2017 IL App (2d) 161113-U
No. 2-16-1113
Order filed April 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re BRIAN S. and JAMES S., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 13-JA-442
	)	13-JA-443
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Edward S., Respondent-Appellant).	)	Honorable
	)	Mary Linn Green,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings, that respondent was unfit as to his two children and that it was in their best interest to terminate his parental rights, were not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Respondent, Edward S., appeals from the trial court's rulings terminating his parental rights to his sons Brian S. and James S. Respondent argues that the trial court's finding, that he failed to make reasonable progress towards their return within specified nine-month periods after their neglect adjudications (750 ILCS 50/1(D)(m)(ii) (West 2014)), was against the manifest weight of the evidence. He also argues that the trial court erred in finding that it was in the

children's best interest to terminate his parental rights. Last, respondent argues that his due process rights were violated. We affirm.

¶ 3 I. BACKGROUND

¶ 4 James was born on October 24, 2003, and Brian was born on October 1, 2009. They have a younger sibling, Cameron S., born on January 22, 2013, who initially lived with them and respondent. However, it was later determined that Cameron had a different father, and Cameron is therefore not a part of the instant appeal.

¶ 5 On September 23, 2013, the State filed petitions alleging that James and Brian were neglected. The State alleged that their environment was injurious to their welfare in that Cameron had multiple bruises and swelling on his face, and respondent and Cameron's mother did not have an adequate explanation about how the injuries occurred. The State also filed a statement of facts summarizing the situation as follows. On September 19, 2013, respondent brought 7-month-old Cameron to the hospital; Cameron had multiple bruises and swelling all over his face. Respondent reported that his friend, Carrie B., was living with him taking care of her children and Cameron while respondent was at work. Carrie contacted respondent and said that her daughter had hit Cameron with a toy. Respondent took him to the hospital to make sure that he did not have any other injuries. Carrie reported that she was at home with Cameron and her one-year-old and three-year-old. They were all sleeping downstairs, and she went upstairs to clean the house. She heard Cameron crying, went downstairs, saw her one-year-old in Cameron's playpen with him, and saw injuries to Cameron's head. Carrie did not have a car, so she texted respondent, and he came home from work early. Brian and James were not at home when the incident occurred. Medical personnel determined that the severity and extent of Cameron's injuries showed that they were caused by abuse.

¶ 6 Cameron's mother stated that she was separated from respondent, and a divorce was pending. She had been hospitalized twice during the past month for psychiatric issues and had not seen Cameron during that time.

¶ 7 Also on September 23, 2013, the parties waived their right to a shelter care hearing. The trial court gave temporary guardianship and custody of Brian and James to the Department of Children and Family Services (DCFS). On November 21, 2013, based on the parents' factual stipulation, the trial court adjudicated the boys to be neglected. A DCFS report to the court filed that day stated that it attempted to set up twice-weekly visitation for respondent, but he said that his work schedule allowed for visitation only once per week.

¶ 8 On January 15, 2014, respondent was adjudicated to be the biological father of Brian and James but not Cameron. A DCFS report to the court stated that respondent was employed full-time at Advance Auto Parts and was visiting the children weekly due to his work schedule. Respondent had been referred to Clarity Counseling, done an assessment there, and had begun the recommended individual counseling. The counseling was to address respondent's "passive role in parenting and lack of accountability for the reasons the children are in care." Respondent had also been referred to "YSB" for parenting classes.

¶ 9 A dispositional hearing took place on March 10, 2014. Pursuant to a stipulation, the trial court found the parents unfit or unable to take care of the children. DCFS was given guardianship and custody of the boys.

¶ 10 A permanency review took place on July 1, 2014. The trial court found the goal of return home within 12 months appropriate, and it found that respondent had made reasonable efforts.

¶ 11 A DCFS service plan dated August 11, 2014, was filed on December 16, 2014. It stated the following. Respondent was living with the children's mother and with Carrie, who was the

mother's best friend. He did not believe that he had neglected the children in any way, that Carrie had hurt Cameron, or that she should have to leave the home. The main reason why the case remained open for respondent was that he was "allowing the indicated offender of abuse to his child to reside in his home and fail[ed] to see why this create[d] a risk to his children."

