No. 2—11—0254
Order filed June 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A. M. and T. M., Minors	)	Appeal from the Circuit Court
	)	of DeKalb County.
	)	
	)	Nos. 08–JA–40
	)	08–JA–41
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Tiffany M.,	)	Melissa S. Barnhart,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: Trial court's order finding respondent unfit was not contrary to the manifest weight of the evidence where substantial evidence supported its decision; the State was not required to introduce written copies of service plans into evidence.

Respondent, Tiffany M., appeals an order of the circuit court of DeKalb County terminating her parental rights to the minors, A. M. and T. M (hereinafter, "the minors"). Respondent contends the trial court's order finding her an unfit parent is contrary to the manifest weight of the evidence (she does not challenge the trial court's determination that termination of her parental rights was in the minors' best interests). We disagree; consequently, we affirm.

On October 15, 2010, the State filed a motion to terminate respondent's parental rights to the minors. The State alleged that respondent was unfit in that: (1) she failed to make reasonable progress toward returning the minors to her parentage during any nine-month period after the end of the initial nine-month period following the point at which they were adjudicated neglected (750 ILCS 50/1(D)(m)(iii) (West 2010)) and (2) she failed to make reasonable progress toward return of the minors to her parentage during the nine-month period following the adjudication of neglect in this case (750 ILCS 50/1(D)(m)(ii) (West 2010)). A hearing was held on the State's motion on February 25, 2011.

Julia Stevens, a caseworker who was assigned to the minors, first testified. She stated that T.M was born in October 2000 and A.M. was born in March 2008. She stated that this case began when respondent "had taken a number of medications and was attempting suicide." Respondent told T.M. that she was going to kill herself and A.M. and asked T.M. how he would like to die. T.M. stated that he did not wish to die. Respondent's sister called the police, and the minors were placed in shelter care on August 18, 2008. They were adjudicated neglected on June 19, 2009. From the time the minors were taken into protective custody, they resided with a maternal aunt.

Following the adjudication of neglect, a service plan was in place for respondent. She was required to "attend individual therapy, psychiatric services and receive medication for her bipolar [disorder]." She was also required to undergo "substance abuse treatment, a parenting education course and maintain contact with the agency, [and] attend court." Substance-abuse treatment was required because respondent "admitted to self-medicating her bipolar [disorder] with marijuana." Stevens authored a report dated July 24, 2009. Respondent was "participating in some services" at the time. She attended individual therapy and was seeing a psychiatrist. However, respondent

refused a "drug drop" that had been scheduled for June 19, 2009. Stevens explained that a refusal is deemed to be a positive result. In October 2009, respondent was continuing with her services. Three drug drops during this period had been negative; however, in one test, the specimen was insufficient. Respondent was employed and had regular contact with the minors. According to respondent's sister, who supervised visitation, the visits went well.

In December 2009, Stevens testified, respondent successfully completed her substance-abuse treatment. Several drug drops were negative. Respondent began parenting classes. Stevens started planning for unsupervised visitation. In March 2010, respondent was continuing with individual therapy and seeing her psychiatrist. Respondent began testing positive for cannabis. Stevens asked respondent to resume substance-abuse treatment. Stevens contacted the Ben Gordon Center, where respondent had previously undergone treatment and was informed that respondent could reopen treatment simply by making a telephone call. Stevens repeatedly asked respondent to do so, and respondent told Stevens that she was in the process of doing so.

Stevens testified that respondent was often late for visits with the minors. By June 2010, respondent had completed parenting classes. Respondent tested positive for marijuana in March 2010 and failed to complete screening tests on three occasions in April 2010 and May 2010. She continued her individual therapy and was seeing her psychiatrist. Due to respondent's marijuana use, Stevens explained, "[t]he agency was not able to assess her parenting abilities as she was constantly using marijuana to self-medicate the bipolar [condition] and the depression that had originally brought her case to our attention." On June 7, 2010, respondent cancelled a family meeting that Stevens was to attend. The meeting was rescheduled to June 14. Stevens and her supervisor went to respondent's home, but she was not there. They left. As they were walking to their car, they saw

respondent driving by, so they stopped her. Respondent told them that she was on her way to Chicago to take her mother to the doctor. Respondent asked how long the meeting would take. Stevens said, "Well, rather than taking five minutes at a family meeting[,] we would prefer you complete [a] drug drop." Respondent stated that she did not have time to do that.

The meeting was eventually held later in June. They addressed the issue of respondent's drug use. Stevens testified:

> "Initially, she was very cold about it. She said that, 'It's just pot. I don't know what the big deal is. I don't know why you're so hung up on this. In other states I could get a medical prescription for marijuana to medicate my bipolar [disorder].' "

Stevens also testified that she had repeatedly told respondent of the importance of completing services and "that her children were on the line."

