2022 IL App (4th) 220067-U

NO. 4-22-0067

FILED
June 21, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re K.L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Henry County
Petitioner-Appellee,	)	No. 19JA6
v.	)	
Michelle C.,	)	Honorable
Respondent-Appellant).	)	Terence M. Patton,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The reviewing court lacked jurisdiction to consider respondent's claims of error as to the adjudicatory hearing and order;

(2) Respondent mother failed to demonstrate plain error where (a) the trial court did not dismiss the proceedings under the Juvenile Court Act after the entry of an order in family law proceedings, (b) termination of respondent's parental rights was not unconstitutional, and (c) the trial court did not grant respondent continuances in her absence;

(3) The trial court did not err in finding respondent mother unfit;

(4) The trial court did not err in finding the termination of respondent mother's parental rights to be in the minor's best interest; and

(5) Respondent did not receive ineffective assistance of counsel.

¶ 2 In January 2022, the trial court entered an order terminating the parental rights of respondent mother, Michelle C., to her child, K.L. (born April 21, 2015). Respondent appeals the order, arguing various claims of error on the part of the court and counsel. The State contends

(1) this court does not have jurisdiction to consider some of respondent's claims on appeal, (2) some of respondent's claims are forfeited, and (3) the remaining claims were not error. We agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Adjudicatory Proceedings

¶ 5 On January 14, 2019, the State filed a petition for adjudication of wardship, which was later amended. In the amended petition, the State alleged the minor's environment was injurious to her welfare (705 ILCS 405/4-3(1)(b) (West 2018)) due, in part, to respondent and the minor's father, Bryan L., failing to comply with the terms of a safety plan. The court appointed attorneys for Bryan and respondent.

¶ 6 On April 16, 2019, the trial court held an adjudicatory hearing. Bryan's counsel informed the court he was stipulating to the facts in the petition. Respondent inquired, "I was just wondering what that means." The court stated, "That means he's going to stipulate to the facts so there won't be any further hearing." The court then admonished Bryan regarding his stipulation. The State presented the following factual basis:

> "A safety plan was instituted in August of 2018 involving [K.L.] and [respondent] and [Bryan]. Since then, [K.L.] was placed with *** paternal aunt. Visits are supervised by maternal grandmother. And [Bryan] and [respondent] have been recommended to do certain services with the Youth—the Center for Youth and Family Solutions. They have not done any of those. There have also been several drug tests that have been positive, with the last admitted use *** December 27, 2018."

The court additionally took judicial notice of Bryan's guilty plea to domestic battery (720 ILCS 5/12-3.2(a) (West 2018)) in Henry County case No. 19-CM-03.

¶ 7 Based on Bryan's stipulation, the trial court adjudicated K.L. neglected and granted temporary custody to the Department of Children and Family Services (DCFS). Respondent did not object during the proceedings. Respondent's counsel informed the court respondent would not be present at a hearing on May 8, 2019, as she would be in inpatient treatment for at least 28 days. Respondent agreed to waive her presence at the dispositional hearing if she were still in inpatient treatment.

¶ 8 The same day, the court entered a written adjudicatory order. The portion of the adjudicatory order detailing how the minor was neglected is whited out and illegible.

¶ 9 B. Permanency Proceedings

¶ 10 On May 8, 2019, the trial court held a dispositional hearing, and respondent was present. Bryan was present in the custody of the Henry County jail. The court set a permanency goal of return home within 12 months. The same day, the court entered a written dispositional order reflecting the permanency goal.

¶ 11 On November 13, 2019, the trial court held a permanency review hearing. Respondent was present. Bryan was in the Department of Corrections. The State presented the following review for respondent:

> "[I]n terms of this permanency review, it appears that there has been some positives and some negatives in terms of *** mom's progress. She's currently not participating in any services and has failed for perform [*sic*] some drug drops. But has participated in most of her visits. And has begun to miss appointments with

> [Treatment Alternatives for Safe Communities] as well as probation. So I see there being some complication.
>
> But at least at this point she is at least visiting with the child. *** however, at this time the State would remain that the goal of return home, at least momentarily, the goal remain."

Respondent argued she had made "serious efforts" to address substance abuse issues and concurred with the permanency goal remaining unchanged. The court ordered the goal remain return home within 12 months.

¶ 12 On May 13, 2020, the trial court entered a permanency order without a hearing, due to the ongoing COVID-19 pandemic. The permanency goal remained return home within 12 months. The court explained its decision was due to "mom's lack of progress in drug treatment and dad's incarceration," finding neither respondent nor Bryan had made reasonable and substantial progress or reasonable efforts toward returning the minor home.