¶ 12 A DCFS permanency hearing report to the court also filed on December 16, 2014, stated that respondent satisfactorily completed parenting classes through YSB in August 2014 and continued to participate in counseling services to address the conditions that brought the children into care. It stated that he was struggling with maintaining appropriate boundaries with the children's mother and with the foster parents. He had cancelled visits when he did not have food in the home for the children, but he was upset when a foster parent canceled a visit when a child had a fever. He then called and texted the foster parent with accusatory comments. He continued to reside with the alleged perpetrator of the abuse. By agreement of the parties, the trial court reserved findings regarding the parents until the next court date.

¶ 13 An addendum to the permanency hearing report was filed on April 7, 2015. It stated that respondent continued to reside with Carrie. The visits went "fairly well," but there were some concerns. Respondent did not change Cameron's diaper during a three-hour visit and kept feeding him food that upset his stomach, even though the foster parents had provided other food. During one visit, respondent became frustrated with Brian and James and was " 'harsh' " with them. During the majority of the visits, respondent and the children watched movies most of the time, allowing for little interaction between the meal and the movie. An attempt was made to change visits to the weekend to allow respondent to spend more time with the boys, but it had to be changed back due to his work schedule. Respondent needed to develop a plan that allowed him to care for the children for extended periods of time to be able to demonstrate parenting

skills in a broad range of experiences. DCFS was concerned how respondent would coordinate childcare if the children returned home. He said that he would likely get a roommate to assist in childcare. DCFS was also concerned that respondent continued to live with Carrie. She was present at a few of the visits, though only briefly.

¶ 14 At a hearing on April 7, 2015, respondent's attorney stated that Carrie was in the process of moving out of respondent's home. She also stated that respondent was going to ask his boss to have a consistent second day off to allow for more visitation. The trial court found that it was in the children's best interest that the permanency goal remain at return home within 12 months. It found that respondent had made reasonable efforts but not reasonable progress, especially considering that Carrie was just now moving out.

¶ 15 A DCFS service plan dated September 1, 2015, was filed on September 29, 2015. It stated that respondent had completed parenting classes and was attending counseling. However, he appeared to be unable to process, retain, and demonstrate knowledge of the principles he was learning through the services. He was recently indicated for physically abusing Brian during a supervised visit by grabbing his arm, causing a bruise. After the incident, he had a difficult time identifying a more appropriate way to address the children's misbehaviors. Therefore, he would need to attend parenting classes again.

¶ 16 A report to the court regarding Brian filed on September 29, 2015, stated that he had a history of extreme neglect and physical abuse. It stated that he had been exposed to domestic violence, pornography, and possibly psychotropic medications while in utero. He had long-term behavioral concerns including homicidal and suicidal ideation and physical aggression. He was reported to experience auditory hallucinations at night, difficulty sleeping, and "extreme behaviors" in regards to visiting his parents. He had been diagnosed with PTSD, reactive

attachment disorder, bipolar disorder with homicidal ideations, and schizoaffective disorder. His behaviors resulted in a hospitalization on August 4, 2015, after which he was prescribed new medications and appeared to be adjusting well.

¶ 17 A permanency review hearing took place on November 5, 2015. The trial court found that it was in the children's best interest to maintain the permanency goal at return home with 12 months. It found that respondent had made reasonable efforts but not reasonable progress.

¶ 18 A report to the court regarding the children was filed on March 29, 2016. It stated that James was 12 years old and had been at his current foster care placement since August 19, 2015. He was the only child there and reported liking the placement. He was in good physical health and received mental health counseling. He was diagnosed with ADHD and received medication for that condition.

¶ 19 Brian was five years old and had been residing in his foster home since June 9, 2015. There were ongoing behavior concerns, as he reported having an imaginary friend whom he said was telling him to kill the family and whom he blamed for his misbehaviors. However, he also said that he would not hurt his family. The foster parent was unsure if she could continue to have Brian placed in her home. Brian's visits with respondent were suspended because Brian was exhibiting extreme behaviors before and after the visits, such as expressing suicidal and homicidal ideations. Visits with respondent would be postponed until Brian stabilized, though Brian continued with sibling visits.

¶ 20 A report to the court about the boys filed on May 10, 2016, stated that the foster parents had asked for James to be removed due to his inappropriate touching of their grandson. Brian's foster parent had also asked that he be removed from her home. A legal screen had taken place on April 27, 2016, with the recommendation of a goal change to termination of parental rights.

