2014 IL App (2d) 140235-U
No. 2-14-0235
Order filed July 24, 2014



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* Kristina M., a Minor, | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | No. 11-JA-148 |
| | ) | |
| (The People of the State of Illinois, | ) | Honorable |
| Petitioner-Appellee, v. Madria M., | ) | Mary Linn Green, |
| Respondent-Appellant.) | ) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The short-term guardian was not a necessary party to this case. Further, the trial court's unfitness and best interest findings were not contrary to the manifest weight of the evidence. Affirmed.

¶ 2 Respondent, Madria M., appeals the trial court's March 6, 2014, findings that she is unfit to parent her daughter, Kristina M., and that it is in Kristina's best interest that respondent's parental rights be terminated. In addition, respondent argues that the trial court erred in excluding a short-term guardian from the proceedings and, therefore, the orders should be vacated. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 As general background, we note that, at the commencement of this case, respondent, age 17, was a ward of the Department of Children and Family Services (DCFS). Specifically, respondent was apparently placed in foster care when she was 12 days old. She was adopted at age two, but was placed back in foster care when, at age seven, her adoptive father sexually abused her. At age nine, respondent was placed back in the *same* adoptive home, but returned to DCFS care at age 11, due to behavioral and mental health difficulties. Respondent was emancipated during the course of these proceedings, in April 2013, at age 19.

¶ 5 Kristina was born August 15, 2010; her father was alleged to be Justin Lamar Brown (his parental rights were also terminated). Further, at the time of the fitness hearing, respondent had two other children and was pregnant; the father of those children is Jason Nightengale.

¶ 6 A. Protective Custody

¶ 7 In February 2011, DCFS investigated a hotline call alleging that, during a snow storm, respondent went "on the run" with Kristina without adequate food and clothing to care for her. (The phrase "on the run," which appears frequently throughout this record, refers to when a DCFS ward leaves a placement without authorization for days or weeks at a time.) On May 9, 2011, DCFS took protective custody of Kristina after learning that respondent left Kristina in the care of respondent's sister, Audrea M., age 21, whose infant child had previously died in her care. Respondent had admitted herself to a mental hospital due to depression and suicidal ideation. DCFS placed Kristina in traditional foster care and, on May 10, 2011, filed a neglect petition, alleging that respondent placed Kristina in an environment injurious to her welfare due to respondent's mental health problems and going on the run with Kristina in bad weather and without adequate supplies.

¶ 8 B. Temporary Shelter Care Hearing

¶ 9 On May 10, 2011, the court convened for a temporary shelter care hearing. Respondent was not present because she remained hospitalized for psychiatric issues. However, Melissa Zelman, respondent's caseworker through OMNI Youth Services (an agency that is contracted with DCFS to perform case-management services), was present. In addition, respondent's sister, Audrea, appeared. The State moved to exclude Audrea and any other nonparties from the proceedings. The court-appointed guardian *ad litem* (GAL) representing Kristina's interests asserted that it appeared that Audrea was a relative caregiver and that, given that respondent was not present, "it's vital that she be a part of this. I believe she has a right to be here." The State objected that Audrea did not meet the statutory definition of a party with rights to be present at the proceeding, namely because respondent made the placement, not DCFS. The court granted the State's motion to exclude Audrea as a nonparty witness. In addition, it ordered services for respondent, that Kristina stay in the custody of the foster parents, and continued the shelter care hearing to May 18, 2011.

¶ 10 On May 18, 2011, respondent's GAL (from her case in which she was a ward) was present and was appointed, temporarily, to represent respondent's interests in Kristina's case. Also at the hearing, the court learned that respondent and Audrea, with help from OMNI, had filled out a short-term guardianship form. Accordingly, the GAL asserted that, at the May 10, 2011, shelter care hearing, Audrea was Kristina's short-term guardian and custodian. "I think that she has to get notice. We took guardianship and custody essentially away from her, and she wasn't even allowed to be in court. I think that's an issue. At the time, she was guardian and custodian. Quite frankly[,] she is a party, I think." The State disagreed, arguing that temporary guardianships are revocable and, further, that guardians have a right to be present only if they are party respondents, which Audrea was not. The court ordered that the DCFS caseworker obtain

the guardianship documents, again continued the shelter care hearing, and ordered that Audrea be given notice of the hearing.