¶ 13 On November 18, 2020, the court held a permanency review hearing. Respondent was not present for the hearing. Her counsel explained respondent had planned on being present for the hearing but has no independent means of transportation. The court noted, in the past, respondent had called the clerk's office when she could not find transportation. No call was received. The following colloquy occurred:

> "THE COURT: *** Are you making a motion to continue, Mr. Paulson?
>
> MR. PAULSON [(RESPONDENT'S COUNSEL)]: No, Your Honor. I believe that mother would substantially agree with the findings in the report, as far as her efforts and the goal. And also in agreement with the goal.

> THE COURT: I don't believe there is good cause, in any event, because she knows how to call and let us know she has ride problems. She was offered a ride and told to call if she needed it, and she didn't reach out. So we're going to go ahead and proceed with the permanency review."

After the hearing, the court found Bryan had made reasonable efforts and reasonable and substantial progress, though noted most of his progress was while he was in custody. The court found respondent had not made reasonable efforts or reasonable and substantial progress, even taking into account transportation problems. The permanency goal remained return home within 12 months. It was later noted respondent arrived late to the hearing.

¶ 14 On May 12, 2021, the court held another permanency hearing. Respondent was not present, and her counsel did not know her location. The State indicated respondent was supposed to turn herself in to the Henry County jail. Respondent's counsel moved to continue the hearing. The trial court denied the continuance, stating:

> "I don't find good cause for a continuance, because she didn't show up for jail. So that makes it, I think, less likely she is going to show up now. Because I'm sure she knows that if she shows up, she is going to go to jail. *** [W]e can't keep holding up court just because she is not here."

Based on the permanency report, the State recommended K.L. be returned to Bryan but the case be left open in case of "further issues." Bryan's counsel and respondent's counsel argued for the case to be closed with K.L.'s return to her father's care. The court found Bryan fit, returned K.L. to his care, and discharged DCFS as guardian. As for the status of the case, the court stated:

> "My concern is, as soon as I [close the case], mom has just as much legal rights to this child as [Bryan] does. *** So my concern is protection of the minor

from the mother, who, as of right now, in my opinion, remains unfit, because of her drug issues. So I agree that this is something that could be taken care of in [a family law] case, because a—if mother ever does get her addiction under control, then it's possible that she could still have a relationship with the child. But that's a big if.

So unless I know that there's some order in [a family law] case protecting the child by giving the parenting time and parenting decision making to [Bryan], I don't believe it's in the child's best interest to just dismiss this case. ***

I am going to keep this case open. And if the State wished to proceed to termination, they can. *** And [Bryan], you will proceed to file [a family law] case. And we can go from there. ***

But something like that is going to have to happen before I feel comfortable in that it is in the child's best interest to discharge the child as ward. We have got to have some safety mechanism in place one way or another."

¶ 15 C. Family Law Order

¶ 16 On September 2, 2021, the trial court entered an order in Henry County case No. 21-F-44 (1) finding respondent in default, (2) awarding Bryan sole decision-making authority for K.L., (3) awarding Bryan majority parenting time, and (4) awarding respondent limited supervised parenting time.

¶ 17 D. Termination Proceedings

¶ 18 Also on September 2, 2021, the State filed a motion to terminate the parental rights of respondent. In its motion, the State alleged respondent was an unfit parent as she (1) abandoned the minor (750 ILCS 50/1(D)(a) (West 2020)); (2) failed to maintain a reasonable

degree of interest, concern, or responsibility as to the minor's welfare (*id.* § 1(D)(b)); (3) deserted the minor for more than three months (*id.* § 1(D)(c)); (4) failed to make reasonable efforts to correct the conditions that were the basis for removal of the minor during a nine-month period following the adjudication as neglected, namely May 9, 2019, to February 9, 2020, February 10, 2020, to November 10, 2020, and November 11, 2020, to August 11, 2021 (*id.* § 1(D)(m)(i)); and (5) failed to make reasonable progress toward the return of the minor to her care within a nine-month period following the adjudication as neglected, namely May 9, 2019, to February 9, 2020, February 10, 2020, to November 10, 2020, and November 11, 2020, to August 11, 2021 (*id.* § 1(D)(m)(ii)).

¶ 19 On September 8, 2021, the trial court held a permanency hearing. The trial court noted the default judgment entered in Henry County case No. 21-F-44. Respondent was not present at the hearing, and her counsel did not know her location. Counsel did not request a continuance.

¶ 20 Respondent's counsel objected to the petition for termination, arguing "the purpose of the *** juvenile case is complete and I don't think there's any reason to eliminate a parent completely from the child's life in this case." The guardian *ad litem* responded:

> "I disagree with [respondent's counsel]. The point of the Juvenile Court Act is, we have to resolve any issues that we find with a parent once the case is opened. We have resolved those with dad. But with mom, the resolution is termination. She is not participating, she is not doing anything. She has not made progress. That's not producing the *** child's parent, that's ensuring that should something happen to Bryan, the father, while we're in the middle of a global pandemic, that if he were to die suddenly for any reason, that we don't have a

> situation where we go back and the child goes to [respondent] and all those sorts of things.
>
> Instead, if we terminate her rights, then the child would be—again, if something happened to [Bryan], it would be governed by a different set of standards that would place the child in a much better position. And we could do that now. We have the evidence to do that now. And [respondent] was aware this was a potential outcome from day one. The Court admonished them on day one when she was here. So the [juvenile adjudication] court exists to terminate one parent's parental rights, even if the other one is fit, to ensure we are providing the children are safe."

