2011 IL App (4th) 110539-U

Filed 10/24/11

NO. 4-11-0539

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.N. and M.N., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 10JA18
ELLA McAFEE,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Absent a compelling state interest, due process forbids the state from infringing upon an intellectually impaired person's right to raise a family; but protecting a child's welfare is a compelling state interest, and this interest is implicated if the parent's intellectual deficits cause him or her to be an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)).

¶ 2 Respondent, Ella McAfee, appeals from the trial court's judgment terminating her parental rights to her children, C.N. and M.N. She argues that the court and the State, knowing she was illiterate and cognitively impaired, violated her right to due process by setting her up for failure. According to respondent, the court set her up for failure by including, in a dispositional order, a long "laundry list" of requirements that she was incapable of reading, let alone fulfilling. Respondent claims that the State set her up for failure by serving upon her a request for admission of facts–again, which she was incapable of reading–and when she did not respond to the request within 28 days, the

facts therein were deemed to be admitted, with disastrous consequences for her case.

¶ 3 We are unconvinced by these arguments. The State served the request for admission upon respondent's attorney, and, most likely, the reason why the request went unanswered was that the attorney could not locate respondent. Just as respondent seeks an exemption from responding to a request for admission, she seeks an exemption from correcting her parental deficiencies. The requirements that the trial court imposed upon her in the dispositional order are requirements commonly imposed upon parents in child-neglect proceedings, to identify their parental deficiencies and to correct them. While respondent deserves some empathy, it would be unjust to C.N. and M.N. to sacrifice their welfare by exempting her from these requirements. Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Reason for Taking Protective Custody of the Children

¶ 6 Respondent is the mother of a boy, C.N., born on September 1, 2003, and a girl, M.N., born on August 19, 2004. On March 11, 2010, the Illinois Department of Family Services (DCFS) took these children into protective custody because respondent had left them in the care of another resident at a domestic-violence shelter, A Woman's Place, in Urbana. See 325 ILCS 5/5 (West 2010). Respondent had promised that she would return within an hour or two, but she did not return until several hours later, and during her absence, she could not be reached by phone.

¶ 7 After respondent returned, a DCFS investigator questioned her and found that respondent "had difficulty controlling herself" and engaging in conversation. Reportedly, respondent was illiterate and developmentally delayed. Also, DCFS had been called about these children before. On the previous occasion, however, DCFS had lost track of the family's whereabouts and

consequently could not pursue the matter further. Because of the current and past concerns about the children's safety, DCFS took them into protective custody.

¶ 8 B. The Petition for Adjudication of Neglect

¶ 9 On March 12, 2010, the Champaign County State's Attorney's office filed a petition for an adjudication of neglect. See 705 ILCS 405/2-13(1) through (3) (West 2010). The petition named respondent and the putative father, Craig Nelson (address unknown), and it alleged that C.N. and M.N. were neglected in four ways. Count I alleged that when the children resided with respondent, their environment was injurious to their welfare in that they were inadequately supervised. See 705 ILCS 405/2-3(1)(b) (West 2010). Count II alleged that when the children resided with respondent, their environment was injurious to their welfare in that she left them for six hours without a proper plan of care. See *id.* Count III alleged that she did not provide them with adequate food, clothing, and shelter. See 705 ILCS 405/2-3(1)(a) (West 2010). Count IV alleged that she did not provide them "the remedial care recognized under state law as necessary for [their] well being." See *id.*

¶ 10 C. The Default of the Father

¶ 11 On April 14, 2010, the trial court found the proof to be satisfactory that the respondent father, Craig Nelson, as well as unknown fathers had been served by publication. Craig Nelson did not appear, and the court found him and all unknown fathers to be in default.

¶ 12 D. The Adjudication of Neglect

¶ 13 On May 12, 2010, the trial court held an adjudicatory hearing (see 705 ILCS 405/2-18 (West 2010)), in which respondent appeared personally along with her court-appointed attorney, Cherie Kesler. According to the docket entry for that date, witnesses were sworn, and after hearing

the evidence, the court found "by a preponderance of the evidence and by clear and convincing evidence in favor of Petitioner and against respondent mother."