¶ 11 On May 25, 2011, the court held the shelter care hearing. Audrea was present, but upon the State's motion to exclude nonparty witnesses, the court ordered her to step outside. DCFS investigator Judy Lundberg testified that Kristina was taken into custody and placed in traditional foster care because DCFS could not find relatives who could pass LEADS and that she was unable to secure a waiver from DCFS supervisors to leave Kristina with Audrea. Lundberg testified that respondent checked herself into the hospital because she had a lack of placement options and going to a shelter with Kristina was her only other option. To the best of Lundberg's knowledge, respondent and Zelman worked to come up with a solution and Zelman gave respondent and Audrea the short-term guardianship form and had them complete it. Lundberg's understanding was that the intent was to give Audrea a short-term guardianship while respondent was in a shelter bed or elsewhere. Lundberg agreed that respondent and Kristina had stayed with Audrea for a few months after Kristina's birth (but respondent was Kristina's caregiver at that time) and that the OMNI caseworkers had not expressed any safety concerns about leaving Kristina with Audrea. In addition, when Lundberg investigated the case, she did not observe any safety or welfare concerns with Kristina being placed with Audrea: she had no injuries, and her needs were being met. Nevertheless, DCFS's concern was that, in 2009, Audrea had been indicated for death of her infant by neglect (as opposed to abuse), when she placed her infant on a couch, supported by a pillow, left the room, and, upon her return, found the infant had fallen forward and suffocated. Audrea subsequently completed all services required of her, the case was closed in 2010, and Audrea had a four-year-old daughter. According to Lundberg, DCFS policy provides that, no matter how many services a person has

completed, he or she cannot be given guardianship or custody of a child if he or she was previously indicated for death of a child.

¶ 12 According to the DCFS statement of facts admitted into evidence, respondent was also hospitalized on November 29, 2010, for suicidal ideations. She was released on February 1, 2011, stayed in her DCFS-approved placement for one evening, then went on the run with Kristina. Their whereabouts were unknown until April 26, 2011. Respondent was hospitalized May 1, 2011, and reported that she was having suicidal ideations.

¶ 13 The State introduced into evidence the form respondent completed, entitled "Illinois Statutory Short Form Appointment of Short-Term Guardian." The form was witnessed by only one, instead of two, persons (caseworker Zelman). Further, the option checked concerning the date upon which the appointment was to become effective states "[o]n the date that I state in writing that I am no longer either willing or able to make and carry out day-to-day child care decisions concerning my child." Despite this option being checked, under another option, which was unchecked, the date "4/27/2011" is written in. Finally, the form states that, unless specified that the appointment should end sooner, the appointment shall terminate 60 days after the effective date. However, one of the options written thereunder, which provides "on the date which is __ days (*state a number of days, but no more than 60 days*) after the effective date" (emphasis in original), was altered with the date "10/27/2011" written in the blank, the phrase "60 days" stricken out, and the words "6 months" written underneath it.

¶ 14 Audrea was not called as a witness.

¶ 15 The trial court found that urgent and immediate necessity was present because respondent engaged in behaviors that put Kristina at risk, particularly when she made unapproved, self-selected placements. In addition to her behavior, respondent was psychiatrically hospitalized and

the court did not know for how long she would be hospitalized. The court ordered that Kristina be placed in the temporary guardianship and custody of DCFS, and that DCFS had discretion to place Kristina with a responsible relative, in traditional foster care, or with respondent. The court commented:

> "As to the aunt, I would love to place her with the aunt, but I don't believe I can do that. There is a reason that DCFS has their rules, and as much as I would like to place her with the aunt, I, as a Court, cannot abrogate something that was put in place by a department that is [an] expert[] in the area for the safety of the children. I simply can't do it. Even if I would love to do it, I can't."

¶ 16 The GAL then asked the court to clarify the status of the short-term guardianship, since Audrea was again excluded from the hearing. The State responded that the issue was moot and noted that Audrea was not called as a witness. The court replied that it had not "made a ruling on that," noted that Audrea was an inappropriate placement, and stated that, while it was not making a ruling on whether the guardianship form was properly completed, the facts that Audrea was not an approved placement and the child was a ward "would make [the guardianship] in this Court's estimation void[.]" Respondent's GAL and Kristina's GAL argued that, in their view, if the document was appropriate and made Audrea a short-term guardian, she should not have been excluded, was arguably a party, and should have been heard. The court noted that no one called Audrea as a witness, and "I'm not going to rule on that today. I'm just not going to rule on it. You've got your urgent and immediate necessity. I've ruled that I won't place with the aunt."

¶ 17 Kristina's GAL reiterated that the court needed to address whether Audrea was a necessary party because it was not in Kristina's best interests to conduct hearings that have no legal effect because a necessary party was excluded. The State asserted that, even if the

guardianship was valid, it was valid at most for 60 days and, even though the hearing was within the 60 days, the statute did not mention temporary guardians, Audrea was not a party respondent, the court could override the guardianship placement in the best interests of the minor, and that a motion to intervene could be filed. The GAL's collectively responded that other short-term temporary guardians have been permitted in the courtroom. The court replied, "Bring a motion then. I made my decision today. Bring the motion."