The trial court agreed with the guardian *ad litem.* The court determined it was appropriate to proceed on the motion for termination of respondent's parental rights.

¶ 21 1. *The Fitness Hearing*

¶ 22 On October 19, 2021, the trial court held respondent's fitness hearing. Respondent appeared in the custody of the Henry County jail.

¶ 23 Bryan testified he currently had custody of K.L. and has had continuous custody since May 2021. During this period, respondent did not visit with K.L. According to Bryan, the last visit respondent had with K.L. was in April 2021. Respondent knows Bryan's address but has not sent any notes, cards, or gifts to K.L. Bryan stated he had not had any contact with respondent, nor received messages respondent was trying to reach him, although respondent could reach him through his sister and has done so in the past. On cross-examination, Bryan admitted he was imprisoned from 2019 to November 2020. Bryan also agreed, when he was in a

relationship with respondent, they used methamphetamine together and their arguments would become physical. Bryan had not seen respondent since he was released from prison.

¶ 24 Diana Bledsoe, a child welfare specialist with Lutheran Social Services, testified she was assigned as the caseworker in K.L.'s case in August 2021. Bledsoe testified she had never spoken with respondent as the phone number on file with Lutheran Social Services was not working. Bledsoe also testified respondent never contacted her to provide information. Bledsoe testified respondent was required to complete substance abuse treatment, mental health treatment, and parenting education classes as part of her service plan. Respondent was also required to give random drug drops. Respondent had not provided any record of successful completion of substance abuse treatment beyond her initial inpatient stay in 2020, mental health treatment, or parenting classes. Bledsoe testified, based on respondent's participation in services, K.L. could not safely be returned to her care.

¶ 25 Respondent testified K.L. had not been in her care for nearly four years. Respondent agreed she understood the requirements of her service plan. Respondent confirmed she did not successfully complete outpatient or aftercare substance abuse treatment. Respondent confirmed she never provided verification she completed parenting classes. The last drug drop she completed was in August 2020. Respondent testified she completed mental health treatment and has been seeing a doctor since 2019. When asked if she had provided verification to her caseworker as to her mental health treatment, respondent stated she had "not met the new case worker." Respondent testified she called Lutheran Social Services "many times" and left voicemail messages but could not reach anyone to provide her new phone number. Since April, respondent had not visited K.L. As to whether she made any effort to visit K.L., respondent testified,

> "Yes, a couple times. I was told that I was not allowed to talk to [K.L.], it had been too many days. I tried contacting her through Messenger through her aunt. I was told I couldn't have her father's phone number. I was told I couldn't contact him because I took his baby away for 18 months while he went to prison. I was in prison too. With her in my backyard, I was told not to contact her more than one day a week. After five days a week, I was able to Facetime her. I have had case workers I don't even know, they quit a week or two through Covid. Covid screwed everything up. I tried to contact my baby. I don't even know this Diana [Bledsoe]."

Respondent also denied avoiding contact with Lutheran Social Services. Respondent complained of extensive issues with her caseworkers, including receiving incorrect information. Respondent also claimed she did not receive notice of court hearings on May 12, 2021, or September 8, 2021, but agreed she did not stay in touch with her counsel. She denied avoiding court to prevent her arrest. Respondent testified she had difficulty finding transportation for drug drops in Galesburg. According to respondent, the last time she had methamphetamines in her system was approximately two months before the fitness hearing.

¶ 26 The trial court found respondent had not completed services and provided verification of completion, as required. The court acknowledged respondent completed a 28-day inpatient treatment for substance abuse and mental health in 2020, but the court also noted respondent did not follow through with aftercare. The court also acknowledged respondent's problems with finding transportation. However, as to respondent's lack of contact with Lutheran Social Services, the court found respondent lacked credibility. Similarly, the court found respondent lacked credibility when she testified she did not receive notice of court hearings.

Respondent was in custody on a charge for failing to report to jail on April 26, 2021, and the court noted "that is also approximately the time frame where [respondent] appears to have dropped off the map and disappeared." The court therefore found it to be a reasonable inference respondent was not "staying in touch with anyone" because she was aware she was going to be "in trouble" for not turning herself in to the county jail.

¶ 27 The court found respondent unfit for (1) failure to make reasonable efforts for the periods of February 10, 2020, to November 10, 2020, and November 11, 2020, to August 11, 2021, and (2) failure to make reasonable and substantial progress for the periods of May 9, 2019, to February 9, 2020, February 10, 2020, to November 10, 2020, and November 11, 2020, to August 1, 2021. The court stated, "we're really no closer to [returning K.L.] than we were a couple of years ago, because none of the treatment has been successfully completed from the mental health and parenting classes."