A July 2010 screening was positive for marijuana, as was one conducted on August 31, 2010. Stevens learned from Reality House, where respondent had been undergoing individual counseling, that she had been discharged as unsuccessful for missing eight appointments. Respondent stated that she had not been attending because she felt it had not been helping her. She continued to see her psychiatrist. Beginning in August, respondent had attended substance-abuse counseling every other week at the Ben Gordon Center. During an October 2010 family meeting, respondent "again stated that it was just pot and she did not understand what the big deal was." Steven noted in a report she authored in December 2010 that 12 drug screening had been positive for marijuana, 8 were negative, and 11 had not been completed by respondent. In Stevens opinion, respondent was putting her own needs before the needs of the children. Stevens learned that respondent had been arrested on December 1, 2010, for possession of marijuana.

During cross-examination, Stevens acknowledged that respondent appeared to be bonded with the minors. She did appropriate things with the children, and they interacted with her. Respondent's home was safe for them. Stevens explained that the services provided by respondent's psychiatrist were different than those respondent received in individual therapy. Stevens discussed the initial incident that resulted in the children being taken into shelter care. Respondent believed that she was suffering from postpartum depression at the time. Stevens agreed that respondent "always presented in a clean manner" and that "her home was clean." When Stevens and respondent discussed "the case and the fact that the children cannot be returned to her," respondent would become "very argumentative."

The State next called Cathy Zeier. Zeier is Stevens' supervisor. On June 14, 2010, she and Stevens attempted to hold a family meeting with respondent. She testified that she "did not know that [respondent] had previously left a message to cancel it." They went to respondent's home and knocked on the door. There was no answer, so they left. When they were in the parking lot, they saw respondent drive by in her car. She stopped and spoke with them briefly, stating that she had to leave immediately to go to work in Chicago. Respondent left. Stevens and Zeier spoke for 10 or 15 minutes in the parking lot. Zeier drove to a gas station, where she saw respondent. She waived to respondent twice, but respondent did not acknowledge her. Zeier had attended eight family meetings with respondent. At first respondent was cooperative; later, she became argumentative. For example, respondent stated that marijuana should be legal, that it was legal in some states, and that she thought the whole situation was being "blown out of proportion." Zeier explained to respondent that it was necessary for her to test clean to be a "good and positive parent" and also that they needed to see respondent in a sober state so they could accurately assess her parenting ability.

The State then rested, and respondent called her sister to testify on her behalf. Respondent's sister had been acting as a foster parent to the minors. She testified that A.M was three or four months old when respondent had attempted suicide. During this incident, respondent called her sister and her sister came immediately to help her. Respondent's sister indicated that the "incident was out of character for" respondent. No harm came to the minors. According to respondent's sister, respondent is a good parent. Her children are clean and well taken care of. She would feed them proper meals and insure T.M did his homework. Respondent and the minors had bonded with each other, and she consistently visits them. The minors look forward to visits with respondent.

Respondent then testified that she has had mental health issues since she was 18. She had previously received treatment, but during the time prior to her attempting suicide, she had not been receiving treatment. Subsequently, she had been seeing a psychiatrist and taking medication. Respondent testified that she was compliant with services in the beginning. However, eventually, she became less so because "the situation was just going on for a long time and I just felt like since I've been compliant in the beginning and since they gave me a second chance, that they weren't going to give me another chance." Respondent noted that she had successfully completed the substance-abuse program.

Respondent further testified that she had a good relationship with her family, which provides her with emotional support. She would play with T.M., watch movies, and help him with his homework. She would play with A.M. as well. Respondent stated that she regretted not complying with parts of her service plan and that she wanted her children back. During cross-examination, respondent stated that she believed that marijuana should be legal.

The trial court found respondent to be an unfit parent. It noted that, though there was some progress early in the case, starting in February 2010, respondent tested positive for marijuana on 7 of 12 occasions. She also did not complete five requested screenings. Respondent was unsuccessfully terminated from individual treatment for missing eight appointments. The trial court observed that respondent "advised that she doesn't think she has a problem." Furthermore, the trial court noted, respondent has "indicated to me today that she doesn't want to give up marijuana." Accordingly, the trial court found that there were several nine-month periods in which respondent failed to make reasonable progress toward return of the minors. Specifically, the trial court cited the first nine-month period following the adjudication of neglect as well as the period between March 2010 and December 2010, in essence finding respondent unfit on both grounds alleged by the State. This appeal followed.

On appeal, respondent challenges the trial court's determination that she is an unfit parent. We review such a decision using the manifest-weight standard of review. *In re J.C.*, 396 Ill. App. 3d 1050, 1060 (2009). Hence, we will only reverse if an opposite conclusion to that drawn by the trial court is clearly apparent. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). It is primarily the function of the trial court to assign weight to evidence, judge the credibility of witnesses, and draw appropriate inferences. *In re Diane L.*, 343 Ill. App. 3d 419, 425 (2003). We note that, though the trial court found respondent unfit on both grounds alleged in the State's motion to terminate her parental rights, "[e]vidence of one statutory ground is sufficient to support an unfitness finding." *In re D.L.*, 326 Ill. App. 3d 262, 268 (2001). Hence if we find either ground sufficient, we need not address the other one. See *In re T.Y.*, 334 Ill. App. 3d 894, 905 (2002).