¶ 14 The trial court stated its findings in greater detail in an adjudicatory order (see 705 ILCS 405/2-21(1) (West 2010)), which it signed on May 12, 2010, and which was filed on the same date. This adjudicatory order was a preprinted fill-in-the-blank form, and therein the court found the children to be neglected in that (1) they "suffer[ed] from a lack of support, education, [and] remedial care" (see 705 ILCS 405/2-3(1)(a) (West 2010)) and (2) they were in an environment injurious to their welfare (see 705 ILCS 405/2-3(1)(b) (West 2010)). In (1), however, the court must have meant that the children suffered only from a lack of support and education, because elsewhere in the order, the court dismissed count IV of the petition for adjudication, in which the State alleged a lack of remedial care. Thus, the court found C.N. (age 6) and M.N. (age 5) to be neglected in that they were receiving no support and no education and they were in a harmful environment.

¶ 15 The trial court made these findings on the basis of testimony by Cari Dieu, Jessica Miller, Lisa Sadus, and respondent, which the court summarized or described in its adjudicatory order as follows:

> "Cari Dieu (with DCFS) testified. She was assigned to investigate a report in 2008. Respondent mother was feeding the infant water, and did not have formula. Respondent mother was living with a paramour in Danville. The investigator was refused entry until the police came. [M.N. and C.N.] were present. Respondent mother admitted statement about infant drinking water. She did not have a doctor for the children and had no knowledge of

children's health status. There was no crib. Respondent mother refused DCFS services at that time. DCFS was then involved with a domestic violence when a domestic violence incident required the respondent mother to move to a shelter. Respondent mother acknowledged that she had extremely unstable housing in the last 5 years, including 3 or 4 separate incidents of being homeless. Respondent mother is illiterate and has no real skills in parenting or housekeeping or ability to care for her children. She did not agree to open a DCFS case.

Jessica Miller (with A Woman's Place [*sic*]). She has worked with the respondent mother and her children. Respondent mother stayed there from March 3, 2010 to April 6, 2010. The children were there until protective custody was taken. The respondent mother asked another resident to watch the children for 1 hour, and Ms. Miller agreed. The respondent mother did not make 9 PM curfew; at 10 PM Ms. Miller called DCFS, and the respondent mother arrived around midnight. The respondent mother was completely out of touch for 6 hours.

Lisa Sadus (with DCFS) was assigned to investigate the March 10 call regarding inadequate supervision. On March 11, 2010, Ms. Sadus interviewed respondent mother, who said she was leaving because DCFS was involved. DCFS had "lost" the family twice

before while open cases services were being offered. Respondent mother said she would be leaving as soon as the children were home (leaving the Woman's Place shelter). There was a deep concern regarding respondent mother's cognitive functioning.

The court finds the State's witnesses to be credible.

The respondent mother testified. It is clear to the court that the respondent mother does have some functioning issues."

¶ 16 E. The Dispositional Hearing

¶ 17 On June 28, 2010, the trial court held a dispositional hearing (see 705 ILCS 405/2-21(2) (West 2010)), at which respondent appeared personally and by her attorney and at which the putative father, Craig Nelson, also appeared personally. The court appointed an attorney, David Appleman, to represent Nelson, and the hearing commenced.

¶ 18 After reviewing the home and background report by Casey Huster of Catholic Charities, the trial court found that both parents were unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline C.N. and M.N. and that the best interests of the children would be jeopardized if they remained in the parents' custody. See 705 ILCS 405/2-27(1) (West 2010). Specifically, as to respondent, the court observed that she "ha[d] not cooperated with DCFS. She ha[d] not complied with the Court's order regarding a psychological evaluation. She ha[d] not engaged in services."

¶ 19 Therefore, the trial court made C.N. and M.N. (who were in shelter care) wards of the court, removed custody and guardianship from the parents, and placed custody and guardianship with the guardianship administrator of DCFS. See 705 ILCS 405/2-22(1) (West 2010).