¶ 28 2. *The Best-Interest Hearing*

¶ 29 On January 21, 2022, the trial court held the best-interest hearing.

¶ 30 Diana Bledsoe testified K.L. was presently residing with Bryan and she has visited the home a couple times. Bledsoe testified K.L.'s needs were being met. The house was clean, and K.L. had her own room. K.L. was involved in various activities including Girl Scouts, tumbling, and swimming. K.L. was doing well in school. Bledsoe testified K.L. "seems very happy there" and she "does well with her dad." There was a bond between K.L. and Bryan, and she is "very happy when she talks to him." K.L. had no "issues or any complaints." K.L. had not had any contact with respondent, and Bledsoe had not heard from respondent since the fitness hearing. Bledsoe testified, "She had not contacted me and when I talked to [Bryan], she hadn't contact him, either." Bledsoe believed respondent was residing with her mother. Bledsoe

testified she believed Bryan could provide permanency for K.L. Bledsoe agreed she would have "concerns" for the health and stability of K.L. if she were placed in respondent's care.

¶ 31 Bryan testified he and K.L. lived with his fiancée and her three children. K.L. got along "really well" with his fiancée and treated his fiancée's children, who were teenagers, like siblings. He worked as a mechanic and had sufficient income to meet K.L.'s needs. K.L. was in first grade, and Bryan described her as "top of her class" and stated she "likes going to school." He helps K.L. with school activities and homework. K.L. visits with Bryan's extended family. K.L. had adjusted well returning to Bryan's care. Bryan testified, since K.L. was returned to his care, respondent had not seen K.L., had not contacted him in an effort to see K.L., and had sent one letter a week prior to the last court date. Respondent had contacted Bryan's sister "a couple times." Bryan testified K.L. had never expressed anything about respondent to him. On cross-examination, Bryan stated he did not know what respondent contacted his sister about and, per court order, respondent was not allowed to have his phone number. Bryan stated, "I don't want nothing to do with [respondent]."

¶ 32 Respondent testified, as to substance abuse treatment, she completed inpatient treatment and attempted living in a recovery home but it "didn't work out." She's had several mental health evaluations and talks to her counselor "quite frequently." Describing her relationship with K.L., respondent stated, "We were as close as you can be for only having weekly visits, but I would talk on the phone with her daily." Respondent testified she "got in trouble" and "was told not to call every day anymore." Respondent stated she was able to talk to K.L. on the phone recently, just before Christmas, when K.L. was at her paternal grandmother's house. Respondent was told she was not allowed to talk to K.L. "because [K.L.] said something to her dad and she told me she misses me, loves me, and she lost some teeth." Respondent

complained of issues with caseworkers from Lutheran Social Services and a lack of contact. Respondent stated she felt she was "going to be in additional treatment for the rest of [her] life" because "[i]t's something you deal with daily." She stated she has maintained sobriety since her release from county jail. Respondent had several phone interviews about possible jobs. Respondent stated it was in K.L.'s best interest for her to retain parental rights because "she needs her mom" and "[s]he was so excited to talk to me." She agreed recovery was a lifelong process, and she is continuing to address her issues. On cross-examination, she admitted she did not show up for her sentence in April 2021, but she stated she did not turn herself in because of a domestic dispute. Respondent admitted she was not currently receiving treatment for her bipolar disorder other than seeing her counselor.

¶ 33 The court determined it was in the best interest of the minor to terminate respondent's parental rights. In particular, the court noted the need for permanence and a sense of security. The court explained,

> "This child needs permanence. This child needs to know who [her] parent or parents is going to be. This child has spent enough time wondering where is Mom? Is she going to come visit me or is she on the run hiding from the cops again? Am I ever going to go back and live with Mom? Is Mom ever going to get her substance abuse issues and mental health issues under control?
>
> *** Mom has given years to do this. Now it's time to focus on the child and I find that the State has proven by a preponderance of the evidence that it is in the best interest of the minor to terminate the mother's parental rights."

The court dismissed K.L. as a ward of the court.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 On appeal, respondent argues (1) the trial court erred at adjudication by (a) finding the minor neglected and (b) failing to make a written factual determination of the factual basis in support of neglect; (2) the trial court erred in not dismissing the case after the family law order was entered in Henry County case No. 20-F-44; (3) the termination of respondent's parental rights was unconstitutional; (4) the trial court erred in failing to grant continuances in respondent's absence; (5) the trial court's finding respondent was unfit was against the manifest weight of the evidence; (6) the trial court's finding it was in the best interest of K.L. to terminate respondent's parental rights was against the manifest weight of the evidence; and (7) she received ineffective assistance of counsel where counsel (a) "failed to address the early issues of the case," (b) failed to challenge the finding of neglect, (c) failed to move to continue in respondent's absence, (d) failed to raise respondent's constitutional claim, and (e) failed to argue respondent made "reasonable efforts and substantial progress."