¶ 18 No motion concerning Audrea, her status as a short-term guardian, to intervene, for *mandamus*, or otherwise was subsequently filed.

¶ 19 C. Neglect Proceeding

¶ 20 On February 23, 2012, the court adjudicated Kristina a neglected minor. Respondent was present at the hearing. Judy Lundberg-Lange testified that she is a DCFS investigator. In February 2011, her office received a hotline call report that respondent had left her placement without food, diapers, clothing, or other items to care for Kristina. Respondent had recently been hospitalized for suicidal ideations and did not have a job. She had been diagnosed with bipolar disorder and depression and, although prescribed medication, Lange did not believe respondent was cooperative with taking the medication. Lange testified that respondent was hospitalized in November 2010 for a suicide attempt. Lange summarized that Kristina was found living with Audrea, Audrea was not considered to be an appropriate placement, Lange was concerned about respondent's ability to parent and, accordingly, DCFS took protective custody of Kristina.

¶ 21 Charlene Blackmore testified that she works for OMNI as a family preservation manager and she supervises the caseworker for respondent and Kristina. Blackmore testified that, in November 2010, respondent was prescribed Risperdal for mental health issues. To her

knowledge, respondent was hospitalized at least five times for suicidal ideation and anxiety and had been diagnosed with bipolar disorder. Blackmore testified that, in 2011, OMNI arranged for respondent to be discharged from the hospital one day early, around January 31, 2011, because a blizzard was coming. Respondent and Kristina were transported to a placement foster home. Respondent left almost immediately with Kristina. The placement home notified OMNI that respondent went on the run in a blizzard with Kristina with no diapers, formula, or other baby care items. To Blackmore's knowledge, respondent has gone on the run from approved placements at least 15 to 20 times. Although services were recommended for her, respondent did not engage in even one of them, nor was she compliant with her medications. As it relates to her ability to care for Kristina, Blackmore was concerned about respondent's mental health and her relationship with Jason Nightengale, who once tried to throw respondent over a third-floor balcony while she was pregnant with her second child.

¶ 22 Respondent testified that she was first diagnosed as bipolar when she was 11 years old. She was prescribed three medications but, at age 13, a physician took her off of them because it was "too much." She was later given Risperdal for anxiety, but her doctor told her to stop taking it when she was pregnant with Kristina. She had not taken medicine since that time because her doctor told her it was "fine" not to; respondent did not feel she needed any medication and testified that she did not have suicidal ideation. Respondent testified that she was hospitalized three times and that she went to the hospital needing shelter and, in order to be admitted, lied about wanting to hurt herself. She explained that telling hospitals that she had suicidal ideation was her way to gain admission to the hospital for "a break, vacation." She conceded that she "lied," but testified that hospital personnel knew she was there to have a place to stay while awaiting placement.

¶ 23 After respondent left her placement in February 2011, she was kicked out of Nightengale's house and did not want to bring Kristina to a shelter. She called Zelman, who brought her temporary guardianship forms and placed Kristina with Audrea. Respondent testified that she did bring supplies for Kristina (including food, diapers, wipes, clothing, water, milk, and a car seat) with her when she went on the run. Respondent testified that her relationship with Nightengale used to be abusive, and she agreed that he tried to throw her off of a balcony and to choke her. She nevertheless maintained a relationship with him (and was, at the time of the hearing, pregnant with his child), but he had not engaged in domestic violence counseling. Respondent asked that Kristina be returned to her because she was living at a parenting agency where Kristina could live with her and she received food stamps and checks from the parenting agency. Respondent agreed that she goes "place to place," without first getting DCFS approval, but that her current location was the longest she had ever stayed in one place; she had been there three to four months.[1]

¶ 24 The trial court found that the State met its burden of showing by a preponderance of the evidence that Kristina was a neglected minor. The court noted respondent's instability, that respondent went on the run in a snowstorm with Kristina and no supplies, respondent's repeated hospitalizations, and that it did not appear that respondent was taking medication or receiving therapy for her mental illness. The court expressed concern that respondent was in a relationship that involved domestic violence and that there had been no treatment to address it.

[1] Blackmore testified in rebuttal that, contrary to respondent's assertions that she had remained in her current placement for three to four months, she went on the run for a few days during that period.

¶ 25 D. Review Periods

¶ 26 The court held four permanency review hearings after the February 23, 2012, neglect adjudication.

