

# NOTICE

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FILED

March 31, 2017

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 160809-U

NOS. 4-16-0809, 4-16-0810, 4-16-0811, 4-16-0812, 4-16-0813, 4-16-0814 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Logan County
v. (No. 4-16-0809)	)	No. 15JA11
TABETHA SKELTON,	)	
Respondent-Appellant.	)	
-----	)	
In re: D.B., a Minor,	)	No. 14JA41
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0810)	)	
TABETHA SKELTON,	)	
Respondent-Appellant.	)	
-----	)	
In re: C.S., a Minor,	)	No. 14JA40
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0811)	)	
TABETHA SKELTON,	)	
Respondent-Appellant.	)	
-----	)	
In re: K.C., a Minor,	)	No. 14JA39
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0812)	)	
TABETHA SKELTON,	)	
Respondent-Appellant.	)	
-----	)	
In re: L.C., a Minor,	)	No. 14JA38
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0813)	)	
TABETHA SKELTON,	)	
Respondent-Appellant.	)	
-----	)	
In re: N.C., a Minor,	)	No. 14JA37

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0814)	)	Honorable
TABETHA SKELTON,	)	William G. Workman,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

### ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In July 2016, the State filed petitions to terminate the parental rights of respondent, Tabetha Skelton, as to her children, J.S. (born July 17, 2015), D.B. (born January 21, 2014), C.S. (born May 28, 2012), K.C. (born October 6, 2009), L.C. (born August 4, 2008), and N.C. (born March 28, 2007). The respondent fathers are not parties to this appeal. In October 2016, the trial court found respondent unfit. In November 2016, the court determined it was in the best interest of the children to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court erred in finding her unfit and determining it was in the best interest of her children to terminate her parental rights.

¶ 4 **I. BACKGROUND**

¶ 5 **A. Initial Proceedings**

¶ 6 In October 2014, the State filed petitions for adjudication of wardship, alleging D.B., C.S., K.C., L.C., and N.C. were neglected in that their environment was injurious to their welfare as evidenced by unsafe and hazardous conditions in the home. 705 ILCS 405/2-3(1)(b) (West 2012). On December 11, 2014, the trial court entered an adjudicatory order finding C.S., K.C., L.C., and N.C. neglected. On January 8, 2015, the court entered a dispositional order finding respondent was unfit to care for C.S., K.C., L.C., and N.C., making the four children

wards of the court and placing guardianship of the four children with the Department of Children and Family Services (DCFS).

¶ 7 The case regarding D.B. tracked separately because D.B. had a different father and the trial court had to determine paternity. On February 19, 2015, the court entered an adjudicatory order finding D.B. neglected. That same day, the court entered a dispositional order finding respondent unfit to care for D.B., making D.B. a ward of the court, and placing guardianship of D.B. with DCFS.

¶ 8 Following J.S.'s July 2015 birth, the State filed a petition for adjudication of wardship, alleging J.S. was neglected in that his environment was injurious to his welfare because (1) his siblings were adjudicated neglected and remained in the care of DCFS, and (2) respondent had not made reasonable progress toward having the children returned to her care. On October 15, 2015, the trial court entered an adjudicatory order finding J.S. neglected. The following month, the court entered a dispositional order finding respondent unfit to care for J.S., making J.S. a ward of the court, and placing guardianship of J.S. with DCFS.

¶ 9 B. Termination Proceedings

¶ 10 On July 20, 2016, the State filed petitions to terminate respondent's parental rights as to all six children. As to J.S., the petition alleged respondent failed to make reasonable (1) efforts to correct the conditions that were the basis for the removal of J.S. (750 ILCS 50/1(D)(m)(i) (West Supp. 2015)); and (2) progress toward the return of J.S. within the initial nine months following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)). As to D.B., the petition alleged respondent failed to make reasonable (1) efforts to correct the conditions that were the basis for the removal of D.B. (750 ILCS 50/1(D)(m)(i) (West Supp. 2015)); (2) progress toward the return of D.B. within the initial nine months following the

adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)); and (3) progress toward the return of D.B. within the nine-month period between October 20, 2015, and July 20, 2016. *Id.* As to C.S., K.C., L.C., and N.C., the petition alleged respondent failed to make reasonable (1) efforts to correct the conditions that were the basis for the removal of the children (750 ILCS 50/1(D)(m)(i) (West Supp. 2015)); (2) progress toward the return of the children within the initial nine months following the adjudication of neglect or abuse (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)); (3) progress toward the return of the children within the nine-month period between September 11, 2015, and June 11, 2016 (*id.*); and (4) progress toward the return of the children within the nine-month period between October 20, 2015, and July 20, 2016 (*id.*).