¶ 20 Then the dispositional order gave a long list of instructions that the trial court expected the parents to follow. Each parent was to (1) cooperate fully with DCFS and the Court Appointed Special Advocates (CASA); (2) comply with service plans; (3) correct the conditions requiring C.N. and M.N. to be in care and to be wards of the court; (4) establish and maintain a regular course of visitation with the children, attending each scheduled visitation unless attendance were impossible; (5) refrain from having any contact with the children that was unsupervised by DCFS or by an agency that DCFS had designated; (6) notify DCFS immediately of any problems with transportation or scheduling that would interfere with the parent's ability to visit the children as scheduled, participate in services, or show up for work; (7) cooperate fully and truthfully with a psychological evaluation and an evaluation for drug or alcohol addiction, to be completed within 60 days; (8) immediate undertake, benefit from, and successfully complete any counseling, education, or treatment recommended as a result of these evaluations and provide DCFS written proof of such completion; (9) successfully complete any course of counseling that DCFS recommended, including counseling addressing domestic violence and sexual abuse; (10) successfully complete any course of parenting instruction that DCFS recommended and provide written proof of completion to DCFS; (11) demonstrate appropriate parenting skills at all times, including supervision, setting limits, discipline, and interaction with the children; (12) refrain from using corporal punishment; (13) abstain from all mood- and mind-altering substances, including alcohol, cannabis, and controlled substances, except for prescription medicine in the correct dosages; (14) submit to the testing of blood, breath, and urine as requested by DCFS, unless the parent could not afford the cost of the test; (15) attend each appointment or meeting scheduled by DCFS or some person designated by DCFS, unless such attendance were actually impossible; (16) establish and maintain a clean, healthy

residence; (17) immediately inform DCFS of any change in the number or identity of persons staying in the residence for longer than 24 hours; (18) sign all authorizations for the release of information as requested by DCFS or CASA to monitor or evaluate the parent's or children's needs or the parent's compliance with the dispositional order; and (19) allow DCFS or CASA to inspect the parent's residence.

¶ 21 The dispositional order warned that failure to comply with its directives could result in the termination of parental rights.

¶ 22 F. The Report in Preparation for the Permanency Review Hearing of September 27, 2010

¶ 23 1. *Difficulty Maintaining a Stable Residence*

¶ 24 Casey Huster of Catholic Charities wrote a report in preparation for the permanency review hearing scheduled for September 27, 2010. In her report, Huster describes how hard it was to obtain housing for respondent and to keep her in the housing. The task was difficult enough with a cooperative client–Huster spent an entire day calling service-providers and shelters–but respondent compounded the difficulty by standing Huster up when she came to pick respondent up for a scheduled appointment at the PACE, Inc., Center for Independent Living.

¶ 25 Also, when Huster lined up the funding for respondent to stay in an apartment in Danville, respondent unexpectedly went to Chicago. A few days later, respondent called from Chicago and explained that she had gone there to visit her daughter in a hospital. Respondent claimed to be at the hospital at that moment. When the worker at Catholic Charities requested permission to speak with a nurse about the daughter's injuries, respondent gave permission and put the telephone on hold, but then she hung up a minute later and did not call back.

¶ 26 In addition to this tendency to suddenly decamp or not be where she was supposed to be, respondent could not seem to manage her money–what little money she had in the form of supplemental security income (SSI). And having a stable residence entailed, of course, paying rent and utilities. For example, when respondent was residing at the Value Place in Champaign for six weeks (by virtue of charitable donations that Catholic Charities had solicited from local churches), she told Huster she had to go to Chicago to pick up her SSI check. After helping respondent with calling the Social Security Administration and arranging that future SSI checks be sent to respondent in care of Catholic Charities in Champaign, Huster acquired for respondent a bus ticket to and from Chicago, so that respondent could pick up her SSI check. When respondent returned to Champaign with her SSI check, Huster advised her not to cash the check, because if she wanted an apartment, she would need the money for a security deposit and rent. Respondent agreed and said she understood. A few days later, however, Huster saw respondent and noticed she had gotten her hair and nails done. Huster asked her how she could afford this. Respondent answered that she had cashed her SSI check. When Huster asked her how much of the check was left, respondent said she did not know but she thought she had $11 left.