¶ 27 At the first review hearing, on May 11, 2012, the court heard testimony that Kristina was doing well in her foster care placement, but that respondent had not visited her since the end of February, in part because she would repeatedly schedule visits and cancel them. Although respondent's service plan required her to engage in mental health services, refrain from using drugs and alcohol, engage in domestic violence services, and maintain minimum parenting standards, she had not yet engaged in any of the aforementioned and was not cooperating. Respondent was present at the hearing, but OMNI personnel did not know where she was staying because she was currently on the run and did not keep in contact with them. The court found that respondent had not made reasonable efforts and ordered her to submit to a drug drop.

¶ 28 On May 29, 2012, the court held a hearing due to a concern report that reflected that respondent's drug drop tested positive for cannabis and that she was four months pregnant. Again, no one knew respondent's location: she gave the drop after the last court date and, then, no one could find her. The court issued a warrant for respondent's arrest. On July 20, 2012, after respondent's arrest, the court held her in contempt and sentenced her to seven days in jail, in part because respondent did not want to return to Cook County due to domestic violence and the fact that Nightengale lived near her Cook County placement, she had nowhere else to go, and the court did not want to release her onto the street. On August 10, 2012, respondent admitted to indirect criminal contempt and the court sentenced her to 90 days in jail, with credit for 7 days served and the remaining time to be stayed. Respondent had received a new placement at Threshold Young Mothers' Project, a transitional housing program in Cook County.

¶ 29 The second permanency review hearing was held on November 13, 2012. At that time, respondent did not appear. The court heard testimony that Kristina was doing well in her placement and, from August to November 2012, respondent was consistent with her visits. However, respondent continued to test positive for cannabis. The recovery coach was unable to meet with respondent because she made herself unavailable. Respondent had been engaging in individual therapy with a therapist at Threshold, but, on November 6, 2012, she went on the run and returned the day of the hearing. Respondent had not made herself available for other required services. The court found that respondent had not made reasonable efforts.

¶ 30 The third permanency review hearing was held on May 14, 2013. Respondent was present. The court heard testimony that Kristina was almost three years old and continued to do well in her foster placement. Respondent emancipated out of DCFS care in April 2013. OMNI personnel did not know what services respondent was completing because she would not sign consent forms and would not cooperate with them.

¶ 31 Respondent testified that she had moved to Rockford in February and obtained an order of protection against Nightengale. Further, she testified that she completed her G.E.D., was staying at a domestic violence shelter, and was participating there in groups on parenting, domestic violence, and life skills. In addition, respondent testified that she was seeing a therapist and would soon be starting substance abuse counseling. Respondent recounted that she signed release forms for OMNI, that she was looking for housing and work, and that she had been having trouble scheduling visits and with transportation. She missed a couple of visits with Kristina in April, due to transportation issues or conflicts with court, but she had asked to re-schedule them. The court found that respondent made reasonable efforts, but not reasonable progress.

¶ 32 The fourth permanency review hearing was held on September 10, 2013. At that time, respondent did not appear. Kristina's caseworker testified and recommended that the goal be changed from return home to termination of parental rights. Respondent had not had contact with Kristina since June 17, 2013, although she had reached out on August 21, 2013, to schedule a visit. Respondent's last visit with Kristina did "not go well at all," and her contact with the agency during the review period was "poor." Although she had been referred to mental health, domestic violence, and parenting services, she had not engaged in any of them. Kristina, age three, was doing well with her foster parents, had been with them for 2½ years, and they had expressed a willingness to adopt her. The court found that respondent had made neither reasonable efforts nor reasonable progress during the review period, and it changed the goal to substitute care pending court termination of parental rights.

¶ 33 E. Petition to Terminate, Unfitness and Best Interest Hearings

¶ 34 On November 13, 2013, the State filed under the Adoption Act (Act) (750 ILCS 50/1 *et seq.* (West 2012)) a four-count termination petition. The petition to terminate alleged that respondent was unfit for her: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to Kristina's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failure to make reasonable efforts to correct the conditions that were the basis for Kristina's removal within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(i)) (West 2012)); (3) failure to make reasonable progress toward the return of Kristina to respondent within nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) failure to make reasonable progress toward the return of Kristina to her within any nine-month period after the first nine months following adjudication (750 ILCS 50/1(D)(m)(iii) (West 2012)), and,

specifically, from November 23, 2012, to August 23, 2013, and March 23, 2013, to December 23, 2013.

