

NOTICE

Decision filed 06/09/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2022 IL App (5th) 220020-U

NOS. 5-22-0020, 5-22-0021, 5-22-0022 cons.

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> H.K., E.K., and O.K., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Clinton County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 19-JA-43, 19-JA-44, and
)	20-JA-5
)	
Kayla P.,)	Honorable
)	Ericka A. Sanders,
Respondent-Appellant).)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Wharton and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court terminating the respondent's parental rights is affirmed where the circuit court's finding that the respondent was unfit for failure to make reasonable progress towards the goal of the children returning home within the relevant nine-month periods is not against the manifest weight of the evidence.

¶ 2 The respondent, Kayla P., appeals the circuit court of Clinton County's September 9, 2021, order finding her unfit as a parent and December 17, 2021, order finding it in the best interests of the respondent's biological minor children, H.K., E.K., and O.K., to terminate the respondent's parental rights. The respondent raises one issue on appeal, and that is whether the State met its burden to prove that the respondent is unfit. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 This case began with the filing, on December 20, 2019, of, *inter alia*, petitions for adjudication of wardship, following the removal of H.K., who was born in mid-November of 2016, and E.K., who was born in early June of 2015, due to allegations of neglect. The petitions alleged that H.K. and E.K. were neglected because of the respondent's history of drug abuse, including recent use of methamphetamine while pregnant, use of cocaine, and a recent positive test for opiates. In addition, the petitions alleged that despite receiving intact family services at the time, the respondent left the family residence because of a reported bedbug infestation and failed to inform the caseworker of her whereabouts from December 4, 2019, through December 11, 2019.

¶ 5 On December 20, 2019, a shelter care hearing was held regarding H.K. and E.K. A Department of Children and Family Services (DCFS) intact caseworker testified at both hearings. The same day, the circuit court entered orders granting DCFS temporary custody of H.K. and E.K. In late January 2020, the respondent's youngest child, O.K., was born. Prior to leaving the hospital, O.K. was taken into DCFS protective custody as a result of O.K.'s meconium testing positive for opiates. A petition for adjudication of wardship for O.K. was filed on January 28, 2020, due to allegations of neglect stemming from respondent's substance abuse. Following a shelter care hearing, the circuit court entered an order granting DCFS temporary custody of O.K.

¶ 6 An initial DCFS Family Service Plan (service plan) was prepared which included recommendations to address the safety concerns that led to H.K., E.K., and O.K. being removed from the respondent's care. The action steps the initial service plan required of the respondent were to: (1) complete an integrated assessment, (2) cooperate with DCFS, and (3) obtain a substance abuse evaluation.

¶ 7 On April 16, 2020, an amended petition for adjudication of wardship was filed regarding each child. The amended petitions contained an additional allegation of neglect stating that respondent gave birth to a child (O.K.) in late January 2020 and the child's meconium tested positive for opiates at delivery. On May 21, 2020, the circuit court held an adjudicatory hearing. During the hearing, the respondent admitted the amended petitions and agreed to custody and guardianship being awarded to DCFS. On June 1, 2020, a dispositional order was entered making all three children wards of the court.

¶ 8 On June 9, 2020, a subsequent service plan was prepared. This service plan recommended the respondent do the following: (1) participate in an integrated assessment, (2) cooperate with DCFS, (3) complete a substance abuse evaluation, (4) complete a mental health evaluation, (5) take parenting classes, (6) complete a domestic violence counseling evaluation, and (7) maintain adequate and appropriate housing.

¶ 9 A permanency hearing was held on August 27, 2020, and the circuit court found the permanency goal of return home within 12 months was in the children's best interests. Following the permanency hearing conducted on December 3, 2020, the goal of return home remained in place. The permanency order entered on June 10, 2021, found the appropriate permanency goal was "substitute care pending determination of termination of parental rights."

¶ 10 On June 25, 2021, the State filed petitions for termination of parental rights and for appointment of a guardian with power to consent to the adoption of H.K., E.K., and O.K. The petitions alleged that the respondent is an unfit person to have children based on the following: (1) abandonment of the children; (2) failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; (3) desertion of the children for more than three months next preceding the commencement of these proceedings; (4) failure to protect the children

from conditions within their environment injurious to their welfare; and (5) failure to make reasonable progress towards the return of the children during any nine-month period following the adjudication of the neglected minors. On the same day, the State filed a notice of the nine-month periods relied upon for the petitions to terminate parental rights specifying the relevant periods for the respondent's failure to make reasonable efforts and/or progress were between June 1, 2020, to March 1, 2021, and September 25, 2020, to June 25, 2021.