¶ 37 A. Adjudication of Neglect and Written Factual Findings

¶ 38 Respondent challenges the adjudication of neglect from April 16, 2019, both on its merits and for the trial court's failure to enter a written finding of fact supporting the adjudication of neglect.

¶ 39 This court lacks jurisdiction over the neglect findings. The dispositional order on the challenged neglect finding was entered in April 2019. This is a final and appealable order. See *In re Leona W.*, 228 Ill. 2d 439, 456, 888 N.E.2d 72, 81 (2008). To challenge those findings, notice of appeal must have been filed within 30 days of the order's entry. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017); R. 660(b) (eff. Oct. 1, 2001). The notice of appeal was filed January

21, 2022. We have no jurisdiction over the neglect findings. See *In re C.S. Jr.*, 294 Ill. App. 3d 780, 785-87, 691 N.E.2d 161, 164-65 (1998).

¶ 40 Respondent argues denying relief "solely on [a] jurisdictional basis" would "deny her a remedy for a previous injustice" and, citing *Droen v. Wechsler*, 271 Ill. App. 3d 332, 336, 648 N.E.2d 981, 985 (1995), argues "cases should be decided on their merits and not procedural technicalities." Jurisdiction is not a "procedural technicality." See Black's Law Dictionary (11th ed. 2019) (defining jurisdiction as "[a] court's power to decide a case or issue a decree").

¶ 41 B. Plain-Error Review

¶ 42 Respondent contends (1) the trial court's failure to dismiss the case after Bryan obtained a family law order violated her right to due process, (2) the termination of her parental rights was unconstitutional, and (3) the trial court erred by failing to grant continuances in her absence. Respondent acknowledges she has forfeited these arguments on appeal because she did not raise these issues before the trial court. However, she contends we should consider her claims under the plain-error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 43 In criminal cases, forfeited claims may be reviewed under the plain-error doctrine "where a clear and obvious error occurred" and (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Belknap*, 2014 IL 117094, ¶ 48, 23 N.E.3d 325. The plain-error doctrine can be applied in abuse and neglect cases. *In re Andrea D.*, 342 Ill. App. 3d 233, 242, 794 N.E.2d 1043, 1050-51 (2003). "The first step of plain-error review is to determine whether

error occurred," and "[t]he burden of persuasion rests with the defendant." *People v. Curry*, 2013 IL App (4th) 120724, ¶ 62, 990 N.E.2d 1269.

¶ 44 1. *Dismissal of Case After Family Law Order Entered*

¶ 45 Respondent argues the trial court indicated it would dismiss this case if the father obtained a family law order, yet after Bryan obtained the family law order granting him sole decision-making authority and the majority of custody, the trial court declined to dismiss this proceeding. Respondent contends her due process rights were implicated because the State elected to "double down" and terminate respondent's parental rights where the trial court had made an agreement the family law order would allow this case to be dismissed. Respondent cites to *People v. Stapinski*, 2015 IL 118278, 40 N.E.3d 15. In *Stapinksi*, the Illinois Supreme Court found the defendant's due process rights were violated where the defendant relied upon a nonprosecution agreement he made with police and incriminated himself, which the State used against the defendant in criminal proceedings. *Id.* ¶ 55.

¶ 46 However, in this case, the trial court, the State, and respondent made no such agreement on which respondent relied. In declining to dismiss the case before Bryan commenced family law proceedings, the trial court stated, "[S]omething like [a family law order] is going to have to happen before I feel comfortable in that it is in the child's best interest to discharge the child as ward. We have got to have some safety mechanism in place one way or another." The court expressed its hesitance K.L. was sufficiently protected without safety mechanisms in place, but it did not state a family law order would resolve those concerns absolutely. The court encouraged Bryan to file a family law case in connection with custody of K.L. and informed the State it could proceed with termination as it saw fit. In the trial court's words, "we can go from there." The process did move forward, and in light of the argument made by of the guardian

ad litem, the court determined K.L. was not sufficiently protected by the order entered in the family law proceeding to justify closing this case.

¶ 47 In this case, there was no agreement upon which to allege a due process violation. Therefore, respondent's due process rights were not violated by the trial court's decision to keep the case open. As we find there was no error, there cannot be plain error. See *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 103, 411 (2007).

¶ 48 2. *Constitutionality of Termination of Parental Rights*

¶ 49 Respondent argues the termination of her parental rights was not narrowly tailored to protecting the minor's welfare, and thus unconstitutional as applied to her. We note respondent also states, "A facial constitutional challenge may be made at any time." Respondent is correct. However, as her challenge is based upon the specific facts and circumstances of her case in arguing the termination of her parental rights is unconstitutional, her challenge is an as-applied challenge. See *People v. Thompson*, 2015 IL 118151, ¶ 36, 43 N.E.3d 984 ("An as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party.").