¶ 27 2. *Visitation*

¶ 28 The report describes respondent's participation in visitation as "inconsistent." She was supposed to visit her children every week for one hour. At the beginning of the reporting period, however, Huster took respondent off the visitation schedule because her whereabouts were unknown. When respondent moved to Champaign on July 27, 2010, Huster put her back on the visitation schedule, and respondent made weekly visits for about a month, on July 28 and August 9, 16, 23, and 30, 2010. Respondent did not call during the week of August 2 to schedule a visit, and she failed

to show up for the scheduled visit of September 7, 2010. The children were beside themselves when she failed to show up.

¶ 29 Although respondent was "appropriate" with the children during visits and although she greeted them with smiles and hugs, her interactions with them were limited. She talked with them, but usually she merely sat down and watched them "instead of engaging in play with them."

¶ 30 3. *Use of Cannabis*

¶ 31 Respondent submitted a "drug drop" at Prairie Center on July 27, 2010. The sample tested positive for cannabis.

¶ 32 4. *Psychological Evaluation of Respondent*

¶ 33 Huster referred respondent to a psychologist, William Kohen, for a court-ordered psychological evaluation. According to Kohen's report, which was attached to the permanency-review report, he interviewed respondent and evaluated her on August 19, 2010.

¶ 34 Kohen noticed, in talking with respondent, that she "seemed to have difficulty with comprehension and had noticeable difficulty in trying to express herself. Her speech was difficult to understand due to poor enunciation." She told him that she could not read or write, that she had quit school in the ninth grade, and that she was receiving social security benefits because she was a "slow learner."

¶ 35 Kohen administered to respondent a battery of tests: the Wechsler Adult Intelligence Scale-IV (WAIS-IV), which was designed to assess the intellectual ability of adults; the Woodcock-Johnson Psycho-Educational Achievement Battery-Revised Test of Achievement (WJ-R), which was designed to assess an individual's level of achievement; and the Vineland Adaptive Behavior Scales-II, which was designed to assess an individual's overall adaptive behavior. The results of the WAIS-

IV suggested that respondent's "intellectual abilities f[e]ll within in the mild to moderate mental retardation range." The results of the WJ-R showed that her letter-word comprehension was at the kindergarten level, as was her ability to solve applied-math problems. The Vineland-II suggested that her "level of adaptive functioning within the communication, daily living skills, and socialization domains also f[e]ll at the less than one percentile rank," like her intellectual abilities.

¶ 36 Respondent told Kohen that, as a child, she had been beaten and verbally abused by her mother as well as sexually abused by her mother's boyfriend. She reported that even at her current age, 34, she still had flashbacks about the beatings and sexual abuse. She also told Kohen: " 'I snap for no reason ever since I was little.' " She would " 'holler and throw things.' " She said that when she was 24, she became so angry that she blacked out and did not remember stabbing her female friend, an offense that landed her in prison for 26 months. Kohen diagnosed "intermittent explosive disorder," among other psychological illnesses.

¶ 37 In summary, Kohen wrote that respondent's "cognitive deficits, mental health issues, and history for marijuana dependence made it difficult for her to benefit from any services provided and to parent effectively." Her "unstable lifestyle over the years" was "largely because of her cognitive deficits," which "put a very low ceiling on what she [could] learn and do in life." Kohen recommended "parenting training" and training in "developing adaptive behavior/independent living skills." But any such training, he cautioned, would have to be one on one.

¶ 38 5. *Sexual-Abuse Assessments of the Children*

¶ 39 The permanency-review report included sexual-abuse assessments of both children. The assessment for M.N. concluded that she had been sexually abused by respondent's paramour, Johnny Ward. M.N. had a scar on her arm, which, she said, had been inflicted when her mother

burned her with a cigarette lighter. She had seen Ward stab and beat her mother.

¶ 40 The assessment for C.N. concluded that he, too, had suffered many forms of abuse, including neglect, physical abuse, witnessing domestic violence, and "possible sexual abuse."