¶ 21 At a permanency hearing on May 10, 2016, respondent testified as follows. He understood that he needed to engage in a "Helping Abusive Parents" (HAP) program through Clarity Counseling. The service was recommended in November 2015. Clarity contacted him to set up the intake and said that it was waiting for DCFS to send in the paperwork. He was told that he had to wait for Clarity to contact him to tell him which class he was in. It contacted him at the end of March 2016, and he attended one class. However, he was injured on April 1, 2016, at work when a customer attacked him. Respondent told his caseworker of his injury. He denied telling Clarity that he could not participate in the program because of a work schedule conflict. The trial court found that respondent had made reasonable efforts but not reasonable progress, and that it was in the children's best interest that their goals be changed to substitute care pending court determination on termination of parental rights.

¶ 22 The State filed a petition to terminate parental rights on June 23, 2016. It alleged that respondent was unfit in that he had: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); and (2) failed to make reasonable progress towards the return of the children within certain nine-month periods after the adjudications of abuse or neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)), specifically November 21, 2013, to August 21, 2014; August 21, 2014, to May 21, 2015; May 21, 2015, to February 21, 2016; and September 22, 2015, to June 22, 2016.

¶ 23 A hearing on the petition to terminate parental rights took place on July 28, 2016, and December 9, 2016. Caseworker Sherry Brown testified as follows. When the case began, respondent participated in an integrated assessment, which resulted in him being required to undergo an assessment through Clarity Counseling. Clarity recommended the "PAIP group" and individual counseling, and respondent successfully completed those services.

¶ 24 Both James and Brian had emotional and behavioral issues and required specialized foster care. Respondent had weekly, three-hour supervised visitation with them in his home. Respondent provided dinner during the visits but not any presents that Brown was aware of. The visits never progressed to unsupervised visitation because DCFS first wanted to increase the number of visitation days, which was difficult due to respondent's work schedule. He worked during the week and most weekends. For a couple of months a second weekly visit was added, but due to respondent's scheduling problems, it returned to weekly visits. Visits had been halted about one year before when respondent grabbed Brian by the arm during a supervised visit in a park, resulting in a small bruise. Respondent claimed that it was time for the children to get in the car with the case aide, and Brian started to run off. Therefore, respondent grabbed him by the arm. Respondent's account differed from what the case aide and minor reported, and respondent was indicated for abuse.[1] The visits later resumed, but visits with Brian were suspended after it was determined that they were causing him to have behavioral issues.

¶ 25 In July 2015, DCFS had a meeting with respondent to discuss the park incident. He was not able to identify more appropriate ways he could have addressed Brian's behaviors. Prior to the incident, there were also concerns about respondent becoming frustrated with James and Brian and not adequately managing their behaviors. These concerns led DCFS to refer him in November 2015 to participate in Clarity's HAP program. DCFS had a difficult time reaching

[1] The report of the investigation of the incident, which was admitted into evidence, stated that, according to the case aide, Brian did not leave the park when it was time to go and resisted walking towards the car. Respondent then grabbed his arm. The report further stated that respondent admitted grabbing Brian's arm after he refused to leave the park at the end of the visit.

him between November 2015 and January 2016, and respondent did not sign a release of information to participate in the program until January 19, 2016. At that point, DCFS could make a referral. Still, respondent did not complete an intake with HAP until May 2016. Brown had not received any reports that respondent had actually engaged in the HAP services, other than the intake. Respondent had reported getting injured at work.

¶ 26 There was an ongoing concern throughout the case for respondent to identify a backup care provider. Throughout the case, respondent had cited his work schedule as a reason for not being able to participate in increased visitation, in the boys' extracurricular activities, parent-teacher conferences, and doctors' appointments. Respondent did not provide any care provider's name until January 2016, when he named Carrie and her significant other. However, they were not appropriate because Carrie was identified as Cameron's abuser. Respondent named another person in March 2016, but DCFS was concerned about respondent's decision-making in that he had found the person on Facebook and did not personally know her. He mentioned meeting with her or talking with her on one occasion.

¶ 27 Respondent had not left any message for Brown since the May 2016 court date, and she had responded to all of his prior messages.