¶ 11 The cases proceeded to a consolidated fitness hearing on September 9, 2021, where the following evidence was submitted. Kaylyn Lynch of Caritas Family Solutions, a contractor of DCFS, was the only witness to testify on behalf of the State. She testified that she was the foster care caseworker assigned since the placement case opened on December 30, 2019. She testified as to the basis for the children's removal from the home, which was substance misuse and abuse.

¶ 12 Lynch then testified regarding the respondent's service plans, which were admitted into evidence without objection. Lynch testified that since the respondent's cases began as failed intact cases an integrated assessor/screener was not assigned. As such, Lynch took over that role to complete an assessment, review it with her supervisor, and reflect the assessment in a service plan.

¶ 13 Lynch testified regarding all the service plans she prepared. Lynch offered the following testimony regarding the service plan she prepared on June 9, 2020. In the June 2020 service plan, respondent was asked to: (1) participate in an integrated assessment, (2) cooperate with DCFS, (3) complete a substance abuse evaluation, (4) complete a mental health evaluation, (5) take parenting classes, (6) complete a domestic violence counseling evaluation, and (7) maintain adequate and appropriate housing. The respondent was evaluated on her progress with the June 2020 service plan. She had participated in the integrated assessment and was rated as satisfactory. Her housing was also satisfactory. The respondent was found to be cooperating with DCFS. She

was engaged in a mental illness and substance abuse counseling program; however, she was still rated as unsatisfactory for substance abuse as she had not ceased substance use. The respondent was rated unsatisfactory for parenting classes and domestic violence counseling as she had not yet engaged in these services.

¶ 14 The next service plan was prepared on December 15, 2020, and contained the same recommended services as the June 2020 service plan. At this time, respondent was satisfactory in her integrated assessment, but she was rated as unsatisfactory for all other recommendations. The respondent was rated unsatisfactory due to a substance abuse relapse. The respondent had multiple instances of substance abuse during this time confirmed by positive drug tests. She was also rated unsatisfactory as she stopped attending the mental illness and substance abuse group counseling. Housing was also unsatisfactory at this point. She was rated unsatisfactory for domestic violence as she had not engaged in counseling. The respondent was rated unsatisfactory for cooperation as she did not stay in consistent contact with the caseworker, and she discontinued her services. The respondent had participated in parenting classes, although she did not demonstrate what was taught to her in her visits with the children, so she was still rated as unsatisfactory. Specifically, during the visits with the children, the respondent needed to take breaks to compose herself. The respondent did not enforce safety rules, nor was she able to handle situations when the young children would have tantrums.

¶ 15 The next service plan was prepared on June 21, 2021. Again, she was rated as satisfactory for the integrated assessment; however, she was rated as unsatisfactory for all other elements of the service plan. The respondent was unsatisfactory as to substance use as she admitted use and did not complete drug tests. The respondent failed to reengage in the substance abuse and mental health group in which she initially participated. The respondent completed the domestic violence

assessment but failed to complete the recommendations resulting in her unsuccessful discharge from the domestic violence service. A domestic violence event occurred in the home in January 2021. The respondent did not report the event to law enforcement or the caseworker. The respondent received a certificate for completing parenting courses; however, she was rated as unsatisfactory due to the inconsistency of her visits with her children and the ongoing struggles she faced when she did visit. During visits, respondent fell asleep because she was under the influence of prescription drugs that she admitted to misusing. A critical decision was made on March 30, 2021, to end parent-child visits and contact due to the negative effects the respondent's visits were having on E.K. Housing was also unsatisfactory as respondent was evicted in June 2021. She then moved to a motel in a different city for approximately three weeks. Next, she moved to yet another city to live with her father. She did not inform the caseworker of these moves when they occurred.

¶ 16 Overall, respondent was rated as unsatisfactory for every service plan within the relevant nine-month periods. The respondent completed her integrated assessment and parenting classes; she did not complete any other recommendations.