¶ 41 G. Administrative Case Review in September 2010

¶ 42 DCFS performed an administrative case review on September 9, 2010, and concluded that both parents had made unsatisfactory progress toward the goal of returning the children to the home. In fact, DCFS concluded that the parents had made no progress at all since the opening of the case.

¶ 43 H. The Report in Preparation for the Permanency Review Hearing of February 15, 2011

¶ 44 1. *Acquisition of a Stable Residence*

¶ 45 In a report in preparation for a permanency review scheduled for February 15, 2011, Huster noted that Catholic Charities had helped respondent obtain a one-bedroom apartment in Danville and that she had moved into this apartment on September 21, 2010. As of the date of the report, February 8, 2011, respondent was still in this apartment. Thus, her housing was now stable.

¶ 46 2. *Participation in Services*

¶ 47 Catholic Charities previously referred respondent to PACE for assistance with independent-living skills. Respondent has stopped attending those sessions at PACE, though.

¶ 48 Catholic Charities also referred respondent to a parenting class, and ever since these classes began on December 7, 2010, respondent has consistently attended them. She does not participate in class, though, and the teacher does not believe that respondent understands the material. Even though tests and quizzes are read to respondent, she does poorly on them. The

teacher does not believe that respondent can benefit from a classroom setting but instead would have to learn in a hands-on way.

¶ 49 Respondent registered for general equivalency degree (G.E.D.) classes at Danville High School and began attending the classes on October 11, 2010. She was dropped from the course, however, after missing several classes.

¶ 50 3. *Visitation*

¶ 51 Respondent's attendance at visitation has been fairly consistent in this reporting period. She attended 13 out of 15 visits. She was a no-show on October 11 and December 21, 2010. She has interacted more with the children during visits. She engages them in conversation and play, and now and then she brings them drinks and snacks.

¶ 52 4. *Summary*

¶ 53 In summary, Huster states as follows in this permanency-review report:

> "Ms. McAfee has been more cooperative this reporting period and states she wants to get her children back. Ms. McAfee has obtained stable housing with the help of the agency. Ms. McAfee was receiving assistance with paying her bills; however in December 2010 Ms. McAfee no longer wanted the assistance and stated she felt capable of handling it on her own. Ms. McAfee also continues to receive disability benefits. Ms. McAfee states she is not in a relationship, however continues to have contact with Mr. Johnny Ward in order to have contact with her other children. Ms. McAfee is currently participating in a parenting class at the Catholic Charities

> Danville office. Ms. McAfee also recently completed a pre-screen assessment at Crosspoint Human Services in Danville and began submitting drug drops. Ms. McAfee continues to participate in visits with [M.N.] and [C.N.] once per week for one hour. Ms. McAfee no-showed two visits, but has been more consistent overall. Ms. McAfee seems to enjoy spending time with her children and has become more interactive with them."

¶ 54 I. Permanency-Review Hearing

¶ 55 On February 15, 2011, the trial court held a permanency hearing, in which the court found that the parents had not made reasonable and substantial progress toward the goal of returning the children home and that they had not made reasonable efforts, either, at achieving that goal. In explanation of these findings, the court wrote, in its permanency order: "[Respondent] stopped participating in life skills classes and GED classes. She has been taking parenting classes, although these"–the sentence is unfinished. The court found the appropriate permanency goal to be "[s]ubstitute care pending determination of termination of parental rights."

¶ 56 J. The Amended Motion To Terminate Parental Rights

¶ 57 On March 21, 2011, the State's Attorney's office filed an amended motion to terminate parental rights. The motion had three counts. Count I alleged that the parents were "unfit persons" within the meaning of section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2010)) in that they had failed to make reasonable efforts to correct the conditions that were the basis for removing C.N. and M.N. from them. Count II alleged that the parents were "unfit persons" within the meaning of section 1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West 2010)) in that, within the initial

nine months after the adjudication of neglect, they failed to make reasonable progress toward the return of the children. Count III alleged that the parents were "unfit persons" within the meaning of section 1(D)(b) (750 ILCS 50/1(D)(b) (West 2010)) in that they had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare.