¶ 35 The fitness hearing commenced on January 23, 2014. Elizabeth Conrad testified that she was Kristina's caseworker. Conrad testified that, despite notice, respondent did not attend Kristina's case reviews or doctor's appointments. Two service plans were admitted into evidence; respondent started some services recommended therein, but, over a two-year period, completed none. Respondent had remained at Threshold for approximately 1½ years (with episodes of "going on the run" therein), but OMNI had very little contact with Threshold because of consent issues and, therefore, was unable to obtain information about any parenting, mental health, or life skills services respondent received there. Respondent frequently emailed Conrad, but would not disclose what services she was seeking. OMNI made referrals for services, but respondent "did not disclose to us what services she found on her own or sign consents for me to speak with them." Respondent was required, as part of her service plan, to sign releases so that OMNI could evaluate her progress and give her credit for any progress. OMNI must corroborate self-reporting to ensure that the self-report is true. OMNI requested that respondent perform two drug drops in the previous six months (June 13, 2013, and September 23, 2013) and both were positive for cannabis.

¶ 36 Between April 22, 2013, and January 23, 2014, respondent missed 14 out of 39 visits with Kristina. Those visits had originally been scheduled twice per week, but were reduced to once per week on account of respondent's inconsistency and, when the goal changed to termination, visits were reduced to once per month. Visits remained supervised and could not move to unsupervised because respondent continued to use substances, not engage in services, and not remain in her placements. Respondent had attended all visits since November 22, 2013,

(three visits). She is appropriate with Kristina during the visits. Domestic violence remained a concern because respondent let lapse her order of protection against Nightengale. Conrad testified that, on November 14, 2013, respondent told her that she had lied to get admitted to the University of Illinois at Chicago (UIC) psychiatric hospital because Nightengale was beating her with a belt. Conrad testified that, if respondent remained in a relationship with domestic violence, Kristina could not be safely returned to her care. She agreed, however, that respondent told her that she terminated her relationship with Nightengale.

¶ 37 Respondent testified that she is 20 years old. She tried to attend one case review for Kristina, but it was cancelled and not rescheduled. Respondent testified that she was not given notice of other case reviews. In addition, respondent agreed that, in February 2013, she obtained an order of protection against Nightengale and that, in May 2013, it was dismissed for want of prosecution. After May 2013, she renewed her relationship with Nightengale and got pregnant by him in October 2013. Respondent testified that she had not had any contact with Nightengale since leaving Chicago after the November 2013 incident where he beat her with a belt. Respondent testified that she received counseling during the two weeks she was admitted to UIC and that she had also completed more than 40 hours of domestic violence and substance abuse counseling and attended parenting classes. Respondent testified that she had been diagnosed with depression, but no medication had been recommended. She testified that she signed a release of information form, but did not have a copy of it or provide a copy to her caseworker.

¶ 38 On March 6, 2014, the trial court found on all four bases in the petition that the State proved by clear and convincing evidence that respondent was unfit to parent Kristina. The court found that respondent missed visits with Kristina, was notified of doctor's appointments, but did not attend them, started, but did not complete, any of the recommended services, and has

continued problems with substance abuse, domestic violence, and leaving placements without authorization. The court found that respondent had two psychiatric hospitalizations, the most recent being in November 2013, when she lied to get admitted because Nightengale was beating her, and, overall, she had failed to consistently comply with services. Thus, the court found respondent made no reasonable progress between March 23, and December 23, 2013, because she was still with Nightengale until at least October 2013. Further, the court found respondent made no reasonable progress between February 2012 (the date of the neglect adjudication) and November 2012, because, during that time, she completed no services and remained no closer to the return of Kristina to her care. In addition, the court found that, while respondent showed interest in Kristina, she did not show or maintain responsibility toward her, because she "only had visits" and kept returning to a dangerous environment.

¶ 39 The court proceeded immediately to a best interests hearing. Sandra Shamie testified that she works for OMNI, supervises Conrad, and is familiar with Kristina's case. She testified that Kristina's foster parents were able to provide appropriate food, shelter, health, and clothing for Kristina, and that, in the almost three years she had been with them (she was placed in their home when she was nine months old), there had been no unusual incidents. The environment is "very loving, very supportive, very well structured." Kristina has her own bedroom, with a bed, toys, and books, and the house has fire and carbon monoxide detectors. Both foster parents are employed full-time, and Kristina has been attending daycare for more than one year. Kristina's foster parents had worked to develop a relationship with the foster parents who care for two of Kristina's younger biological siblings. While Kristina's foster parents are Caucasian (Kristina and respondent are African-American), her siblings' foster parents are African-American, and they will collectively continue to expose her to her culture. Kristina is "very, very connected" to

the foster parents and refers to them as "Mommy" and "Daddy." In addition, she has a foster brother in the household and has a typical sibling relationship with him.

¶ 40 Shamie testified that respondent, in contrast, did not exhibit a safe and stable environment for Kristina and, other than attending visits and perhaps some Christmas presents, respondent had not provided any food, clothing, or financial support for Kristina for close to three years. Shamie agreed that respondent was "absolutely" appropriate during her visits and that there was a bond: Kristina would sit on respondent's lap and listen to books, and Kristina knows that respondent is her mother. Finally, Shamie testified that OMNI recommended that it would be in Kristina's best interests for parental rights to be terminated so that the foster parents could adopt her.