¶ 11

#### *1. Fitness Hearing*

¶ 12

In September 2016, respondent's fitness hearing commenced and spanned two nonconsecutive days. The trial court took judicial notice of several orders and service plans. In the December 2014 adjudicatory order regarding N.C., L.C., K.C., and C.S., the court found the children's environment injurious to their welfare because the home was littered with trash and infested with cockroaches, and the children had lice and bug bites. The court likewise took judicial notice of the adjudicatory orders regarding D.B. and J.S. and permanency orders from June 4, 2015, November 5, 2015, and April 21, 2016, all of which found respondent had not made reasonable progress or reasonable efforts toward the return of the minors. Finally, the service plans summarized respondent's extensive history of environmental neglect as follows.

"[Respondent] has been indicated for this allegation on 2/11/11, 11/1/12 and 10/1/14. She had an Intact Family Case with the DCFS office out of Lincoln, [Illinois,] which opened on

11/20/12 and closed on 5/27/14. [N.C.], [L.C.], [K.C.], and [C.S.] were wards of the court from 5/23/13 – 6/3/14. [D.B.] was born into care in January 2014. The children were taken into protective custody on 10/1/14 and have been placed in traditional foster care.

The home was in deplorable conditions and not conducive for the children to reside. The home did not meet minimum parenting standards. There were roaches crawling all throughout the home. Dog feces and urine were on the floor in at least two places. One child had head lice and other children had nits. The children were dirty, including [respondent]. The kitchen had open garbage/dirty dishes."

The trial court then heard the following testimony.

¶ 13 a. Nolan Recker

¶ 14 Nolan Recker, a foster care case manager with the Center for Youth and Family Services (CYFS), testified he was assigned respondent's case in October 2014. According to Recker, he developed a service plan for respondent and referred her for parenting classes and for treatment through Tazewell County in Pekin, Illinois. Recker also facilitated visitation between respondent and her children. Recker testified he observed visits in October, November, and December 2014, and the visits were generally pleasant; however, respondent struggled to give adequate attention to each child. Respondent's case was transferred to another caseworker at Recker's request. According to Recker, he was uncomfortable working on respondent's case because she had a history of being the victim of sexual assault and she called him pet names, such as "Honey," or "Sweetie."

¶ 15

b. Jeanna Daughy

¶ 16

Jeanna Daughy testified she was a foster care case manager with CYFS and took over respondent's case in January 2015. According to Daughy, the service plans contained desired outcomes, including respondent (1) providing safe, adequate, and clean housing for the children; (2) cooperating with DCFS; and (3) seeking evaluations for treatment for any mental-health concerns. Daughy testified respondent was enrolled in group-counseling sessions through Tazwood Center for Wellness (Tazwood). According to Daughy, respondent reported missing sessions due to inclement weather and issues with her vehicle. An October 2015 evaluation rated respondent "unsatisfactory" for mental-health treatment because she had been removed from the group sessions due to a disagreement with a peer and moved to individual counseling. During the evaluation, service-plan tasks were added to address respondent's communication skills and decision-making process. An April 2016 evaluation again rated respondent "unsatisfactory" for mental-health treatment because she was discharged from Tazwood for not reporting any mental-health disorders. Thereafter, respondent requested additional counseling referrals.

¶ 17

Daughy testified respondent was required to report any changes in her household within 24 hours. Michael Block, an officer with the Logan County sheriff's office, testified, on July 13, 2015, he began an investigation into Jeffrey Galbreath's noncompliance with his sex-offender registration. During the course of that investigation, Block made contact with respondent, who reported Galbreath stayed with her for a few days. According to Block, respondent removed Galbreath from her home immediately when she learned of his sex-offender status. According to Daughy, in July 2015, she became aware Galbreath, an unregistered sex

offender, had lived with respondent. When confronted, respondent denied Galbreath was ever at her house.