We will focus on the second ground alleged by the State, namely, that respondent failed to make reasonable progress toward return of the minors during any nine-month period after the end of the initial nine-month period following the adjudication of neglect in this case (750 ILCS 50/1(D)(m)(ii) (West 2010)). The trial court found that the State had proven this allegation, citing the period between March 2010 and December 2010. The minors were adjudicated neglected on June 19, 2009, so the first nine-month period following the adjudication of neglect terminated on March 19, 2010. The second such period ran from March 19, 2010, to December 19, 2010.

During this period, respondent began testing positive for marijuana. Stevens asked her to resume substance-abuse treatment. Despite the fact that respondent could have resumed treatment simply by making a telephone call, respondent delayed doing so until August, when she started seeing a counselor every other week. Stevens testified that she repeatedly asked respondent to resume treatment, and respondent stated that she was in the process of doing so. Also, respondent was discharged from individual therapy for missing eight appointments. She failed to complete drug-screening tests on three occasions in April 2010 and May 2010. In June, respondent cancelled a family meeting. Furthermore, during a family meeting that was held later in June, respondent told Stevens that she did not "know what the big deal is" with her marijuana use. Respondent tested positive for marijuana in July 2010 and August 2010. In an October 2010 family meeting, respondent "again stated that it was just pot and she did not understand what the big deal was." Respondent was arrested for possession of marijuana on December 1, 2010. Thus, substantial evidence in the record supports the trial court's ruling.

We acknowledge that not all evidence from this period was unfavorable to respondent. For example, respondent completed parenting classes in June 2010 and continued seeing her psychiatrist.

We also acknowledge the testimony of respondent and her sister regarding respondent's interactions and relationship with the minors. However, while this evidence is favorable to respondent, it is not so compelling, particularly in light of the substantial evidence to the contrary, that the trial court's conclusion that respondent is unfit is contrary to the manifest weight of the evidence. For us to make such a finding, a conclusion opposite to that drawn by the trial court would have to be clearly apparent. In re M.R., 393 Ill. App. 3d at 613. Given the state of the record, this is a finding we cannot make.

Respondent nevertheless argues that the trial court's ruling is contrary to the manifest weight of the evidence. She starts by pointing out that it is the State's burden to prove a parent unfit by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Respondent then points to section 1 of the Adoption Act, which, in the course of defining unfitness as it is alleged in this case, provides:

> "If a service plan has been established *** [then], 'failure to make reasonable progress toward the return of the child to the parent' includes [] the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care within 9 months after the adjudication [of neglect]." 750 ILCS 50/1(D)(m)(iii) (West 2010) .

Respondent also cites *In re C.N.*, 196 Ill. 2d 181, 217 (2001), which states that "compliance with DCFS service plans is intimately tied to a parent's progress toward the return of the child, so much so, that where a service plan has been established to correct the conditions that were the basis for the removal of the child from the parent, the failure to make reasonable progress now includes the failure to 'substantially' fulfill the terms of that service plan." Respondent further point out that the State

failed to seek admission of her service plans. She then contends that testimonial evidence alone is insufficient to meet the clear-and-convincing standard required of the State.

Initially, we note that respondent cites nothing that states that testimonial evidence alone is insufficient to support an unfitness finding or that the State is required to introduce documentary evidence concerning a respondent's service plan. This would typically waive the issue. See *In re Marriage of Seffren*, 366 Ill. App. 3d 628, 634 (2006). Moreover, to the extent that compliance with the service plan was a relevant and important consideration (as indicated by *In re C.N.*, 196 Ill. 2d at 217), Stevens testified to the contents of respondent's service plan, indicating that it included individual therapy, psychiatric service to include medication for respondent's bipolar condition, substance-abuse treatment, parenting classes, and that respondent was to maintain contact with Stevens' agency and attend court. Thereafter, Stevens gave substantial testimony regarding these goals. Thus, regardless of whether the written plan was introduced into evidence, the trial court had ample information about respondent's compliance (and lack thereof) with her service plan.

We also note that respondent asserts that there was no testimony that she was addicted to marijuana or that it interfered with her interactions with the minors or her day-to-day life. We are aware of no requirement, nor has any been called to our attention, that respondent had to be addicted to a substance for the trial court to have made the finding it did. Further, that respondent continued to use the substance despite the possibility that her parental rights would be terminated certainly supports an inference that she was addicted to marijuana. Moreover, contrary to respondent's assertion that there was not testimony that her marijuana use affected her interactions with the minors, Stevens testified that "[t]he agency was not able to assess her parenting abilities as she was constantly using marijuana to self-medicate the bipolar [condition] and the depression that had

originally brought her case to our attention." Thus, the trial court could reasonably infer that if Stevens could not assess respondent's parenting abilities due to her marijuana use, her marijuana use must have affected the way she parented, *i.e.*, interacted with the minors. Finally, we note that, according to Stevens, respondent admitted using marijuana to self-medicate her bipolar condition when the case first arose. From this admission, the trial court could conclude that her continued marijuana use served the same purpose.

In sum, adequate evidence exists in the record to support the trial court's determination that respondent is unfit. At the very least, an opposite conclusion is not clearly apparent. Therefore, we affirm the decision of the circuit court of DeKalb County.

Affirmed.