

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 220565-U  
NOS. 4-22-0565, 4-22-0566, 4-22-0567 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 30, 2022  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re</i> J.D., A.C., and L.D., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Winnebago County
Petitioner-Appellee,	)	Nos. 16JA295
v.	)	16JA296
Ashley D.,	)	18JA315
Respondent-Appellant).	)	
	)	Honorable
	)	Mary Linn Green,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, holding the trial court's finding that the respondent mother was unfit to parent her three children was not against the manifest weight of the evidence.

¶ 2 In August 2016, the State filed neglect petitions concerning A.C. (born July 3, 2010) and J.D. (born March 26, 2013), the minor children of respondent, Ashley D. The State later filed a neglect petition concerning Ashley's child L.D. (born August 2, 2018). All three minors were adjudicated neglected, and the court entered dispositional orders finding Ashley was unfit and unable to care for them. The State subsequently filed motions for termination of parental rights as to all three minors. The court found Ashley was unfit and further found it was in the best interests of the minors to terminate her parental rights. Ashley appeals, arguing the

court's finding the State had proven her unfit to care for the children was against the manifest weight of the evidence. We affirm.

¶ 3

## I. BACKGROUND

¶ 4

On August 22, 2016, the State filed petitions alleging that J.D. and A.C. were neglected in that they were in an environment injurious to their welfare due to allegations concerning domestic violence involving Ashley and Derek D. (J.D.'s father). A.C.'s father resided in another state and did not appear during the neglect proceedings. The trial court found probable cause to believe J.D. and A.C. were neglected and ordered that they be placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 5

On November 4, 2016, Ashley and Derek stipulated that A.C. and J.D. were neglected in that they were in an environment injurious to their welfare because Ashley and Derek had a history of domestic violence and violating a no-contact order. The trial court entered an adjudicatory order finding A.C. and J.D. neglected pursuant to the stipulation. On January 10, 2017, the court entered a dispositional order finding Ashley and Derek were unfit and unable to care for A.C. and J.D., making A.C. and J.D. wards of the court, and granting custody and guardianship of A.C. and J.D. to DCFS. The court ordered Ashley and Derek to cooperate with DCFS and participate in services. The court held permanency hearings approximately every six months throughout 2017 and 2018 and maintained a permanency goal of returning the minors home within 12 months at each hearing.

¶ 6

Ashley gave birth to L.D. on August 2, 2018. Derek was L.D.'s father, and L.D. lived in Ashley and Derek's home. A few weeks later, the State filed a neglect petition concerning L.D. but elected not to proceed on the petition at that time. On January 11, 2019, following a permanency review hearing, the court found that Ashley and Derek had made

reasonable efforts and reasonable progress, and it changed the permanency goal to the children returning home within five months.

¶ 7 On March 11, 2019, the State filed an amended neglect petition alleging L.D. was neglected in that she was in an environment injurious to her welfare because: (1) L.D.'s siblings were removed from the care of Ashley and Derek due to findings of neglect and the conditions that led to their removal had not been corrected; (2) Ashley and Derek had a domestic altercation during which L.D. was present; (3) L.D. resided in a home where domestic violence was present; and (4) Ashley drove into a snowbank, passed out with the car running, and was unable to properly complete field sobriety tests while L.D. was in the vehicle and was not properly restrained in her car seat. The next day, the trial court entered an order finding there was probable cause to believe L.D. was neglected and placing her in the temporary custody of DCFS.

¶ 8 On March 14, 2019, the court held an adjudicatory hearing on the amended neglect petition concerning L.D. Pursuant to Derek's stipulation, the court found L.D. was neglected in that she was in an environment injurious to her welfare because her siblings had been removed due to findings of neglect and the conditions that led to their removal had not been corrected. The court later found, pursuant to Ashley's stipulation, L.D. was neglected pursuant to the count concerning the incident in which Ashley drove into a snowbank. The remaining counts were dismissed with the agreement that the parties would participate in services related to the dismissed counts. On May 10, 2019, the court entered an agreed dispositional order finding Ashley and Derek were unfit, unwilling, or unable to care for L.D.; making L.D. a ward of the court; and granting custody and guardianship of L.D. to DCFS.