¶ 17 The respondent then testified on her own behalf. She testified that she completed parenting classes. She testified that she had “almost finished” the domestic violence services, but she had not kept the caseworker informed of this progress. The respondent admitted that prior to her visitation being terminated that the visits “weren’t going as well because I wasn’t there when I was suppose[d] to be. And then when I was there, I didn’t step up and be a mom like I was suppose[d] to *** I’m not used to the whole—they’re right, I’m not used to raising three kids on my own and it’s going to take some time.” The respondent testified that she felt the caseworker was not there to help her. She stated that she was unaware of transportation services that could have benefited

her. She further testified that the caseworker “knew about my transportation issues. That was my biggest issue along with the drug use.” The respondent testified that the caseworker herself had offered twice to provide transportation to respondent. Additionally, the respondent testified that she was now off drugs.

¶ 18 Following the presentation of evidence and argument, the circuit court found the respondent unfit because she failed to make reasonable progress towards the goal of returning home during the nine-month periods identified in the petition. The best interest hearing was held on December 16, 2021. Following the hearing, the circuit court found it was in the best interests of H.K., E.K., and O.K. that the respondent’s parental rights be terminated. On December 17, 2021, the circuit court entered an order terminating the respondent’s parental rights and finding the appropriate permanency goal was adoption. On January 11, 2022, the respondent filed a notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 On appeal, the respondent urges this court to reverse the circuit court’s finding that she is an unfit parent and terminating her parental rights. The State argues that the respondent has forfeited her arguments regarding the fitness hearing because she failed to raise the issue in the lower court prior to filing her appeal. The State asserts that the respondent failed to object at the fitness hearing to the admission of the service plans as evidence, object to the testimony regarding the service plans from caseworker Kaylyn Lynch, failed to cross-examine Lynch, and did not file any posttrial motion to afford the trial court the opportunity to address the respondent’s claims. We agree with the State that by failing to raise the issues regarding the finding of fitness in the lower court, the respondent has forfeited review of those issues. See *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 28; *In re J.J.*, 201 Ill. 2d 236, 248 (2002). However, while the principle of

forfeiture is binding on the parties, it does not limit this court's jurisdiction. *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 948 (2010). Therefore, despite the forfeiture, we choose to address the respondent's argument that the circuit court's finding that she is unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)) by failing to make reasonable progress was against the manifest weight of the evidence.

¶ 21 Termination of parental rights proceedings are governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2020)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2020)). *In re D.T.*, 212 Ill. 2d 347, 352 (2004). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2020). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2020)). 705 ILCS 405/2-29(2), (4) (West 2020); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). If the court finds that the parent is unfit, the matter proceeds to a second hearing, at which the State must prove that termination of parental rights is in the best interests of the child. 705 ILCS 405/2-29(2) (West 2020); *D.T.*, 212 Ill. 2d at 352. Accordingly, we turn to the circuit court's finding that the respondent was unfit.

¶ 22 Our courts have recognized that parental rights and responsibilities are of deep importance and should not be terminated lightly. *D.T.*, 212 Ill. 2d at 364. Thus, parental rights may be terminated only after a finding of unfitness that is supported by clear and convincing evidence. *Id.* A finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* The circuit court's

finding of unfitness is given great deference because it has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). This court, therefore, does not reweigh the evidence or reassess the credibility of the witnesses. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). Each case concerning parental fitness is unique and must be decided on the particular facts and circumstances presented. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). In addition, because each of the statutory grounds of unfitness is independent, the trial court's finding may be affirmed where the evidence supports a finding of unfitness as to any one of the alleged grounds. *In re C.W.*, 199 Ill. 2d 198, 217 (2002).

¶ 23 Section 1(D)(m) of the Adoption Act contains two separate grounds, either of which may uphold a finding of unfitness. Subsection (i) deals with a parent's failure to make reasonable efforts to correct the conditions that were the basis for the removal of the child, and subsection (ii) deals with a parent's failure to make reasonable progress toward the return of the child during any nine-month period following the adjudication of the child as neglected or abused. A parent's failure to substantially fulfill their obligations under a service plan and correct the conditions that brought the child into care is considered failure to make reasonable progress toward the return of the child to the parent. 750 ILCS 50/1(D)(m) (West 2020). Here, the circuit court found the respondent was unfit based on her failure to make reasonable progress toward the return of H.K., E.K., and O.K. during the nine-month periods of June 1, 2020, to March 1, 2021, and September 25, 2020, to June 25, 2021.