¶ 41 Respondent testified that she had recently moved to Chicago and was staying with her biological mother. Her biological mother said that respondent could stay with her, but respondent qualified for, and believed she would soon receive, Section 8 housing. Respondent did not have a job, but received help from family members, and she had a medical card and received food stamps. As far as counseling was concerned, respondent explained, "I do not feel like I need counseling as far as mental illness. My way of getting through things is God and family members." Further, respondent did not believe she needed additional substance abuse treatment, since she is no longer using drugs, and she testified that she is not in a relationship with Nightengale. Respondent testified that she loves Kristina, she is trying hard to get through her problems, and she is unhappy without Kristina.

¶ 42 The foster parents were present. The foster mother testified that Kristina is an "amazing little girl, and we would do anything in this world for her. We love her with all of our hearts, and I know she loves us." She testified further that Kristina "will never want for anything as long as

we have her." Finally, she testified that Kristina and her foster brother get along great, and they have worked to get together with Kristina's siblings for her birthday and playdates.

¶ 43 The court took judicial notice of the testimony and evidence from the unfitness hearing. The court announced that it considered the evidence and the statutory best interests factors and found it in Kristina's best interests that respondent's parental rights be terminated. Respondent appeals.

¶ 44 II. ANALYSIS

¶ 45 A. Short-term Guardian

¶ 46 Respondent argues first that the court's orders are void because Audrea, who was Kristina's short-term guardian, was not made a party to the proceedings. Specifically, respondent asserts that, with the help of OMNI (through Zelman), she executed a short-term guardianship designation pursuant to section 11-5.4 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/11-5.4 (West 2010)). As such, respondent contends that section 1-5(1) of the Juvenile Court Act of 1987 (Juvenile Court Act) provides that Audrea, as guardian, should have been made a party to the proceedings (705 ILCS 405/1-5(1) (West 2010)). As relevant here, section 1-5 of the Juvenile Court Act provides that "the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative who are parties respondent have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records and *** to be represented by counsel." *Id.* Respondent contends that the failure to give Audrea proper notice of the neglect petition and to add her as a necessary party constituted a due process violation, deprived the court of subject matter jurisdiction (a point she later concedes is incorrect (see *In re M.W.*, 232 Ill. 2d 408 (2009)), and renders its orders void (citing *State Farm Mutual*

*Automobile Insurance Co. v. Haskins*, 215 Ill. App. 3d 242, 245 (1991) (an order entered by a court without jurisdiction over a necessary party is null and void)). Respondent asserts that allowing Audrea to be present would have "potentially changed the entire outcome of the case. It may have changed every decision, finding and order from the inception of the case." Respondent asks that we vacate the court's orders.

¶ 47 The State responds that respondent lacks standing to challenge the exclusion of Audrea from the proceedings. Further, it argues that Audrea was not a necessary party because: (1) she did not have physical custody of Kristina when the neglect petition was filed; (2) the court found that Audrea was not a suitable guardian; and (3) the guardianship order was not valid because it was witnessed by only one person, instead of two. Further, the State argues that, regardless of Audrea's status as a party, the trial court maintained subject matter jurisdiction over the case.

¶ 48 We reject respondent's arguments. Even if we assume *arguendo* that: (1) respondent has standing to raise the issue of Audrea's exclusion; (2) the short-term guardianship was validly executed (but see 755 ILCS 5/11-5(a-1), 5.4(a) (West 2010) (designation of a guardian must be witnessed by at least two or more credible witnesses, not including person being named as guardian)); (3) respondent, a minor and DCFS ward, had the legal authority to execute a short-term guardianship; and (4) Audrea, as a temporary guardian, could have been named a party respondent under section 1-5(1) of the Juvenile Court Act, we conclude that, because the trial court found the guardianship void, dismissed Audrea as Kristina's temporary guardian and appointed a new one (DCFS), she was not a necessary party.