¶ 28 Kaitlyn Folliard provided the following testimony. She had been James' and Brian's caseworker since May 2016. They were in specialized foster care due to their diagnoses and behavioral issues. Brian was previously diagnosed with PTSD, but he was doing better, so his therapist changed the diagnosis to trauma unspecified and reactive attachment disorder. Respondent's grabbing of Brian at the park indicated that respondent could not appropriately attend to Brian's needs when he acted up. Visits ceased around that time. Also, after the visits, Brian was showing reactive behaviors such as aggression, tantrums, and spitting in his foster

parents' faces. He had engaged in these behaviors throughout the life of the case, but they decreased after visits with respondent ended. Brian was currently doing well in his foster placement. James had ADHD and reactive attachment disorder. He did not have any behavioral issues related to visiting respondent, and those visits were still occurring. It was typical for parents to contact Folliard for information about their children, but respondent did not. She admitted that she did not proactively contact him.

¶ 29 Respondent testified as follows. He completed a 13-week parenting class from March to July 2014 and a second eight-week parenting class that ended in July 2015. He engaged in individual counseling for about eight months between fall 2014 and fall 2015, after which he was told that they were complete. DCFS had no concerns with him regarding domestic violence or substance abuse. Respondent was told that he would have to take a HAP class, and he received a referral in November 2015 and did the assessment in January 2016. The organization said that it had to wait for DCFS to get back to it, but respondent did not hear anything. He called in March 2016 and found out that classes had already started. Respondent went to one that month. However, on April 1, 2016, he was attacked at work by an irate customer and sustained physical injuries to his face, including a fractured jaw. Respondent left a message about the incident on Brown's phone but did not hear back from her. He was not released to go back to work until July 29, 2016.

¶ 30 Respondent was employed full-time and was able to financially provide for his sons. He had worked for six years as a parts sales manager for Advance Auto Parts, until July 1, 2015. At that time, he switched to a similar position at AutoZone. He usually worked about 40 hours a week, with Tuesdays and Thursdays off. He made sure that he had those days consistently off after being told in court that he needed a second visitation day with the boys. Respondent

relayed this information to Brown but did not hear back about it. He inquired about second visits from late 2014 into 2015 but not afterwards because his visits with Brian had ceased and more visits would further interfere with James' participation in the school band. As far as doctor's visits, he was not told about the appointments, and he needed two weeks' notice in order to take a day off of work and attend. Respondent attended parent-teacher conferences and school programs.

¶ 31 Regarding day care providers, in mid-2015 respondent gave DCFS the name of someone he met named Adam Urean who was watching other children. However, DCFS said that he was inappropriate because Urean was "involved" with Carrie. In fall 2015, respondent provided the name of a friend who was a stay-at-home mom, but he never heard anything back from DCFS about her.

¶ 32 Between November 2015 and January 2016, for about six weeks, respondent had changed phone carriers and was without a phone. He called Brown from work to let her know but was not allowed to receive personal calls there.

¶ 33 Respondent believed that the visits with his sons were "fine." He used skills that he learned in parenting classes to put them in time out for an amount of minutes equating to three times their age. There was just one time a visit had to be cut short because Brian was being verbally aggressive, in part because James was agitating him. Regarding the incident at the park, Brian did not want to leave when it was time to go and started running towards the road. Therefore, respondent grabbed his arm. Respondent still did not think there was any other way he could have stopped Brian from running out into the road.

¶ 34 On December 20, 2016, the trial court found that the State had proven both counts by clear and convincing evidence. It stated that according to evidence in the "indicated packet," in

June 2015 there was an incident during at a visit that resulted in a bruise to Brian's arm. Respondent was indicated for abuse, and visits with Brian were discontinued after that. The court had previously made findings of no reasonable progress at the permanency reviews on April 7, 2015, November 5, 2015, and May 10, 2016. Also, steps were never taken to return the boys home to their father.

¶ 35 The case then proceeded to the best interest hearing. Pursuant to the State's request, the trial court took judicial notice of the testimony and evidence from the fitness portion of the trial, and a court report authored by Brown that was filed on October 25, 2016.

