parental rights.

¶ 57 Ultimately, the record here establishes that the trial court's decision to terminate respondent's parental rights was not contrary to the manifest weight of the evidence. Instead, from all that was presented, we find ample evidence to support its finding that this was in Brittney and Ward's best interest. Accordingly, we find no error on the part of the trial court.

¶ 58 CONCLUSION

¶ 59 For all the foregoing reasons, we affirm the judgment of the trial court.

¶ 60 Affirmed.