¶ 18 The April 2016 evaluation rated respondent "unsatisfactory" for cooperating with DCFS due to her dishonesty about her relationship and housing situation with Christopher McBride. Daughy testified respondent requested a background check on McBride because he was going to stay with her for a short period of time. However, Daughy refused to perform a background check because respondent said McBride would not attend visits with the children. During a December 2015 announced in-home visit, Daughy observed McBride at the home cooking for the children. At that time, respondent denied a romantic relationship with McBride. In February 2016, respondent acknowledged she and McBride began dating, but she denied living with him. In April 2016, however, respondent testified at a court hearing that she and McBride were living together.

¶ 19 From January to September 2015, Daughy observed safety issues in respondent's home, including stairs without a baby gate, pieces of a broken door left out, exposed wiring, and outlets without safety covers. Daughy described problems with cleanliness, including piles of laundry in the bathroom and kids' rooms, dirt and food on the floors, and small items that were choking hazards on the floors. On one occasion, Daughy observed a candle holder full of cigarette butts in the girls' bedroom. On another occasion, K.C. was taking necklaces from a bag and putting them into a Hello Kitty tin can, which had a cigarette butt in it. From November 2015 to April 2016, Daughy testified the issues with cleanliness were consistent. According to Daughy, from May to July 2016, the issues with cleanliness were not as frequent, although there were still issues with choking hazards on the floors.

¶ 20 Daughty testified respondent had difficulty adequately supervising and disciplining the children. According to Daughty, respondent would rarely check on the older children, and Daughty observed them jumping on the top bunks of the beds and throwing D.B. onto beds. Daughty observed respondent disciplining the children if she saw something but stated respondent did not check on the children as frequently as Daughty did.

¶ 21 According to Daughty, respondent was not consistent in checking and changing diapers for J.S., D.B., and C.S. Daughty testified respondent was specifically instructed to make sure D.B. was clean and dry as much as possible because she had a methicillin-resistant staphylococcus aureus (MRSA) infection in her diaper area. Caseworkers talking to and encouraging respondent seemed to prompt her to check the diapers more frequently.

¶ 22 In March 2016, visits increased to four hours to simulate having the children full-time. Expectations of respondent changed, including having her plan and prepare meals while the children were there, helping the children get their homework done, and bathing the children. Respondent was also expected to feed J.S. baby food in addition to a bottle, but respondent failed to provide any baby food at the first extended visit. Daughty testified respondent did not always make the children do homework or ensure they were not distracted during homework time. According to Daughty, respondent also failed to immediately acquire special soap and lotion for L.C., who has eczema.

¶ 23 c. Kayla States

¶ 24 Kayla States testified she previously worked for CYFS and observed visits between respondent and her children from June to August 2015. According to States, there were issues with cleanliness in respondent's home, including small items on the floors and the toilet remaining unflushed. States also observed respondent feed the children on dirty dishes and saw



D.B. eat a banana off the floor. States testified she observed approximately 12 visits, and these issues were consistent during those visits.

¶ 25 d. Brittany Schmidt

¶ 26 Brittany Schmidt, previously employed at CYFS, testified she observed visits from January to August 2015. According to Schmidt, respondent left a cake on top of her refrigerator following a birthday celebration in March, and the cake was still there when Schmidt left CYFS at the end of July. Schmidt testified there were other cleanliness issues, including dirty floors and high chairs. Schmidt stated it would take multiple prompts to get respondent to change diapers. D.B., who was one year old at the time of these visits, would often go to other rooms by herself and play unsupervised, which concerned Schmidt.

¶ 27 e. Desire Williams

¶ 28 Desire Williams testified she was a family-support worker at CYFS and began supervising respondent's baby visits with J.S. in September 2015. In November 2015, Williams took over supervising respondent's visits with all her children. According to Williams, the children would occasionally get out of control, running around and doing whatever they wanted. Williams testified most of respondent's home was "pretty clean" but noted she had seen J.S. eating crumbs from the floor. According to Williams, there were some problems with crumbs and the children acting "wild" in September, October, and November 2015, but things improved following that period and Williams did not observe any problems in 2016. When she first began supervising visits, Williams noticed cigarette butts and reported the home smelled of cigarette smoke. However, respondent told Williams she quit smoking and the home no longer smelled of smoke.

¶ 29 Williams testified respondent had to be prompted to change diapers. As the year went on, respondent began to recognize when a diaper needed to be changed and no longer needed prompting. In March 2016, the visits lengthened to four hours. At first, respondent struggled to get the children to follow directions, keep the baby quiet, and get the children ready for bed.