¶ 36 Folliard then testified as follows. James was living in Woodstock with a foster mother and her three kids. He had been there since October 2016. The foster mother had never reported behavioral issues or concern about him, and she said that she loved James and was interested in adopting him. She was very invested in his schooling, bought him everything he needed, took him to his medical appointments, and was able to care for him. James had expressed to Folliard and to his therapist that he felt very attached to his foster mother. He went to her when he had issues or problems. James' foster mother's mother lived down the street and had two boys James' age, so he went over there a lot, and she was able to watch him after school if the foster mother was working.

¶ 37 Brian had been living in a two-parent home in Rockford since May 2016. The foster mother often talked about how she adored Brian, and she called him a genius. She said that she would like to discuss a potential adoption with her husband. The foster father did not live in the home but would come over. Brian had a very good relationship with his foster mother and his foster mother's sister, whom he called his aunt. The foster mother set up his psychiatric appointments and made sure that his medications were filled and available at school. Brian's

negative behaviors had decreased, and he had not reported any homicidal or suicidal thoughts while living there. Respondent's visits with Brian remained suspended based on his therapist's recommendation.

¶ 38 Both sets of foster parents had homes that were safe and free of clutter, and they both allowed sibling visits. No one else had stepped forward to parent the boys, and it was Folliard's opinion that it would be in their best interest to terminate respondent's parental rights. The boys saw the same therapist, and he also believed that it was in their best interest that respondent's parental rights be terminated.

¶ 39 Respondent provided the following testimony. James called him "Dad" and told him at every visit that he did not want to go back to his foster home, but rather wanted to live with respondent. Respondent agreed that James' therapist was in the room during the visits. Brian called him "Daddy." The boys' mother had sent respondent six or seven videos of Brian telling respondent that he loved him and asking to visit him.

¶ 40 Folliard testified in rebuttal that she had just called James's therapist, and he said that he had been supervising visits for about four months. James had once told the therapist that he wanted to live with respondent, but it was not during visitation, and James never said that he did not want to go back to his foster parent. Neither boy had brought up respondent when Folliard went to visit them at their foster homes. Folliard had supervised three visits between Brian and his mother since May 2016, and he had not heard him talk about respondent. There was also no documentation from other visits about him talking about respondent.

¶ 41 The trial court found that the State had proven by at least a preponderance of the evidence that it was in James' and Brian's best interest for respondent's parental rights to be terminated. Respondent timely appealed.

¶ 42 II. ANALYSIS

¶ 43 On appeal, respondent argues that it was against the manifest weight of the evidence for the trial court to find that he was unfit and that it was in children's best interest to terminate his parental rights. He also argues that his due process rights were violated.

¶ 44 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 45 A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 26. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 28. In child custody cases, we afford even more deference to the trial court's ruling than under the traditional manifest-weight-of-the-evidence standard, due to the cases' delicacy and difficulty. *Id.*

¶ 46 We first examine the trial court's determination that respondent failed to make reasonable progress during the time periods alleged. One statutory ground of unfitness is a parent's failure to make reasonable progress towards the child's return during any nine-month period after the

initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). Our supreme court has defined reasonable progress as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). Progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. We review reasonable progress using an objective standard, and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. In contrast to reasonable progress, reasonable efforts is related to the goal of correcting the conditions which caused the child's removal and is judged by a subjective standard of the amount of effort that is reasonable for the particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). Reasonable efforts is not at issue here, as respondent was found to have always made reasonable efforts.

¶ 47 Respondent argues that the evidence admitted at the hearing contained conclusions of fact based upon evidence which never existed. Respondent argues that the report of the investigation of the park incident includes the incorrect statement that Brian and James were removed from his care because he had physically abused Cameron. According to respondent, he "has never been 'indicated' as ever abusing anyone." He argues that the report also includes a statement, without any basis, that he was reported to enjoy child porn. Respondent argues that his counsel never had a chance to read the exhibit or conduct cross-examination on it.

¶ 48 Respondent further argues that the trial court either did not know about or take into account a report from Our Children's Homestead regarding the children that was filed on

November 5, 2015. Respondent points out that the report states that the "team" determined that Brian's visits with respondent would be postponed until Brian stabilized, because he was exhibiting extreme behaviors before and after the visits, refusing to go at times, and sometimes expressing suicidal and homicidal ideations. The report further states: "It has been determined that since Brian has presented with stabilized behavior and has requested to see both of his parents without prompting that the OCH therapist will participate in a [*sic*] sessions with the [S.] family to facilitate proper adjustment."