¶ 9 On October 22, 2019, following a permanency review hearing, the trial court found Ashley and Derek had not made reasonable efforts or reasonable progress and entered an

order changing the permanency goal for all three minors to substitute care pending a court determination on termination of parental rights.

¶ 10 Six days later, the State filed motions for termination of parental rights as to all three children. The motions concerning each of the three children alleged Ashley was unfit in that she had failed to: (1) maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare and (2) protect the children from conditions within the environment injurious to their welfare. Regarding A.C. and J.D., the motions also alleged Ashley failed to (1) make reasonable efforts to correct the conditions that caused the children to be removed during a nine-month period after the adjudications of neglect and (2) failed to make reasonable progress toward their return during a nine-month period after the adjudications of neglect. The motions specified that the nine-month periods in question were from January 11, 2019, through October 11, 2019, and from January 22, 2019, through October 22, 2019. The motions also alleged that A.C.'s father and Derek were unfit.

¶ 11 On July 17, 2020, a hearing was commenced on the unfitness portion of the termination proceedings. The hearing was continued multiple times and did not conclude until approximately one and a half years later. The State called Officer Christopher Wilder as a witness. Wilder testified that, on February 20, 2019, he responded to a domestic battery call. Ashley, L.D., and a DCFS worker were at the residence when he arrived. Ashley reported that, earlier that day, she had an argument with Derek. During this incident, he threw a saltshaker at her leg, threw her phone against a wall, prevented her from leaving the house, knocked over a coffee table, and grabbed her when she tried to leave the house a second time. Ashley stated L.D. was present during the incident, and she was upset and crying.

¶ 12 Sheriff's Deputy Frank Ventre testified that, on March 8, 2019, he responded to a report regarding "a vehicle parked near a snow bank with a person passed out behind the wheel of the car." When Ventre arrived at the scene, he observed the vehicle's engine was running, the vehicle was still in "drive," and it was stopped against a snowbank. Ashley was asleep in the driver's seat, and Ventre had to yell and shake her to wake her up. According to Ventre, Ashley did not appear to understand what was happening. Ventre performed a preliminary breath test, and the results indicated Ashley had not consumed alcohol. Ventre administered two field sobriety tests to Ashley, which she did not pass. Ashley exhibited signs of intoxication, including poor balance, slurred speech, and confusion as to her whereabouts. Ventre arrested Ashley for driving under the influence of drugs (DUI). Deputies observed L.D. lying in a car seat in the back of the vehicle, but she was not restrained in the car seat.

¶ 13 Tashinah Shade, a DCFS child welfare specialist, testified in both the State's case in chief and Ashley's case in chief. Shade stated she had been assigned to the minors' case since October 2018. Shade identified an integrated assessment dated April 16, 2019, that had been prepared in connection with the instant case, and the court admitted it into evidence. Shade testified that she prepared service plans every six months, which were lists of services the parents needed to complete in order for the children to be returned. Shade identified service plans dated April 28, 2018; February 27, 2019; March 14, 2019; August 22, 2019; and October 23, 2019. The court admitted the service plans into evidence.

¶ 14 Shade testified that Ashley had completed domestic violence classes before the case was assigned to her. On February 20, 2019, an incident of domestic violence occurred between Ashley and Derek in the presence of L.D. Approximately one week later, Shade referred Ashley to a domestic violence service, and she explained to Ashley that completing this service

was necessary for the return of the children. Ashley indicated she did not want to complete the service because she had previously completed domestic violence classes. This was concerning to Shade because she believed Ashley needed to “recognize more triggers.” Ashley also told Shade at that time that she wanted to try to repair her relationship with Derek, though she believed he needed help first. Shade explained the dangers of domestic violence to Ashley every time she spoke to her, which was at least once per month. Ashley told Shade she understood, but she kept returning to the same patterns of domestic violence in her relationship with Derek. The August 2019 service plan indicated Ashley began participating in domestic violence services on July 29, 2019. She had not yet completed domestic violence services at the time the October 2019 service plan was prepared.