¶ 30 f. Ann Bohls

¶ 31 Ann Bohls, a mental-health therapist at Tazwood, testified she provided services for respondent. Bohls identified anxiety, depression, and post-traumatic-stress disorder in respondent. Respondent reported a history of mental-health problems, including obsessive-compulsive disorder, borderline personality disorder, depression, and mania. Bohls' treatment plan included individual counseling and a community-support group. Respondent participated in those services, but she had a three-month absence due to issues with Medicaid. The community-support group was not a good fit, and Bohls and respondent agreed to discontinue those sessions. According to Bohls, respondent was actively engaged in her biweekly individual sessions and seemed invested in addressing her mental-health issues. Bohls testified respondent's treatment was discontinued in October 2015 because she reported no mental-health symptoms and Medicaid could no longer be charged for services. Bohls felt respondent completed the treatment necessary to allow her to cope, and Bohls had no active concerns about her mental health at the time services were discontinued.

¶ 32 g. Becky Beggs

¶ 33 Becky Beggs testified she worked for Lincoln Parents' Center, a birth- to age-three program that visits parents in their homes to teach a curriculum focusing on parent-child interactions, child development, and parental skill-building. According to Beggs, respondent

began the program in January 2016 and met with Beggs twice a month until May 2016. Beggs never observed respondent interact with all six children because the only child present at these visits was J.S., as the older children were ineligible for the program. Beggs testified respondent was always prepared, with a blanket on the floor and J.S. ready for the visits. According to Beggs, she did not identify any areas of concern. Beggs, a former caseworker, testified she also looked at the home to ensure it was a safe environment, and respondent's home was always clean. Respondent's ability to take care of J.S., the home environment, and the level of cleanliness caused Beggs no concern.

¶ 34 h. Jeanna Gill

¶ 35 Jeanna Gill testified she had been D.B.'s foster parent for two years and D.B. was 2 1/2 years old. According to Gill, D.B. had a MRSA infection on her right buttock, which required keeping her diaper as clean and dry as possible and using a special cream to prevent the infection from spreading. In March 2015, D.B. was hospitalized due to the infection. Gill testified she had multiple conversations with respondent regarding the infection and made clear the importance of keeping D.B.'s diapers clean and dry. According to Gill, there was a continuous problem, from the beginning and within the past year, of D.B. coming home with wet or dirty diapers after visits with respondent. From late 2015 to October 2016, D.B. would come home from visits with a dirty or wet diaper at least once a month, except for the month of May. Gill further testified D.B. would return from visits in dirty clothing, with food dried on her face, and smelling strongly of body odor and stale smoke. The trial court admitted into evidence a number of photographs depicting D.B.'s dirty and wet diapers following visits with respondent.

¶ 36 Gill testified she lived next door to respondent and could hear the children if they were playing outside. According to Gill, the street she and respondent lived on was a very busy

street with swiftly moving traffic. In June 2016, Gill was concerned due to the traffic when she saw the children playing outside in front of the house. In July 2016, the children were again playing in the front yard, and Gill looked out the window and noticed respondent and Desire Williams talking and not watching the children. Gill testified she went out to her front porch and saw D.B. running toward the road. According to Gill, she yelled at D.B. to stop running, which is when respondent noticed and walked over to take D.B.'s hand.

¶ 37 i. Tara Samples

¶ 38 Tara Samples testified she was the foster parent for C.S. and J.S. Samples estimated J.S. would return with wet or dirty diapers after one-third to one-fourth of the visits with respondent. According to Samples, C.S. has reactive airway disease, which is primarily treated with inhaler medications. Samples testified, "He uses an inhaler when he has been exposed to a large amount of cigarette smoke or if he's developed a cold or cough." Multiple times in fall 2015 and winter 2016, C.S. would have difficulty breathing at night after visits at respondent's apartment, which smelled strongly of smoke. In May 2016, respondent celebrated C.S.'s birthday with Samples at a restaurant and gave C.S. a gift, which smelled so strongly of smoke C.S. began coughing and Samples was forced to take the gift away. Respondent repeatedly told Samples she had quit smoking, but the problems persisted.

¶ 39 When C.S. first came into care, respondent told Samples he had muscular dystrophy. Respondent never told Samples C.S.'s doctor's name and, after repeated requests for that information by Samples, never mentioned muscular dystrophy again. In October 2015, respondent called Samples and reported J.S. had a high fever, but when Samples arrived, J.S.'s temperature was normal. Respondent repeatedly asked for gas drops when J.S. was fussy at visits. Respondent also called Samples multiple times to ask if J.S. was ill when he was fussy or

not going down easily for a nap. Samples testified she was concerned that respondent could not distinguish between normal fussiness and serious distress signals.