¶ 49 Respondent's arguments are not persuasive. The report of the investigation of the park incident was admitted without objection by respondent, resulting in forfeiture of respondent's argument on appeal. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41. Even otherwise, there is no evidence that his attorney did not have access to the report of the investigation of the park incident. To the contrary, the record shows that it was listed in the State's June 23, 2016, response to respondent's motion to discovery, and the State said it would make all of the documents available to respondent. We further note that although respondent asserts that he has never been indicated, that same report concludes with an indicated finding of abuse by respondent.

¶ 50 The report does contain an incorrect statement that respondent was found to have abused Cameron, but it states in another section that respondent's paramour, meaning Carrie, was indicated for the abuse. Also, all of the other documentary evidence and testimony throughout the case show that all parties and the trial court understood that Carrie was indicated for abusing Cameron, as opposed to respondent. The report further contains the statement: "It was reported that [respondent] also enjoys child porn." The source of the information is listed as police records. Regardless, it is apparent that this allegation did not play a role in the termination of

respondent's parental rights, as it was never raised as a concern by DCFS, never mentioned in testimony or argument at any stage of the case, and the trial court referred to the report solely in mentioning that respondent was indicated for abusing Brian at the park.

¶ 51 Respondent's argument about the November 2015 Our Children's Homestead report is unclear. The failure to clearly define issues and support them with authority results in forfeiture of the argument. *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18. Moreover, the report was not admitted into evidence by any party at the termination hearing. To the extent that respondent is arguing that it was not his decision to cease visits with Brian, this was undisputed based on the testimony. Insofar as defendant is arguing that Brian wanted to resume visits with him, and Our Children's Homestead was planning to proceed with those visits, this circumstance does not directly relate to the trial court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare and failed to make reasonable progress towards their return. Furthermore, the report stated that the therapist would facilitate sessions with family members and not that visits would definitively resume. This is especially apparent considering that the Our Children's Homestead report filed on March 29, 2016, again stated that it was determined that it was clinically best that visits with respondent be postponed until Brian stabilized.

¶ 52 We conclude that the trial court's finding that respondent failed to make reasonable progress towards the children's return was not against the manifest weight of the evidence. Looking at the periods of November 21, 2013, to August 21, 2014, and August 21, 2014, to May 21, 2015, respondent continued to live with Carrie, who was indicated for abusing Cameron, the vast majority of this time.[2] Despite counseling and parenting classes, respondent did not

[2] Respondent's attorney stated at the April 7, 2015, hearing that Carrie was in the process

understand why they could not live together and was resistant to making her move out. Also, since 2013, DCFS was attempting to increase respondent's visitation with the children to twice per week so that he would have more time with them and so that he could demonstrate his parenting skills. Even though respondent worked about 40 hours per week, he did not find a second day for visitation. It was not until the April 7, 2015, hearing that respondent's attorney mentioned that he was going to talk to his boss about getting a consistent second day off. However, visits never progressed to being twice weekly due to respondent's scheduling, according to Brown, which also resulted in him never progressing to unsupervised visitation. In addition to not finding time to be with his children more than once per week, respondent did not have a definitive plan for childcare if the boys were to return to his care. As reasonable progress requires a measureable movement toward the goal of reunification, the trial court's finding that respondent failed to make reasonable progress during these periods is not against the manifest weight of the evidence.

¶ 53 The same holds true for the periods of May 21, 2015, to February 21, 2016, and September 22, 2015, to June 22, 2016. Based on the park incident in June 2015, respondent was indicated for abusing Brian. This finding, along with Brian's severe behaviors resulting from visiting respondent, resulted in a suspension of visitation with him. The indicated finding and respondent's inability to think of what he could have done differently also led DCFS to require respondent to take parenting classes again. Despite DCFS asking respondent to begin the process in November 2015, he did not sign a necessary release until January 2016. According to Brown, respondent did not complete an intake until 2016, and she never received any information that he had taken any of the classes. Also, during the aforementioned time periods,

---

of moving out.

respondent did not increase his visitation to twice weekly and admittedly stopped trying after visits with Brian ceased, even though respondent continued to visit James. Last, respondent was unable to identify appropriate care providers for his children, as he named Carrie and her significant other and a woman he did not personally know. As such, a finding of no reasonable progress during these periods of time was not against the manifest weight of the evidence.