¶ 15           Shade testified she learned that Ashley was charged with DUI in March 2019. Shade spoke to Ashley about the incident, and Ashley said the police were lying about what happened. Ashley said she was not incoherent when the police arrived, and L.D. was “buckled in the seatbelt.” Ashley initially told Shade she had not taken drugs but later stated she had taken seven Benadryl due to allergies. Ashley did not acknowledge that this was dangerous. She said she pulled over to take a nap on the day of her arrest.

¶ 16           Shade testified that Ashley had a history of substance abuse, and she had already completed substance abuse services at the time she was arrested for DUI in February 2019. Ashley reported in March 2019 that she had relapsed by taking Xanax. She again participated in substance abuse services from April 2019 through October 2019. However, she tested positive for cocaine on October 1, 2019. When Shade told Ashley about the positive result, Ashley said Shade had “made up” the screen and told Shade never to call her again.

¶ 17 The integrated assessment that was admitted into evidence stated A.C. and J.D. had been set to return home on February 28, 2019, but this was cancelled due to an incident of violence between Ashley's father and Derek on February 19, 2019. The next day, an incident of domestic violence between Derek and Ashley occurred. Ashley had supervised visitation with her children after that. Shade testified Ashley's visitation was suspended in May 2019 after she had a verbal altercation with the case aide supervising her visitation in the presence of her children. The children were also exhibiting some problematic behaviors after visitation, and their therapist recommended that visitation be suspended until the behaviors improved. Ashley's visitation resumed in February 2020 but was suspended again in April 2020.

¶ 18 In the October 2019 service plan, Shade found Ashley was "unsatisfactory" in utilizing individual counseling to advance communication skills because she tended to yell and scream when she communicated with DCFS and other people, which showed she was not effectively using her counseling.

¶ 19 The trial court indicated that it had taken judicial notice of the prior orders entered in each of the minors' cases. The court also admitted several exhibits into evidence, including: (1) four DCFS investigation reports concerning Ashley; (2) citations issued to Ashley on March 8, 2019, for DUI and a child restraint violation; (3) documentation showing Ashley had pled guilty to DUI in the 2019 case; (4) four petitions for orders of protection filed by Derek against Ashley between 2012 and 2017; (5) three petitions for orders of protection filed by Ashley against Derek between 2012 and 2019; (6) a certificate of conviction and indictment showing that Derek was convicted of domestic battery in 2016 for an incident involving Ashley; and (7) a citation issued to Ashley for DUI in 2017. The State rested.

¶ 20 Ashley called Dr. Caroline Van Doren as a witness. Van Doren testified that she completed a psychological evaluation of Ashley in February 2020. Van Doren diagnosed Ashley with generalized anxiety disorder and a phobia of enclosed spaces and opined these conditions would not be “sufficient to prevent parenting.”

¶ 21 Natara Elliot, Ashley’s therapist, testified that Ashley was referred to her by DCFS to complete a domestic violence program. Ashley completed this program at the end of 2019 and continued seeing Elliot for individual counseling. She began making progress in therapy in early 2020. During therapy, Ashley took responsibility for the children coming into the care of DCFS due to domestic violence and substance abuse.

¶ 22 Ashley testified that she completed a parenting class in 2016 or 2017 after A.C. and J.D. were removed from her care, and she retook the class in 2019 after L.D. was removed. She also completed domestic violence services twice and participated in individual counseling. Ashley testified that she obtained an emergency order of protection against Derek after the domestic incident in February 2019, but she did not obtain a plenary order of protection. She ended her relationship with Derek after L.D. was removed from her care. Ashley stated she had not used cocaine at the time she had a positive drop in October 2019. She admitted she accused DCFS of “fixing the drop.”

¶ 23 On February 8, 2022, the trial court found the State had proven by clear and convincing evidence that Ashley was unfit under each count alleged in the three termination motions. The court also found A.C.’s father and Derek were unfit. On July 5, 2022, following a best interest hearing, the court ruled that it would be in the best interests of the three minors to terminate Ashley’s parental rights as to each of the three children. The court also found it was in



the children's best interests to terminate the parental rights of Derek and A.C.'s father. Ashley appealed the court's order.