¶ 50 The Supreme Court has long held "a parent's right to control the upbringing of his or her children is a fundamental constitutional right." *In re R.C.*, 195 Ill. 2d 291, 303-04, 745 N.E.2d 1233, 1241 (2001) (citing *Troxel v. Granville*, 530 U.S. 57, 77 (2000)). Under a strict scrutiny analysis, the reviewing court determines whether "the measures employed by the legislature [are] necessary to serve a compelling state interest, and [are] narrowly tailored thereto, *i.e.*, the legislature must use the least restrictive means consistent with the attainment of its goal." *In re D.W.*, 214 Ill. 2d 289, 310, 827 N.E.2d 466, 481 (2005). Respondent does not

dispute that the State has a compelling interest in protecting the welfare of children in general. *R.C.*, 195 Ill. 2d at 305.

¶ 51 Respondent contends, "The one-size remedy of the Juvenile Court Act provides for termination and termination alone, without allowing any sort of ensured interaction or specialized outcome." Respondent argues, therefore, the State must not "default" to termination of parental rights. See *id.* at 308 ("[I]t is apparent that termination of parental rights should not be the default option in proceedings under the Adoption Act in which a parent contests an allegation of unfitness.").

¶ 52 It is clear here the State did not "default" to termination. Respondent was subject to an initial safety plan as early as August 2018, and the State did not move to terminate respondent's parental rights until September 2021, three years later. As Bryan demonstrated, parents who complete their service plan objectives can have a child returned to their care. Further, respondent could have demonstrated reasonable and substantial progress throughout the case, and in light of respondent's progress, the State could have elected to forgo a motion for termination of respondent's parental rights, assuming the order in the family law case would have been sufficient protection for K.L. The State electing to file a petition for termination based on respondent's lack of reasonable and substantial progress does not demonstrate a "default" to termination proceedings but rather a necessary step to protect the child after respondent was provided significant opportunity to resolve the case in other ways.

¶ 53 We find no constitutional violation. Without a clear and obvious error, there can be no plain error. See *Piatkowski*, 225 Ill. 2d at 565.

¶ 54 3. *Continuances*

¶ 55 Respondent next argues the trial court erred by not granting continuances when respondent was absent from hearings on November 18, 2020, May 12, 2021, and September 8, 2021. We first note respondent's counsel did not request continuances at the November 18, 2020, or September 8, 2021, hearings. The court cannot have erred in failing to grant a continuance counsel never requested. Therefore, there cannot be plain error as to those dates.

¶ 56 As to the May 12, 2021, hearing, counsel requested a continuance on respondent's behalf, noting at the November 18, 2020, hearing, respondent arrived later than the assigned time but did arrive. The court denied the continuance, finding no good cause.

¶ 57 A respondent parent does not have an absolute right to a continuance. *In re S.W.*, 2015 IL App (3d) 140981, ¶ 31, 33 N.E.3d 861. Instead, continuances should only be granted where good cause is shown. Ill. S. Ct. R. 901(c) (eff. July 1, 2018). The decision to grant or deny a motion for a continuance is left to the sound discretion of the trial court. *S.W.*, 2015 IL App (3d) 140981, ¶ 31. On review, this court will not reverse a trial court's decision denying a motion for a continuance unless the respondent parent can demonstrate no reasonable person would agree with the court's decision. *In re M.P.*, 408 Ill. App. 3d 1070, 1073, 945 N.E.2d 1197, 1200 (2011). Further, "the denial of a request for a continuance is not a ground for reversal unless the complaining party has been prejudiced by the denial." *In re A.F.*, 2012 IL App (2d) 111079, ¶ 36, 969 N.E.2d 877.

¶ 58 Here, respondent had failed to turn herself in to the county jail and her appearance for the hearing would have resulted in her arrest. It was within the trial court's sound discretion to assume respondent was absent from the hearing to avoid arrest. It was not an abuse of discretion for the court to find avoiding arrest was not good cause for a continuance.

¶ 59 Further, respondent cannot show she was prejudiced. The trial court considered the permanency report and determined respondent had not made reasonable efforts or reasonable and substantial progress towards the return of K.L. The court found respondent failed to complete services and failed to maintain contact with Lutheran Social Services. No later evidence disputed these findings.

¶ 60 As the trial court did not err in denying respondent's motion for a continuance, there was no plain error. *Piatkowski*, 225 Ill. 2d at 565.

¶ 61 C. Unfitness Finding

¶ 62 Respondent asserts the trial court's finding she was an unfit parent is against the manifest weight of the evidence.

¶ 63 In a proceeding to terminate parental rights, the State must prove parental unfitness by clear and convincing evidence. *In re N.G.*, 2018 IL 121939, ¶ 28, 115 N.E.3d 102. A trial court's finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* ¶ 29. A finding is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Id.*

¶ 64 The trial court found respondent was an unfit parent as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2020)). Section 1(D)(m)(ii) states a parent will be considered an "unfit person" if he or she fails to "make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected."