¶ 54 Respondent could be found unfit for failing to make reasonable progress towards the children's return during any nine-month period alleged (750 ILCS 50/1(D)(m)(ii) (West 2014)), and we have affirmed the trial court's findings as to all of the time periods alleged. Therefore, we need not examine the trial court's finding that respondent was also unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. See *In re H.S.*, 2016 IL App (1st) 161589, ¶ 31 (a finding of parental unfitness may be based upon evidence sufficient to support a single statutory ground).

¶ 55 Respondent next argues that the trial court's finding that it was in the children's best interests for his rights to be terminated was against the manifest weight of the evidence. A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65. Still, during the best interest hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court is required to consider the following statutory factors of the Juvenile Court Act in light of the child's age and developmental needs: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, sense of

security, sense of familiarity, continuity of affection of the child, and least disruptive placement for the child; (5) the child's wishes and goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48. The State must show by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 53. We will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *Id.* ¶ 54.

¶ 56 Respondent argues that although the trial court's ruling was couched in the required terms of the children's best interest, "it is clear that the evidence upon which the court relied led the court to doing whatever was necessary to remove [him] from the boys' lives." Respondent maintains that the only evidence that could have arguably led to a termination of his parental rights was the indicated packet about the park incident, but without any enunciated findings by the trial court, its thought process remains a mystery. Respondent argues that this case should be reversed and remanded, if for no other reason than for the trial court to make findings of fact to support its ruling on the children's best interest.

¶ 57 Respondent cites *In re O.S.*, 364 Ill. App. 3d 628 (2006), as involving a conceptually-similar situation. There, the trial court did not allow respondent to have visits with her son while she was in prison. *Id.* at 631-32. Even after she was released, the trial court limited visitation to

twice per month, required the respondent not to tell her son that she was his biological mother, and threatened to terminate her visitation rights if she did not comply. *Id.* at 632. As a result, her son became more bonded with his foster parents than the respondent, and the trial court ruled that it was in his best interest for her parental rights to be terminated. *Id.* at 633. The appellate court held that the trial court's actions prevented visitation from having its usual and meaningful attributes, and that a termination of the respondent's rights under the circumstances would deprive her of her constitutional right to custody of her son without the due process of law guaranteed by the Juvenile Court Act. *Id.* at 639-40.

¶ 58 *In re O.S.* is readily distinguishable from this case in many respects, most notably that DCFS and the trial court did not prohibit respondent from disclosing that he was the children's father or impede him from bonding with them. To the contrary, from the case's inception, DCFS sought to increase respondent's visitation with the children, and it was his own scheduling issues that prevented him from doing so. DCFS also provided respondent with services designed to assist in reunification with the boys, but the trial court determined, and we have affirmed, that despite DCFS's and respondent's own efforts, he failed to make reasonable progress towards their return.

¶ 59 As for respondent's argument that the trial court was required to make specific factual findings supporting its ruling on the children's best interest, respondent is mistaken. "The trial court's best interest determination need not contain an explicit reference to each of [the statutory] factors and we need not rely on any basis used by the trial court in affirming its decision." *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 78. Also, as discussed, there is no indication that the trial court relied on the report of the park incident for anything other than information about the park incident itself.

¶ 60 After a parent is found to be unfit, the focus shifts to the child's best interest. *In re B.B.*, 386 Ill. App. 3d at 697-98. Here, it was not against the manifest weight of the evidence for the trial court to conclude that the State proved, by a preponderance of the evidence, that it was in the children's best interest to terminate respondent's parental rights. The evidence revealed that both boys had specialized needs, particularly Brian. However, respondent's inability/unwillingness to increase his visitation time with them prevented him from demonstrating that he could parent them in a variety of circumstances. To the contrary, his action of grabbing Brian in the park, causing a bruise, and his inability to subsequently articulate a better course of action showed, according to DCFS, that he had not absorbed the information from his parenting classes, to the extent that he was required to retake them. Respondent was then slow to sign the releases to begin the classes, and he took either just one class or none at all, even by the time of the termination hearing. Respondent's visitation with Brian had also caused negative, extreme reactions from Brian, such that they were suspended. Thus, despite the fact that the children had been in care for several years, respondent had not progressed to even unsupervised visitation with the children, and there is no indication that this would happen any time soon, much less that the children could achieve permanency with respondent in the foreseeable future.