¶ 24

## II. ANALYSIS

¶ 25 On appeal, Ashley argues that the trial court's findings that the State proved she was an unfit parent were against the manifest weight of the evidence. She does not challenge the court's best interest determinations.

¶ 26 The involuntary termination of parental rights involves a two-step process. *In re D.F.*, 201 Ill. 2d 476, 494 (2002) First, the State must show by clear and convincing evidence that a parent is unfit as defined in section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2020)). *D.F.*, 201 Ill. 2d at 494-95. "The clear and convincing standard requires proof greater than a preponderance, but not quite approaching the criminal standard of beyond a reasonable doubt." *In re D.T.*, 212 Ill. 2d 347, 362 (2004). If the trial court determines that a parent is unfit based on one or more of the grounds enumerated in section 1(D) of the Act, the court must then consider whether termination of parental rights is in the best interest of the child. *D.F.*, 201 Ill. 2d at 495. See also 705 ILCS 405/2-29(2) (West 2020).

¶ 27 We will not disturb a trial court's finding that a parent's unfitness has been proven by clear and convincing evidence unless the court's finding is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id.*

¶ 28

A. L.D.

¶ 29 Ashley argues the trial court's finding that the State proved the two grounds of unfitness alleged in its motion to terminate her parental rights as to L.D. was against the manifest

weight of the evidence. That is, Ashley contends the State failed to show by clear and convincing evidence that she either (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to L.D.'s welfare pursuant to section 1(D)(b) of the Act (750 ILCS 50/1(D)(b) (West 2020)), or (2) failed to protect L.D. from conditions within the environment injurious to her welfare pursuant to section 1(D)(g) of the Act (*id.* § 1(D)(g)).

¶ 30 We first consider whether the trial court erred in finding Ashley unfit in that she failed to protect L.D. from conditions within the environment that were injurious to her welfare pursuant to section 1(D)(g) of the Act (*id.*). “[E]vidence in support of this ground of unfitness must focus on the child’s environment and the parent’s failure to protect before removal of the child from the injurious home environment.” *In re C.W.*, 199 Ill. 2d 198, 214-15 (2002). A parent may be found unfit under this section on the same ground that formed the basis of the neglect petition. *Id.* at 219.

¶ 31 Here, the trial court’s finding that Ashley was unfit in that she failed to protect L.D. from conditions in her environment that were injurious to her welfare was not against the manifest weight of the evidence. The State presented evidence that, prior to L.D.’s removal from Ashley’s care, she was exposed to Ashley’s substance abuse and to domestic violence between Ashley and Derek. Specifically, the State presented evidence that, in March 2019, Ashley drove a vehicle after taking seven Benadryl while seven-month-old L.D. was in the vehicle and was not properly buckled into her car seat. Officers found Ashley passed out in her car while the car was still in “drive” and resting against a snowbank. When officers roused her, she was incoherent and was unable to successfully complete field sobriety tests. Ashley’s choice to drive while impaired with L.D. in the vehicle and her failure to properly secure L.D. in a car seat put L.D. at great risk of harm. The State also presented evidence that L.D. was present during an incident of domestic

violence between Derek and Ashley in February 2019. While Ashley obtained an emergency order of protection against Derek after this incident, she did not obtain a plenary order of protection.

¶ 32 The State's evidence showed that both Ashley's substance abuse and the domestic violence in her relationship with Derek were omnipresent throughout the case. At the time of the March 2019 DUI incident, Ashley had a history of substance abuse, had previously been charged with DUI in 2017, and had completed substance abuse services. The State also presented evidence that there was a long history of domestic violence in Ashley's relationship with Derek, including several prior orders of protection. Additionally, J.D. and A.C. were removed from Ashley's care due to domestic violence in her relationship with Derek.