¶ 58 K. The Fitness Hearing

¶ 59 On April 25, 2011, the trial court held a hearing on the issue of parental fitness. The attorneys for the parents were present at this hearing, but the parents themselves did not attend.

¶ 60 1. *Casey Huster's Testimony*

¶ 61 The State called Casey Huster, who testified that respondent had failed to complete the parenting course. According to Huster, respondent attended the classes at first, but then she stopped showing up and did not finish the course.

¶ 62 2. *Megan Cambron's Testimony*

¶ 63 The State next called Megan Cambron, the teacher of the parenting course that respondent had attended for a while. Cambron testified that the class had 10 to 15 other parents and that it lasted 8 weeks. The course consisted of a two-hour session each week, and it involved a lot of group work, videos, homework, tests, and quizzes. Classes began on December 7, 2010, and respondent attended the first four classes, but then she stopped attending. Even when she attended, respondent did not actively participate in the class; she just sat there quietly. When Cambron asked her questions, she could not answer them. She did not do the homework, either. All the quizzes and tests were read to her, but she did not understand any of the material.

¶ 64 3. *Documentary Evidence*

¶ 65 Without objection, the trial court took judicial notice of the orders it previously had

entered in the case.

¶ 66 The court also accepted the parties' stipulation that if Kohen were called to testify, his testimony would be the same as his report, which the court admitted in evidence.

¶ 67 The trial court also deemed to be admitted a request for admission of facts that the State's Attorney's office had served on respondent's attorney on March 21, 2011. The admitted facts were as follows:

> "1. You are the mother of [C.N.], born September 1, 2003, and [M.N.], born August 19, 2004.
>
> 2. You failed to appear for a scheduled appointment with the integrated assessment screener on April 19, 2010. (Home and Background report, pg. 2 & April 19, 2010 contact note authored by Casey Huster)
>
> 3. In March 2010 you resided at A Woman's Place. (Home and Background report, pg. 3)
>
> 4. After moving out of A Woman's Place you did not inform the Department of Children and Family Services (hereinafter DCFS) or Catholic Charities of your new contact information. (Home and Background report, pg. 3)
>
> 5. In April and May 2010 you resided at Restoration Urban Ministries. (Home and Background report, pg. 2-3)
>
> 6. In late May or early June 2010 you moved out of Restoration Urban Ministries and did not inform DCFS or Catholic

Charities of your new contact information. (Home and Background report, pg. 2-3)

7. From March 18, 2010 until June 1, 2010 you were offered 10 visits with [C.N. and M.N.] and you attended 2. (June 22, 2010 permanency report and June 1, 2010, July 7, 2010, and July 28, 2010, contact notes authored by Casey Huster)

8. From at least June 1, 2010 until July 26, 2010 you resided in the Chicago area. (June 22, 2010 permanency report and June 1, 2010, July 7, 2010 and July 28, 2010 contact notes authored by Casey Huster)

9. From at least September 13, 2010 until September 20, 2010 you were staying in the Chicago area. (September 22, 2010 permanency report, pg. 5-6)

10. From at least June 2010 until July 27, 2010 you did not visit with [C.N. and M.N.]. (June 1, 2010, July 7, 2010, and July 28, 2010 contact notes authored by Casey Huster and September 22, 2010 permanency report, pg. 7)

11. You did not contact Catholic Charities to schedule a visit for the week of August 2, 2010. (September 22, 2010 permanency report, pg. 7)

12. You failed to appear for a scheduled visit with [C.N. and M.N.] on September 7, 2010. (September 22, 2010 permanency

report, pg. 7)

13. You failed to appear for a scheduled visit with [C.N. and M.N.] on October 12, 2010. (October 12, 2010 contact note authored by Casey Huster)

14. You failed to appear for a scheduled visit with [C.N. and M.N.] on December 21, 2010. (February 9, 2011 permanency report, pg. 4)