¶ 24 Reasonable progress is judged by an objective standard based on the amount of progress measured from the conditions existing at the time custody was taken from the parent. *Daphnie E.*, 368 Ill. App. 3d at 1067. At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification, and reasonable progress exists when the circuit court

can conclude that it will be able to order the child returned to parental custody in the near future. However, a parent does not have an unlimited amount of time to make reasonable efforts or progress toward the return home of her children. *In re Grant M.*, 307 Ill. App. 3d 865, 871 (1999).

¶ 25 Here, the evidence presented at the fitness hearing supported a finding that the respondent did not make reasonable progress during the nine-month periods at issue. The respondent urges us to consider that no testimony was provided at trial demonstrating that referrals were made for the services recommended, and thus, asks us to conclude that necessary services were not offered to her. However, while Lynch may have not directly stated during her testimony that she “referred” the respondent to the recommended services, it is apparent based upon the testimony and service plans, which were entered into evidence during Lynch’s testimony, that these referrals occurred. At least initially following the removal of the children, the respondent participated in each of the recommended services set forth in her service plan. The evaluation completed on June 8, 2020, found that the respondent completed the integrated assessment and was cooperating with DCFS. She was also evaluated for mental health and substance abuse issues and was participating in a mental illness and substance abuse group that addressed each of these areas. She enrolled in and was taking parenting classes. She completed her evaluation for domestic violence counseling in June 2020 and was scheduled for her first domestic violence counseling session on June 15, 2020.

¶ 26 Unfortunately, the respondent’s efforts and progress did not continue. The service plan prepared on December 15, 2020, noted that the respondent stopped participating in services in late June 2020 and that she had yet to reengage in services. The respondent admitted to drug use in July, August, and September of 2020. She discontinued her substance abuse and mental health services when she relapsed on methamphetamine and opiates in July 2020. The respondent admitted in December 2020 that her home was no longer safe for the children to be returned to and

that the home would need to be cleaned up before the children could be returned home. Additionally, the respondent was at risk of eviction for having a dog in the home. Six months after the initial evaluation, the respondent had not yet begun the domestic violence counseling that was recommended, and the respondent had not completed her parenting classes as she stopped attending them.

¶ 27 As indicated in the June 21, 2021, service plan, the respondent was not cooperating with drug screens and had admitted to drug use. Further, the respondent admitted that she had attended visits with the young children while under the influence of drugs, which resulted in her falling asleep. The respondent had not reengaged with the mental illness and substance abuse counseling she began more than a year earlier. The respondent no longer had appropriate and adequate housing as she was evicted from her home in Breese. Following the eviction, the respondent lived in a motel in Marion for approximately three weeks. The respondent next moved to her father's home in Mt. Vernon. However, that housing situation was not an appropriate placement for the young children as there was a history of sexual abuse committed against the respondent by her father when she was a child. The respondent was in a domestic violence situation in January 2021 that she failed to report to law enforcement and her caseworker. She was unsuccessfully discharged from domestic violence treatment services in June 2021 for nonparticipation.

¶ 28 Considering that we must affirm if we find evidence to support the circuit court's finding that the respondent failed to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect (see *C.W.*, 199 Ill. 2d at 217), after reviewing the record, we cannot say that an opposite conclusion is clearly apparent. We find the circuit court's determination that the respondent is unfit because she failed to make reasonable

progress toward the return of H.K., E.K., and O.K. in the nine-month periods alleged is not against the manifest weight of the evidence and is affirmed.

¶ 29 Lastly, we again note that the respondent does not challenge the circuit court's finding that it was in the children's best interests that her parental rights be terminated, and so that finding is also affirmed. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not argued are forfeited).

¶ 30 **III. CONCLUSION**

¶ 31 For the foregoing reasons, the December 17, 2021, judgment of the circuit court of Clinton County, that terminated the respondent's parental rights as to H.K., E.K., and O.K., is hereby affirmed.

¶ 32 Affirmed.