¶ 40 In fall 2015 and spring 2016, Samples testified she had concerns about the children being outside by a busy road with inadequate supervision. On occasion, Samples was concerned when respondent put J.S. in his carrier on the table when the other children were running around. According to Samples, respondent often provided clothing in the wrong sizes for the boys, including dressing 6-month-old J.S. in 18-month pajamas and, on one occasion, sending C.S. home in a pair of D.B.'s underwear.

¶ 41 j. The Trial Court's Findings

¶ 42 Following arguments, the trial court noted the conditions that led to the children being taken were deplorable, including filthy floors, food throughout the house, and piles of dirty clothing throughout the house. The court acknowledged respondent's new residence was not as deplorable as the first residence, but it noted she still had piles of clothing, dirty floors, and cigarette butts strewn about the house. The court stated it did not find Beggs' testimony contradictory. Rather, the court noted Beggs only observed the home for prescheduled meetings, and she did not inspect each and every area of the house. The court expressed its concern regarding Bohls' testimony that all of respondent's issues were addressed when respondent missed so many appointments and counseling was terminated because Medicaid could no longer be charged after respondent denied having any problems. Accordingly, the court found the State proved respondent unfit by clear and convincing evidence for failing to make reasonable (1) efforts to correct the conditions that caused the children to be removed, (2) progress to have the children returned within nine months of adjudication, and (3) progress for the return of the children within the time frames specified in the petitions for termination of parental rights.

¶ 43

## *2. Best-Interest Hearing*

¶ 44

In November 2016, the matter proceeded to a best-interest hearing. The trial court stated it would consider the best-interest report, as well as the testimony presented at the fitness hearing and the December 2014 adjudicatory hearing. The testimony at the December 2014 adjudicatory hearing established the conditions of the home at the time the children were taken into protective custody. The DCFS investigator testified the home had a pungent odor, unfinished floors, a cockroach infestation, and dog feces on the floors. The cockroaches were crawling everywhere, including on a baby seat and under the bed coverings. There were piles of dishes in the kitchen that appeared to have remained unwashed for weeks and mold in the refrigerator. The children were dirty, smelled "repugnant," and had lice and bug bites. Respondent testified she and the children were staying with friends while she tried to handle the roach problem. According to respondent, the house was in disarray because the cockroach "bomb" she set off that morning required all drawers and cabinets to be open. After the children were taken, respondent gave up on the house and eventually moved to a new apartment.

¶ 45

The best-interest report indicated respondent continued to have issues with cleanliness in the home, including garbage, coins, small toys, and cigarette butts within reach of the younger children. Respondent also continued to have issues properly cleaning the home. Throughout the case, respondent did not maintain consistent employment for longer than five months, but she was then working at Subway and training to become a manager. Respondent also continued to have issues with properly supervising all the children, ensuring diapers were changed, and meeting the needs of the children. Finally, the report indicated respondent was referred for counseling services in April 2016, and she attended 6 of 11 scheduled sessions before ceasing to attend altogether in September 2016.

¶ 46 At the best-interest hearing, Daughy testified she met with the foster parents the required minimum of once a month and, occasionally, more often. According to Daughy, N.C. and K.C. are placed with Jeanette and Anthony Kashner, who have expressed a desire to adopt the girls. N.C. and K.C. have a positive, supportive relationship with the Kashners and share a healthy bond. Both girls seek help and support from the Kashners. In particular, Daughy testified, "[K.C.] has meltdowns when she's given directions and I have observed the foster parents be very calm and supportive with her through those."

¶ 47 Daughy testified L.C. is placed with Brandy and Robert Long. According to Daughy, L.C. has a strong, supportive relationship with the Longs and seeks their support. L.C. requires extra care and attention and, in Daughy's opinion, the Longs have always been able to meet her needs. The Longs have expressed interest in adopting L.C.

¶ 48 C.S. and J.S. are placed with Tara and Matt Samples, and both boys share a very strong, healthy bond with the foster parents. C.S. asks lots of questions and, at times, is needy and requires extra comfort. According to Daughy, Tara, in particular, is able to meet those needs. J.S., a curious and playful toddler, has a natural bond with the Samples. The Samples have expressed their desire to adopt both boys.