15. You cancelled a visit with [C.N. and M.N.] scheduled for February 10, 2011. (February 8 & 10, 2011 contact notes authored by Casey Huster)

16. On July 27, 2010, you submitted a urine sample for drug screening which was determined to be positive for THC. (September 22, 1010 permanency report, pg. 7)

17. THC is a substance resulting from a person's use of marijuana.

18. On September 20, 2010 you admitted to Kimberly Seward that you used marijuana on September 17, 2010. (September 22, 2010 permanency report, pg. 6)

19. On July 28, 2010 you were referred to PACE for assistance with independent life skills. (September 22, 1010 permanency report, pg. 6)

20. You failed to attend a scheduled appointment at PACE on

August 2, 2010. (September 22, 1010 permanency report, pg. 6)

21. You attended only two appointments at PACE on August 13, 2010 and August 18, 2010. (September 22, 1010 permanency report, pg. 6-7)

22. You did not attend a scheduled appointment for a psychological evaluation with Dr. William Kohen on June 10, 2010.

23. On November 18, 2010, Casey Huster referred you to Catholic Charities to attend parenting classes. (February 9, 2010 permanency report, pg. 4)

24. Kimberly Seward helped you to register for educational classes at Urbana Adult Ed on August 17, 2010 to assist you in learning how to read and count. (September 22, 2010 permanency report, pg. 7)

25. Orientation for the educational classes at Urbana Adult Ed began on August 26, 2010. (September 22, 1010 permanency report, pg. 7)

26. As of September 13, 2010, you have stopped attending the educational classes at Urbana Adult Ed referenced in the two preceding paragraphs. (September 22, 1010 permanency report, pg. 5, 7)

27. You began attending GED classes on October 11, 2011 and were later dropped from the classes after you had failed to attend

several classes. (February 9, 2011 permanency report, pg. 4)

28. You failed to appear for scheduled appointments at Crosspoint Human Services in Champaign on April 21, 2010 and April 28, 2010. (August 10, 2010 contact note authored by Casey Huster)

29. Crosspoint Human Services would not allow you to make further appointments after you failed to appear for the two (2) scheduled appointments. (April 29, 2010 and April 10, 2010 contact notes by Casey Huster[])

30. As of January 20, 2010 you had an outstanding Ameren balance of $484.15. (Ameren bill dated January 20, 2011 addressed to Ella McAfee, 717 Wayne St. Unit 2, Danville, IL 61832)."

¶ 68 At the conclusion of the fitness hearing, the trial court found, by clear and convincing evidence, that both parents were "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)).

¶ 69 L. The Best-Interest Hearing

¶ 70 On June 6, 2011, the trial court held a hearing on the children's best interests. The parents were absent from this hearing, too, although their attorneys were present.

¶ 71 The trial court considered a report by CASA, a home and background report, and permanency reports from September 2010 and February 2011. According to these materials, C.N. resided in a foster home with a relative, along with his sister M.N. The children had been there since December 7, 2010. Because C.N., however, was displaying sexual behavior toward his sister, he was

going to be moved to a different foster home. He was attending first grade at Stratton Elementary School in Champaign.

¶ 72 C.N. had not visited with his mother since March 3, 2011, but he did not appear to be affected by not seeing her, and he did not mention that he wanted to visit her. He did not seem to be attached to her.

¶ 73 M.N. had resided in the foster home since December 7, 2010. She was attached to her foster parents and referred to her foster mother as "Mom." She trusted them and wanted to remain with them, and the foster mother wanted to adopt her.

¶ 74 Respondent's whereabouts were unknown. She had stopped having her disability checks sent to the office of Catholic Charities, and she had declined its help in paying her rent and other bills. She had refused to provide the agency with a phone number at which she could be reached.

¶ 75 The trial court found it was in the best interest of the children to terminate parental rights, and the court did so.