¶ 33 Because we have found that the trial court did not err in finding Ashley unfit pursuant to section 1(D)(g) of the Act (750 ILCS 50/1(D)(g) (West 2020)), we need not consider whether the State also proved her unfit under section 1(D)(b). See *D.D.*, 196 Ill. 2d at 422 (“[P]arental rights may be terminated upon proof, by clear and convincing evidence, of a single ground for unfitness.”).

¶ 34 B. A.C. and J.D.

¶ 35 We next consider Ashley's argument that the trial court erred in finding her unfit to parent A.C. and J.D. based on the four grounds alleged in the State's motion—namely, that she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to A.C.'s and J.D.'s welfare, (2) protect them from conditions within the environment injurious to their welfare, (3) make reasonable efforts to correct the conditions that caused them to be removed during a nine-month period after the adjudications of neglect, and (4) make reasonable progress toward their return during a nine-month period after the adjudications of neglect.

¶ 36 We first address whether the trial court erred in finding the State proved Ashley was unfit in that she failed to make reasonable progress toward the return of A.C. and J.D. during either of the overlapping nine-month periods from January 11, 2019, through October 11, 2019, or from January 22, 2019, through October 22, 2019. Section 1(D)(m)(ii) of the Act provides that a ground of unfitness is the failure to “make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor.” 750 ILCS 50/1(D)(m)(ii) (West 2020). Failure to make reasonable progress “includes the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication.” *Id.*

¶ 37 “[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent.” *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006).

“[T]he benchmark for measuring a parent’s ‘progress toward the return of the child’ under section 1(D)(m) of the Adoption Act encompasses the parent’s compliance with the service plans and the court’s directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent.” *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001).

Reasonable progress requires, at a minimum, measurable or demonstrable progress toward the goal of reunification. *Daphnie E.*, 368 Ill. App. 3d at 1067. “Reasonable progress exists when the

trial court can conclude that it will be able to order the child returned to parental custody in the near future.” *Id.*

¶ 38 Here, despite Ashley’s participation in services required under the service plans, she failed to make reasonable progress toward the return of the children during either the period from January 11, 2019, through October 11, 2019, or the period from January 22, 2019, through October 22, 2019. Though she had already completed substance abuse services, Ashley was arrested for DUI on March 8, 2019. She again completed substance abuse services after her arrest, but she tested positive for cocaine on October 1, 2019.

¶ 39 At the beginning of the nine-month periods in question, Ashley had already completed domestic violence services and parenting classes. She began having extended overnight visits with J.D. and A.C. in early February 2019, and the children were set to return home later that month. However, the plan for the children to return home was cancelled following a violent incident between Ashley’s father and Derek on February 19, 2019, and an incident of domestic violence between Derek and Ashley the next day. After these violent incidents, Ashley had supervised visitation with the children. Her visitation was suspended altogether in May 2019 due to her behavior during visitation and based upon the recommendation of the children’s therapist prompted by their problematic behavior after visitation. She did not have visitation with J.D. and A.C. for the remainder of the nine-month periods in question.

¶ 40 After Ashley’s DUI arrest in March 2019, she was directed to complete parenting and domestic violence services for a second time. Ashley completed a second parenting class in August 2019. She initially resisted completing additional domestic violence services despite having been told it was necessary for the return of her children, though she eventually began

participating in domestic violence services in late July 2019. Ashley was also directed to participate in individual counseling during the nine-month periods in question. While Ashley attended counseling, she did not use the skills she learned during her sessions with DCFS employees, often becoming angry and defensive with them.

¶ 41 Based on the foregoing evidence, the trial court's finding that Ashley did not make reasonable progress toward the return home of her children during the nine-month periods in question was not against the manifest weight of the evidence. Ashley actually regressed during the nine-month periods in terms of having her children returned due to her continued substance abuse and failure to incorporate into her life what she had been taught during her services and counseling.

¶ 42 Because we have found that the trial court did not err in finding Ashley unfit pursuant to section 1(D)(m)(ii) of the Act (750 ILCS 50/1(D)(m)(ii) (West 2020)), we need not consider whether the State also proved the remaining allegations of unfitness as to A.C. and J.D. See *D.D.*, 196 Ill. 2d at 422.

## 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment.

¶ 45 Affirmed.