¶ 61 In contrast, Brian's negative behaviors had decreased while living with his foster mother. He had a good relationship with her, and she took care of all of his physical and medical needs. Although the foster mother did not commit to adopting Brian, she did state that she would talk to her husband about it, and the likelihood of a child's adoption is just one factor to consider at a best interest hearing. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). James was bonded with his foster mother and expressed his attachment to her to Folliard and his therapist. The foster

mother was able to take care of him, was invested in his schooling, made sure he went to his medical appointments, and stated that she loved him and was interested in adopting him. Accordingly, we find no basis to disturb the trial court's ruling on the children's best interest.

¶ 62 Last, respondent argues that the order terminating his parental rights was entered in violation of his due process rights. A parent has a fundamental liberty interest to raise his or her biological child, and the Juvenile Court Act's two-step process to involuntarily terminate a parent's rights is designed to safeguard this interest (*In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 51) by providing due process (*In re A.L.*, 2012 IL App (2d) 110992, ¶ 14).

¶ 63 Respondent argues that his right to due process was violated when Folliard was allowed to testify about the boys' therapist's statements in a phone conversation in order to rebut respondent's testimony that the boys had said during visitation that they wanted to live with him. Defendant argues that there was no opportunity for his counsel to confront or cross-examine the therapist's alleged statements. Respondent appears to be taking the position that Folliard's testimony about the therapist's statements was improper hearsay, but he forfeited this argument by failing to object to the testimony during the hearing. *In re Jaber W.*, 344 Ill. App. 3d 250, 256 (2003).

¶ 64 Respondent further argues that his due process rights were violated due to the admission of the report of the investigation of the park incident. Respondent repeats his arguments that his counsel never had an opportunity to read the report and that it contained incorrect statements that were contrary to the record or otherwise lacked a factual basis. We have already addressed this issue and determined that respondent forfeited his argument regarding the exhibit's admission, that the report was previously disclosed in discovery, and that the complained-of statements within the report did not prejudice respondent in this case. See *supra* ¶¶ 49-50.

¶ 65 Respondent argues that his due process rights were also violated by a "conflation of the standards of proof as practiced by DCFS and Our Children's Homestead." He cites the standards of proof relevant to the termination of parental rights. Defendant's argument is unclear. In any event, we have already reviewed the trial court's rulings, considered the relevant standards of proofs, applied the appropriate standards of review, and ultimately concluded that the rulings were not against the manifest weight of the evidence.

¶ 66 Respondent cites passages from *In re O.S.*, 364 Ill. App. 3d at 638, including the following:

> "The statute nowhere suggests or condones decisions of child welfare agencies, enforced by the courts, prior to the best interest hearing that allow a parent to believe that she is progressing toward reunification while *ensuring* that she will fail the best interest test. When the actions make the best interest hearing a futile gesture there has been a violation of due process tainting the constitutionality of the termination of respondent's parental rights." (Emphasis in original.)

Respondent argues that DCFS " 'slow walked' " its dealing with him after it decided to stop his visits with Brian. Respondent maintains that DCFS was ensuring his failure.

¶ 67 Respondent's argument is not persuasive. The visits with Brian were not stopped arbitrarily, but rather because respondent was indicated for abuse and because Brian was engaging in extreme negative behaviors after the visits, including suicidal and homicidal ideations. Even after DCFS suspended visits with Brian, it attempted to engage respondent in the appropriate services, including HAP parenting classes. Respondent was the one who did not sign the necessary release until a couple of months later. According to Brown, he did not engage in the intake until several months after that, and she did not receive any information that he

participated in any of the classes. Also, respondent admittedly made no attempt to increase visitation with James after visitation with Brian ceased. Unlike *In re O.S.*, there is no evidence that the actions taken by DCFS or the trial court were ensuring that the best interest test would be resolved against respondent. Rather, it was respondent's own actions and the circumstances of the case that led to this result.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 70 Affirmed.