¶ 49 D.B. is placed with Jeanna and Glen Gill, with whom she has a healthy bond. D.B. seeks the Gills' support and is an active and energetic child. According to Daughy, the Gills have been able to meet D.B.'s needs. The Gills have expressed interest in adopting D.B.

¶ 50 The trial court noted the long history of environmental neglect, beginning with reports in 2011 and 2012. The court observed the conditions that led to the 2012 case were basically identical to the conditions in the present case, where the children lived in "absolute filth" and suffered head lice infestations. Eventually, respondent brought the home up to a

standard sufficient for the court to allow the cases to be closed in May 2014. The court noted the conditions that led to the removal of the children just five months later were essentially the same, with the children infested with head lice, dog feces all over the house, and spoiled food and unwashed laundry strewn about the house. The court further expressed concern over respondent's inability to maintain her new home during the pendency of this case, noting reports of dirty clothing piled in the apartment, spoiled food, and the condition of the children after visits with respondent.

¶ 51 The trial court found, by a preponderance of the evidence, it was in the best interest of the children to terminate respondent's parental rights. The court acknowledged the children were in separate foster homes. However, the court found those placements provided the children environments in which they were thriving, doing well in school, and bonding with their foster families. The court also noted prior reports of environmental neglect in Kentucky and Peoria, Illinois, prior to the 2011 reports and the 2012 case. The court found the children deserved a sense of permanency, which could not come from being returned to respondent.

¶ 52 This appeal followed. We have docketed the appeals regarding each child as follows: J.S. (No. 4-16-0809), D.B. (No. 4-16-0810), C.S. (No. 4-16-0811), K.C. (No. 4-16-0812), L.C. (No. 4-16-0813), and N.C. (No. 4-16-0814). We have consolidated the cases for review.

## ¶ 53 II. ANALYSIS

¶ 54 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2) determining it was in the best interest of the children to terminate her parental rights. We turn first to the fitness finding.

### ¶ 55 A. Fitness Finding



¶ 56 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 57 The trial court found respondent unfit based on her failure to make reasonable (1) efforts to correct the conditions which led to the children's removal (750 ILCS 50/1(D)(m)(i) (West Supp. 2015)), (2) progress to have the children returned within nine months of adjudication (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)), and (3) progress for the return of the children within the time frames specified in the petitions for termination of parental rights (*id.*).

¶ 58 Under section 1(D)(m), a parent may be found unfit due to a failure to make either reasonable (1) efforts to correct the conditions that were the basis for the removal of the minor, or (2) progress toward the return of the child during a specified time period. 750 ILCS 50/1(D)(m)(i)-(iii) (West Supp. 2015). Each ground requires a separate analysis. *In re J.A.*, 316 Ill. App. 3d 553, 564, 736 N.E.2d 678, 687 (2000). However, "[o]nly one ground of unfitness needs to be proved by clear and convincing evidence in order to find a parent unfit." *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). We begin by discussing respondent's reasonable progress, as we find that issue dispositive. "Reasonable progress" is an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391, 757 N.E.2d 613, 615 (2001). "[I]n determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *In re J.L.*, 236 Ill. 2d 329, 341, 924 N.E.2d 961, 968 (2010).

¶ 59 We first note it appears the State used an outdated version of the statute, as section 1(D)(m)(iii), which used to provide a basis for parental unfitness based on a failure to make reasonable progress within a nine-month period following the initial nine-month period, has been eliminated. The statute has been amended to provide a basis for parental unfitness based on a failure to make reasonable progress within *any* nine-month period following adjudication. 750 ILCS 50/1(D)(m)(ii) (West Supp. 2015). Nevertheless, the nine-month period between October 20, 2015, and July 20, 2016, the State specified in the petitions related to D.B., C.S., K.C., L.C., and N.C. was a nine-month period following the initial nine-month period after the children were adjudicated neglected (D.B. was adjudicated neglected February 19, 2015, so the initial nine-month period ended October 19, 2015; C.S., K.C., L.C., and N.C. were adjudicated neglected December 11, 2014, so the initial nine-month period ended September 11, 2015). This time period also substantially overlaps the initial nine-month period following the October 15, 2015, order adjudicating J.S. neglected. Accordingly, we consider this time period in determining whether the court's finding of unfitness was against the manifest weight of the evidence.