¶ 65 "Reasonable progress" has been defined as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001). This is an objective standard. *In re F.P.*, 2014 IL App (4th) 140360,

¶ 88, 19 N.E.3d 227. The benchmark for measuring a parent's progress toward reunification "encompasses the parent's compliance with the service plans and the court's directives, in light of the conditions 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." *C.N.*, 196 Ill. 2d at 216-17. Reasonable progress exists when the trial court can conclude it will be able to order the child returned to parental custody in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 66 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Id.*

¶ 67 In this case, the relevant time period was November 11, 2020, to August 1, 2021. During that period, as respondent admitted during the fitness hearing, she did not successfully complete substance abuse treatment and did not successfully complete parenting classes. Respondent also agreed during her testimony she was aware of these requirements as part of her service plan. Although respondent testified she was receiving mental health counselling, Bledsoe testified, as a part of the service plan, respondent was required to verify successful completion of treatments. Other than her completion of inpatient treatment in January 2020, prior to the relevant time period, respondent did not provide any verification of successful completion of treatment in relation to the requirements of her service plan. Based on respondent's lack of participation in services, Bledsoe testified K.L. could not be safely returned to her care. Given

this evidence, we find the trial court's unfitness finding based on respondent's failure to make reasonable progress is not against the manifest weight of the evidence.

¶ 68 As only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other grounds for the court's unfitness finding. See *In re Z.M.*, 2019 IL App (3d) 180424, ¶ 70, 131 N.E.3d 1122.

¶ 69 D. Best-Interest Finding

¶ 70 Respondent asserts the trial court's finding it was in the minor's best interest to terminate her parental rights is against the manifest weight of the evidence.

¶ 71 Upon a finding of parental unfitness, the proceedings move to a best interest hearing. At the best-interest hearing, the trial court's focus shifts to the child's interest in securing "a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). When a best-interest decision must be made, the court shall consider factors listed in section 1-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2020)). These factors include the child's physical safety and welfare, the development of the child's identity, the child's background and ties, the child's sense of attachments including the sense of security, familiarity, and continuity of affection, the child's wishes and long-term goals, and the preferences of those available to care for the child. *Id.* A parent's wishes to continue the relationship with the child yields to the child's interests. *D.T.*, 212 Ill. 2d at 364.

¶ 72 The trial court may terminate parental rights only upon finding the State proved, by a preponderance of the evidence, the termination of those rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb a best-interest determination unless it is against the manifest weight of the evidence. *Id.* A best-interest determination is against the manifest weight of the evidence only if it is clearly

evident the State failed to carry its burden of proof or, in other words, if the finding is "unreasonable, arbitrary, or not based on the evidence presented." (Internal quotation marks omitted.) *In re J.H.*, 2020 IL App (4th) 200150, ¶ 85, 162 N.E.3d 454.

¶ 73 Based on the evidence presented, we find the trial court's best-interest determination was not against the manifest weight of the evidence. Respondent argues the statutory factors were irrelevant because K.L. was already in Bryan's care. We disagree. A trial court must consider "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." (Emphasis added.) 705 ILCS 405/1-3(4.05) (West 2020). The evidence demonstrated respondent could not offer K.L. permanence because she had unresolved mental health and substance abuse issues. Moreover, the record shows respondent had very limited contact with K.L. and was a destabilizing presence in K.L.'s life. In further explanation of its decision, the court stated the following:

> "This child needs to know who [her] parent or parents is going to be. This child has spent enough time wondering where is Mom? Is she going to come visit me or is she on the run hiding from the cops again? Am I ever going to go back and live with Mom? Is Mom ever going to get her substance abuse issues and mental health issues under control?"

The court's decision it was in K.L.'s best interest to terminate respondent's parental rights was not unreasonable, arbitrary, or contrary to the manifest weight of the evidence.

¶ 74 E. Ineffective Assistance of Counsel

¶ 75 Under section 1-5(1) of the Juvenile Court Act (705 ILCS 405/1-5(1) (West 2020)), minors and their parents in juvenile proceedings have the right to effective assistance of

counsel. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 12, 990 N.E.2d 175. Even though this right is statutory rather than constitutional, Illinois courts gauge the effectiveness of counsel in juvenile proceedings by applying the constitutional standard from criminal law, specifically, the standard in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Ch. W.*, 399 Ill. App. 3d 825, 828, 927 N.E.2d 872, 875 (2010). Under *Strickland*, a party alleging ineffective assistance must prove two propositions: (1) "counsel's representation fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 669), and (2) there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (*id.* at 694). A defendant must satisfy both prongs of the *Strickland* test. *People v. Evans*, 186 Ill. 2d 83, 94, 708 N.E.2d 1158, 1164 (1999). "However, if the ineffective-assistance claim can be disposed of on the ground that the defendant did not suffer prejudice, a court need not decide whether counsel's performance was constitutionally deficient." *Id.*

¶ 76 When, as in this case, the trial court never addressed the claim of ineffective assistance, we decide *de novo* whether the respondent has proved less than reasonable representation and resulting prejudice. See *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24, 42 N.E.2d 885.