¶ 76 II. ANALYSIS

¶ 77 A. "Thwarting a Mother's Ability To Reunify With Her Child"

¶ 78 Respondent says: "In In re Interest of Overton [*sic*], 21 Ill.App.3d 1014, 1019, 316 N.E.2d 201, 205 (Ill.App. 1974), the court held that the actions of a caseworker in thwarting a mother's ability to reunify with her child were sufficient to warrant a reversal of a finding of unfitness." That is true, but in *Overton*, the caseworker's actions in "thwarting" the mother did not include communicating with her in writing and expecting her to perform tasks, and to achieve goals, relevant to parenting. Instead, when the mother in *Overton* sent a gift to her children, DCFS never

delivered the gift. *Overton*, 21 Ill. App. 3d at 1019. And when the mother wrote DCFS a letter, DCFS never responded to the letter. *Id.* And "if [the mother] did not see her children frequently enough the Department was prepared to and did file a petition alleging that [the mother] did not show reasonable interest, yet, if she insisted upon seeing her children in opposition to the feelings of her case worker, her case worker may not have recommended the return of her children." *Id.* DCFS never did anything comparable to respondent in the present case. Rather, DCFS imposed upon her requirements that were calculated to identify and remedy her deficiencies as a parent.

¶ 79 Nevertheless, respondent argues that these requirements were unfair because she suffered from a significant cognitive deficit and could not read. Even so, parenting requires some minimum level of competence. This is not to say that illiteracy automatically disqualifies a person from being a parent any more than having less than average intelligence automatically does so; but cognitive deficiencies can disqualify a person from being a parent if they prevent the person from discharging the duties of a parent. Absent a compelling state interest, due process forbids the state from infringing upon an intellectually impaired person's right to raise a family; but protecting a child's welfare is a compelling state interest (*Helvey v. Rednour*, 86 Ill. App. 3d 154, 159 (1980)), and this interest is implicated if the parent's intellectual deficits cause him or her to be an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) (*Helvey*, 86 Ill. App. 3d at 160). In short, while intellectually impaired people are not categorically disqualified from being parents, they, like any other parent, are expected to take care of their children.

¶ 80 It is in the very nature of service plans to demand something of the parent–to demand a demonstration of "fitness" or progress toward "fitness." Some parents are unable to render this

performance because they have a volitional deficiency, a cognitive deficiency, or both. These are "unfit persons." If performance were excused, service plans would be optional, and there would be no such thing as an "unfit person." But there is such a thing as an "unfit person." 750 ILCS 50/1(D) (West 2010). A parent can be unfit, for example, by failing to make "reasonable progress" toward the goal of returning the child home (750 ILCS 50/1(D)(m)(ii) (West 2010)), and a possible reason for failing to make reasonable progress is an *inability* to do so. Likewise, a parent can be unfit by failing to make "reasonable efforts" to correct the conditions that caused the child to be removed (750 ILCS 50/1(D)(m)(i) (West 2010)), and a possible cause of failing to make reasonable efforts is an *inability* to do so. We are unaware of any case holding that the concept of "unfit persons" violates due process or that it is a violation of due process to communicate in written English with an English-speaking person. We are aware of no cases holding that documents (for example, summonses) are devoid of legal effect as to illiterate people. Nor are we aware of any case holding that due process or statutory law requires DCFS to provide services to a developmentally impaired parent in the form of one-on-one instruction instead of classroom instruction. In sum, we are unconvinced by the argument that by requiring respondent to conform to objective standards applicable to all parents, DCFS "thwarted" her.

¶ 81 B. "Sanctions"

¶ 82 Illinois Supreme Court Rule 216(b) (eff. May 30, 2008) provides that if within 28 days a party fails to respond to a request for admission of facts, the factual statements in the request are deemed to be admitted. Respondent argues that this admission by operation of law is a harsh "sanction." She cites case law to the effect that "due to the drastic consequences that necessarily flow from the imposition of severe sanctions, they should only be imposed in the most extreme cases

as a last resort to enforce discovery rules." We are aware of no case holding, however, that the automatic admission of facts pursuant to Rule 216(c) is indeed a "sanction." Therefore, respondent's argument in this respect is inapplicable.

¶ 83 III. CONCLUSION

¶ 84 For the foregoing reasons, we affirm the trial court's judgment.

¶ 85 Affirmed.