¶ 60 During this time period, the caseworker identified three desired outcomes of respondent's service plan: (1) provide safe, adequate, and clean housing for the children; (2) cooperate with DCFS; and (3) seek treatment for mental-health concerns. During this time period, Daughy testified there were issues with the cleanliness of respondent's home, including piles of laundry, dirt and food on the floors, and small items that were choking hazards on the floors. There were also safety issues regarding uncovered outlets and exposed wiring. Daughy acknowledged the issues with cleanliness were not as frequent from May to July 2016; however, she testified there were ongoing issues with debris on the floors that posed a risk of choking.

Williams, who began supervising visits in November 2015, testified she had seen J.S. eating crumbs off the floor and had seen cigarette butts in the home. There was also a great deal of testimony regarding respondent's ability to adequately and safely supervise the children, with consistent statements about the children running wild and respondent's apparent indifference to regularly checking on the children. Multiple witnesses testified respondent failed to regularly check the youngest children's diapers and regularly sent them back to their foster homes with dirty or wet diapers. The testimony also showed respondent's indifference to D.B.'s MRSA infection and C.S.'s breathing troubles.

¶ 61 Moreover, respondent did not make reasonable progress toward the goal of cooperating with DCFS. The testimony showed respondent failed to advise DCFS as to changes in her household. Daughy testified respondent was dishonest about her relationship with McBride and stated he would not be present at visits. McBride was then observed cooking for the children at a December 2015 visit. Daughy further testified respondent denied Galbreath, a registered sex offender, was ever at her home, although respondent told Officer Block he stayed with her for a few days.

¶ 62 We acknowledge there was some testimony by Williams and Beggs that respondent's home was clean and appropriate. However, Williams also testified there were crumbs on the floor and cigarette butts in the home. Beggs only observed respondent interact with J.S. at prescheduled meetings and acknowledged she did not inspect every room in the house. Moreover, the trial court is in the best position to determine the credibility of the witnesses and the weight to give testimony. *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604.

¶ 63 Respondent contends the August 25, 2016, DCFS service plan indicated she was rated satisfactory for almost every item. However, the document respondent cites in the record is the April 15, 2015, service plan. Indeed, the record does not contain an August 25, 2016, service plan. The most recent service plan in the record (dated April 22, 2016) rated respondent as unsatisfactory for (1) keeping DCFS/CYFS informed of changes in household composition; (2) using appropriate parenting skills; (3) keeping the walls, floors, and furniture clean and free of clutter; and (4) keeping the house adequately clean. That service plan noted an increased problem with food on the floor and cigarette butts around the house.

¶ 64 Given the foregoing evidence and credibility determinations by the trial court, we cannot say the court's finding of unfitness for failure to make reasonable progress toward the return of the children was against the manifest weight of the evidence.

¶ 65 Because we have upheld the trial court's finding as to one ground of unfitness, we need not review the remaining grounds. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001) ("When multiple grounds of unfitness have been alleged, a finding that any one allegation has been proved is sufficient to sustain a parental unfitness finding.").

¶ 66 B. Best-Interest Finding

¶ 67 Respondent next asserts the trial court erred in terminating her parental rights. We disagree.

¶ 68 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minors to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minors. *Id.* The court's finding will not be

overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 69 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West Supp. 2015). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments \*\*\*[;]

\* \* \*

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

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

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West Supp. 2015).

¶ 70 Here, the children were not all together in one foster placement. Although the children were not together, each placement was stable, and the children were bonded with their foster families and thriving. According to the testimony, each child has a healthy, supportive relationship with their foster parents and the foster parents are capable of meeting the children's individual needs. These placements appear to be stable, healthy, safe, and loving. Moreover, all the foster parents have expressed their desire to adopt the children, should they become available for adoption.

¶ 71 Conversely, the trial court found respondent lacked the ability to provide stability and noted its concern that the children would end up in foster care again if the court returned them to respondent's care, as this had already happened. Given the conditions that led to the children's removal and respondent's ongoing troubles maintaining her home, we cannot say this concern is unfounded. We also note DCFS has been actively involved with this family since November 2012, with only a brief five-month reprieve between the closing of the prior case and the children being taken into protective custody in the instant case. Given the uncertainty regarding respondent's ability to provide stability in the near future and the children's opportunity for permanency in the environments in which they currently thrive, we conclude the trial court's finding that the children's best interest was served by terminating respondent's rights was not against the manifest weight of the evidence.

¶ 72 III. CONCLUSION

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

¶ 74 Affirmed.