¶ 77 Respondent claims ineffective assistance of counsel of multiple grounds, which we will discuss in turn.

¶ 78 1. *Adjudicatory Proceedings*

¶ 79 Respondent argues counsel was ineffective for failing to "address the early issues in the case." Specifically, respondent argues counsel failed to object when the trial court accepted the stipulation at the adjudicatory hearing and, alternatively, failed to file a notice of

appeal from the adjudicatory proceedings. Respondent also argues counsel was ineffective for failing to challenge the trial court's finding of neglect.

¶ 80 As discussed above, we lack jurisdiction over arguments pertaining to alleged errors in the adjudicatory process. "Even where a respondent alleges that she received ineffective assistance of counsel during the adjudicatory phase of the proceedings, we categorically lack jurisdiction to entertain such an argument in an appeal from an order terminating parental rights." *In re Ja. P.*, 2021 IL App (2d) 210257, ¶ 24.

¶ 81 Further, Illinois Supreme Court Rule 303(b)(2) (eff. Jan. 1, 2015) mandates a notice of appeal "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." This court acquires jurisdiction over the judgments specified in the notice of appeal and lacks jurisdiction over any matter or judgment not so specified. *Diocese of Quincy v. Episcopal Church*, 2014 IL App (4th) 130901, ¶ 35, 14 N.E.3d 1245. Here, respondent specified in her notice of appeal only the order entered January 21, 2022, which, as respondent attached to her petition, was the order terminating her parental rights. Respondent did not assert error regarding the now challenged adjudicatory order. We categorically lack jurisdiction to consider whether trial counsel was ineffective for failing to file a notice of appeal to an adjudicatory order in an appeal from an order terminating parental rights. See, *e.g.*, *In re J.J.*, 316 Ill. App. 3d 817, 825-26, 737 N.E.2d 1080, 1087 (2000); *In re S.D.*, 213 Ill. App. 3d 284, 289, 571 N.E.2d 1162, 1065-66 (1991).

¶ 82 2. *Continuances*

¶ 83 Respondent next argues she received ineffective assistance of counsel where counsel failed to request continuances when she was absent from permanency review hearings. Much like the trial court's denial of the motion to continue on May 12, 2021, defendant was not

prejudiced by counsel's failure to request continuances on November 18, 2020, or September 8, 2021. The evidence presented at those hearings, and at later hearings during which respondent was present, demonstrated during the relevant time period, respondent had made no reasonable efforts or reasonable progress towards the return of K.L. Respondent's presence would not have changed this evidence.

¶ 84 Respondent argues she was prejudiced because her absence "reinforced the court's concern with [respondent] failing to appear." However, a continuance would not alter respondent's failure to appear as required at those hearings. The court would still be able to take into consideration respondent's repeated absence as "part of the problem," even if she did appear in court at a later date.

¶ 85 As respondent cannot demonstrate prejudice from counsel's failure to request continuances, we reject respondent's claim counsel was ineffective. See *Evans*, 186 Ill. 2d at 94.

¶ 86 3. *Constitutional Claim*

¶ 87 Respondent next argues counsel was ineffective for failing to raise her claim the termination of her parental rights was unconstitutional. As discussed above, this claim was without merit. Therefore, respondent was not prejudiced by trial counsel's failure to preserve a meritless claim. *Id.*

¶ 88 4. *Reasonable Efforts and Substantial Progress*

¶ 89 Finally, respondent argues she received ineffective assistance of counsel where counsel failed to argue respondent made reasonable efforts and substantial progress at three permanency hearings—November 18, 2020; May 12, 2021; and September 8, 2021. Respondent argues she was prejudiced because counsel's failure to argue she had made reasonable efforts

and reasonable and substantial progress "led to the continual court findings of lack of appropriate progress."

¶ 90 As discussed above, respondent had not made progress in completing the requirements of her service plan after her inpatient treatment in January 2020. Respondent had not been in contact with her attorney and was absent from the relevant hearings. Regardless of any argument counsel could have made, respondent was not prejudiced where the evidence demonstrated she had clearly made no reasonable progress towards reunification with K.L. Respondent does not explain what arguments counsel could have made to demonstrate she had made reasonable efforts or reasonable progress, and we can find none. Therefore, respondent cannot demonstrate prejudice for failing to argue reasonable efforts or reasonable and substantial progress at the referenced permanency hearings. We reject respondent's claim counsel was ineffective. See *id.*

¶ 91 III. CONCLUSION

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

¶ 93 Affirmed.