¶ 49 Section 11-13.2(a) of the Probate Act provides that a short-term guardian has authority to act, without direction of court, for the duration of the appointment, but the guardian's authority "may be limited or terminated by a court of competent jurisdiction." 755 ILCS 5/11-13.2(a)

(West 2010). Similarly, section 11-5.4(e-5) of the Probate Act also provides that, when a temporary custodian has been appointed by the court pursuant to section 5-501 of the Juvenile Court Act (*i.e.*, at a shelter care hearing), the court may, if in the child's best interests and upon notice, vacate a short-term guardianship. 755 ILCS 5/11-5.4(e-5) (West 2010). In *In re C.C.*, 2011 IL 111795, ¶ 54, our supreme court held that a "former guardian" does not constitute a necessary party respondent with rights under section 1-5(1) of the Juvenile Court Act. [2]

¶ 50 Here, assuming that Audrea's short-term guardianship was valid, the court, on May 25, 2011, vacated it. We acknowledge that the court's method of doing so was not precise. For example, although it ordered that Audrea be given notice of the May 25, 2011, hearing, it did not explicitly give her notice that it would vacate the guardianship. Further, the court commented that it was not ruling on the status of the short-term guardianship, and it did not enter an order explicitly vacating the guardianship. Nevertheless, the court found that Audrea was not a suitable placement and, therefore, that the guardianship was "void." It found that, *even if* it wanted to place Kristina with Audrea, it could not, given the fact that she had been previously

[2] The court noted, however, that the former or removed guardian may still have rights under section 1-5(2)(a) (705 ILCS 405/1-5(2)(a) (West 2010)) (which contemplates that "a current or previously appointed foster parent or relative caregiver" has the right to be heard by the court, but does *not* thereby become a party to the proceeding). *In re C.C.*, 2011 IL 111795, at ¶ 54. We note, however, that section 1-5(2)(a) further provides that, if the court denies "a current or previously appointed foster parent or relative caregiver" the right to be heard, the remedy is to bring a *mandamus* action to enforce that right, either immediately or "in no event later than 30 days" after the denial of that right. No such motion was filed here.

indicated for death of a child due to neglect. The judge later reiterated, "I've ruled that I won't place with [Audrea.]" Finally, critically, the court ordered, pursuant to section 5-501 of the Juvenile Court Act, that DCFS was appointed as Kristina's temporary guardian. Thus, assuming Audrea's short-term guardianship was valid, the court's actions on May 25, 2011, effectively terminated it. Thereafter, as a former guardian, Audrea had no right to be a party to the proceedings. *In re C.C.*, 2011 IL 111795, ¶ 54. Thus, there was no failure to add a necessary party here.

¶ 51 We note that, even if Audrea had been named as a party respondent and the court had not terminated her guardianship at the shelter care hearing, any right Audrea possessed to remain a party to the case would have expired at the latest on October 27, 2011, when the short-term guardianship appointment, by its very terms, expired (again, assuming it was permissible to extend the appointment beyond the 60-day limit prescribed by the form). In other words, even if the trial court had not removed Audrea's guardianship, she would have become a former guardian five months into the proceedings, at which time she lost any right to *remain* a party. See *id.* at ¶¶ 53-54; see also *In re S.B.*, 373 Ill. App. 3d 224, 227 (2007) (original guardian properly dismissed from the case because she was no longer a guardian, was instead a former guardian, and, therefore, no longer had a right to be a party to the proceedings).

¶ 52 Respondent speculates that the entire proceedings might have differed had Audrea not been excluded. Nothing in the record suggests that to be the case. We note that Audrea was excluded from the shelter care hearing as a nonparty witness; therefore, she could have been called as a witness, but was not. As Audrea was not called as a witness at the shelter care hearing, there was no evidence contradicting the State's submitted evidence concerning Audrea's past, or reflecting that she wished to continue as guardian. Despite the court's invitation, there

were never any motions or offers of proof objecting to Audrea's exclusion, or reflecting that, if the guardianship was permitted to run its course, Audrea and respondent would, upon its expiration, have wished to restore the short-term guardianship. The record instead reflects that, whether Audrea became a former guardian on May 25, 2011, or whether she became a former guardian five months later, the court here would not have returned Kristina to Audrea's care. The court's comments that Audrea was an inappropriate placement, that it would not place Kristina with Audrea, and DCFS's policy that it would not place a child with any individual who had formerly been indicated for the death of a child, leaves no doubt that, even if the court had not found Audrea's guardianship void and terminated on May 25, 2011, the guardianship would have ended no later than October 27, 2011, and it would not have been restored. Accordingly, where there is nothing in the record to suggest that the result (particularly as against respondent) would have differed if Audrea had not been excluded, we see no reversible prejudice from the exclusion. See *In re A.K.*, 250 Ill. App. 3d 981 (1993) (holding that, even though a presumed father should not have been dismissed as a party, the dismissal was nevertheless affirmed; the presumed father suffered no prejudice where his criminal history involving minors reflected that his further participation would not have altered the result of the proceedings).

¶ 53 B. Unfitness Finding

¶ 54 Respondent argues next that the trial court's unfitness findings were contrary to the manifest weight of the evidence. She asserts that the State did not meet its burden of proof on any of the alleged bases of unfitness. See *In re F.S.*, 322 Ill. App. 3d 486, 489 (2001) (the State bears the burden to prove a parent's unfitness by clear and convincing evidence). We disagree.

¶ 55 We give great deference to the court's findings of unfitness, and *any one ground*, properly proved, is sufficient to affirm an unfitness finding. *In re Janine M.A.*, 342 Ill. App. 3d

1041, 1049 (2003). The court's finding that the State met its burden of establishing unfitness will not be reversed unless it is contrary to the manifest weight of the evidence (*i.e.*, unless the opposite conclusion is clearly evident or the finding is not based on the evidence). *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Here, at a minimum, the court's finding that respondent failed to make reasonable progress toward the return of Kristina to respondent within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) is not contrary to the manifest weight of the evidence.

¶ 56 The neglect adjudication occurred on February 23, 2012, and, therefore, the nine-month period at issue is February 23, to November 23, 2012. As the trial court noted, in that period, respondent completed no services. At the May 11, 2012, permanency review hearing, the court heard evidence that respondent had not visited with Kristina since late February 2012. Respondent had been on the run several times, was not maintaining communication with OMNI, tested positive for cannabis multiple times, was arrested and jailed, returned to her dangerous relationship with Nightengale, and made herself unavailable for required services. The court's finding that there was no reasonable progress toward returning Kristina home was not contrary to the manifest weight of the evidence.

¶ 57 Respondent argues that, based upon her pregnancy and incarceration, she was limited in what she could accomplish during the relevant period, but notes that she did start individual therapy and was consistent for a period of time (August to November 2012), with her visitation. We cannot conclude that the existence of these factors renders the court's conclusion erroneous where, to the extent respondent's progress was hindered by her pregnancy and jail time, those circumstances were consequences of her return to a dangerous relationship and her choice to use illegal substances.

¶ 58 Respondent further argues that we should consider whether progress was made in light of the conditions which gave rise to Kristina's removal, but the conditions existing when Kristina was taken into care showed her to be with Audrea, safe and unharmed. Respondent misses the point: the conditions giving rise to Kristina's removal stem from respondent's mental health issues and psychiatric hospitalizations and her repeated refusal to stay in authorized placements, including her decision to spend only one night in her placement after being released from an extended psychiatric stay and to go on the run in a blizzard without adequate supplies for Kristina. Further, reasonable progress is not limited to the conditions that formed the basis for removal; it also 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." *In re C.N.*, 196 Ill. 2d at 216. Here, in addition to respondent's failure to complete any services, conditions reflecting that there was no reasonable progress that would permit the court to return Kristina to respondent include her drug use, lack of stable housing, abusive relationship, and failure to communicate with her caseworkers. In sum, the court's unfitness finding was not contrary to the manifest weight of the evidence.

¶ 59 C. Best Interests Finding

¶ 60 Respondent finally argues that the court erred in finding that it was in Kristina's best interest that her parental rights be terminated. Specifically, respondent argues that: (1) Kristina was safe while in her care and would remain so; (2) she has housing and the ability to support Kristina and keep her healthy; (3) she and Kristina are African-American, while the foster parents are Caucasian, which could confuse Kristina; (4) Kristina has siblings with whom she is not placed; and (5) she and Kristina have a bond. We reject her arguments.

¶ 61 On appeal, we consider whether it was against the manifest weight of the evidence for the trial court to conclude that termination of parental rights is in the child's best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2012)), including the child's physical safety and welfare; need for permanence, stability and continuity; sense of attachments, love, security, and familiarity; community ties, including school; and the uniqueness of every child. *Id*. The focus of the best interests hearing is the child, and the parent's interest in maintaining the relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004).

¶ 62 The court's finding here was not contrary to the manifest weight of the evidence. Although Kristina and respondent have a bond, the court heard evidence that Kristina, age three, has been with the same foster parents since she was an infant, is "very, very connected" to them, and refers to them as "Mommy" and "Daddy." Although respondent asserts that she has housing and the means to provide for Kristina, at the time of the hearing, respondent's housing situation was speculative (she testified that she qualified for, and believed she would soon receive, subsidized housing) and her ability to provide for herself and Kristina was unstable. In contrast, the court heard evidence that the foster parents provided Kristina with stability in food, clothing, a home in which she has her own room, bed, toys, and books, and that both parents are employed full time. The evidence further reflected that the foster parents encouraged a relationship between Kristina and her siblings, who lived with African-American foster parents. Finally, the foster parents were willing to adopt Kristina and the foster mother testified that they love her. In light of the foregoing, we cannot conclude that the court's finding that it is in Kristina's best

interests that respondent's parental rights be terminated was contrary to the manifest weight of the evidence.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, the judgment of the circuit court of Winnebago County is affirmed.

¶ 65 Affirmed.