NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120296-U

Filed 8/22/12

NO. 4-12-0296

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.T., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 09JA66
BYRONNISE CLARK,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding respondent mother was an unfit parent due to failure to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of her minor child; failure to make reasonable progress toward the return of the minor within nine months after adjudication of neglect; and failure to make reasonable progress toward the return of the minor within any nine-month period after the initial nine-month period after the adjudication of neglect, namely December 14, 2010, to September 14, 2011, was not against the manifest weight of the evidence. Termination of mother's parental rights was also not against the manifest weight of the evidence.

¶ 2 In October 2009, the State filed a petition for adjudication of wardship of A.T. (born January 10, 2007), the minor child of respondent, Byronnise Clark, and Mario Turner. In February 2010, the trial court found the minor neglected by both parents and, in March 2010, placed custody of the minor in the Illinois Department of Children and Family Services (DCFS).

¶ 3 In September 2011, the State filed a petition to terminate respondent's and

Turner's parental rights to the minor. In February 2012, the trial court found respondent to be unfit on several grounds and later terminated her parental rights in March 2012. Respondent appeals both the finding of unfitness and the termination of her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 26, 2009, Urbana police responded to a report of a home invasion and shots fired at respondent's home. The offender had fled the scene and no one was hurt. Respondent was present but there were conflicting reports on whether A.T. was present. Her whereabouts at the time of the incident were not verified. Police arrested Turner for this offense and respondent obtained an order of protection against Turner after this incident. The family was referred to Catholic Charities for an intact family case on September 9, 2009. Prior to officially opening the case, respondent informed DCFS she did not wish to participate in services. The case was never opened.

¶ 6 On October 21, 2009, the State filed a petition for adjudication of wardship, alleging A.T. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West Supp. 2009)) in that, when she resided with respondent, respondent failed to correct the conditions which resulted in a prior adjudication of parental unfitness in regard to the minor's half-sibling and failed to protect A.T. from risk of physical harm. Further, the State alleged A.T. was a neglected minor under section 2-3(1)(b) of the Act in that, when she resided with respondent and/or Turner, A.T.'s environment exposed her to risk of physical harm and to domestic violence. On February 17, 2010, the trial court found A.T. was neglected. The court did not hold a shelter care hearing, and A.T. remained in respondent's home.

¶ 7 On March 29, 2010, the trial court held a dispositional hearing and ordered custody and guardianship of A.T. removed from respondent and Turner and placed with DCFS. Respondent appealed the neglect finding and removal of A.T. from her custody and guardianship. This court affirmed both of the trial court's decisions. *In re A.T.*, No. 4-10-0258 (Aug. 10, 2010) (unpublished order under Supreme Court Rule 23).

¶ 8 The dispositional order required respondent to cooperate with DCFS and Court Appointed Special Advocates (CASA), find employment, attend counseling and parenting classes, refrain from drugs and alcohol, and participate in drug screens and refrain from all criminal activity. On June 24, 2010, DCFS filed a permanency report with the trial court in preparation for the upcoming permanency review hearing. The report noted respondent (1) failed to obtain employment DCFS could verify, (2) had an active warrant for her arrest for failure to appear in court for driving on a suspended license, (3) was arrested for retail theft, and (4) had pending charges of driving on a revoked license. Although respondent completed parenting classes and impact classes, she had yet to start individual counseling or domestic violence classes. Respondent failed to comply with drug screening. She failed to call in to see if she needed to do a drug screen on 23 of 35 days in May and June 2010 and failed to do screens on five dates in May and June that she was required to do.

¶ 9 At the June 29, 2010, permanency review hearing, the trial court found respondent failed to make reasonable and substantial progress toward returning A.T. home and failed to make reasonable efforts toward her return. Respondent was at that time a resident of the Champaign County jail.

¶ 10 By the time of the December 8, 2010, permanency report, respondent was living

in her own home but still unemployed. The report indicated she had a prior misdemeanor theft charge for which she was required to complete 20 hours of community service and had not done so. She told the author of the report she completed five hours of service at the Times Center but, upon investigation by the author, the Times Center had no record of respondent completing any service hours there. Respondent just started options classes in late November 2010. Additionally, respondent did not show for required drug drops six times between July 2010 and October 2010. She missed 3 of 11 individual counseling sessions between July and November 2010. At the permanency review hearing held December 13, 2010, the trial court found respondent failed to make reasonable and substantial progress toward returning A.T. home and failed to make reasonable efforts toward her return.

¶ 11 DCFS prepared another permanency review report on March 1, 2011. The report indicated defendant's drug drop tested positive for opiates on December 30, 2010. Respondent was attending individual counseling and options domestic violence classes. She had an appropriate home and was employed. On March 8, 2011, the trial court found respondent had made reasonable progress and reasonable efforts towards A.T.'s return home.

¶ 12 On June 20, 2011, the trial court held a permanency review hearing. The report prepared for the hearing indicated respondent had an appropriate home, was employed, and had completed the options domestic violence classes. She was still attending individual counseling sessions. She missed only one drug screen and the results of one drug test, on May 19, 2011, were still pending. The trial court again found respondent had made reasonable progress and reasonable efforts towards A.T.'s return home.

¶ 13 The September 13, 2011, permanency report indicated the May 19 drug screen

had tested positive for codeine and morphine. Further, respondent failed to complete drug screens on June 9 and 15 and August 25 and 30. Police arrested respondent on September 3, 2011, for resisting a police officer. She was with Turner at the time of the arrest and he was found to possess marijuana. Respondent did not report the arrest to her caseworker. She was to discuss the arrest at her counseling session but she did not attend the session. She also missed other counseling sessions during the reporting period. Respondent maintained her residence but was no longer employed.

¶ 14 On September 19, 2011, the State filed a petition to terminate the parental rights of respondent and Turner. Also on that date, at the scheduled permanency review hearing, the trial court found respondent failed to make reasonable and substantial progress and efforts towards the return home of A.T. The motion to terminate alleged respondent was unfit because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) failed to make reasonable progress toward the return of the minor to her within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (3) failed to make reasonable progress toward the return of the minor during any nine-month period after the end of the initial nine-month period following the adjudication of neglect, specifically December 14, 2010, to September 14, 2011(750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 15 At a February 7, 2012, termination hearing, the trial court took judicial notice of respondent's prior convictions, which included three felonies and two misdemeanors, as well as the court's prior orders in this case. The State presented the testimony of Champaign County sheriff's deputy Norman Meeker. Deputy Meeker testified he responded to a late-night call at a

Motel 6 in Urbana on September 3, 2011. Meeker found respondent dancing to loud music in the motel parking lot with a male, later identified as Turner. After telling respondent and Turner to turn off the music and leave, respondent cursed and yelled at Meeker. He told the two if they did not leave, they would be arrested. Respondent continued cursing at Meeker. He told Turner to take respondent inside or she would be arrested. Respondent told Meeker to arrest her and cursed at him again. Meeker then arrested respondent. Meeker testified at the time of her arrest, respondent was under the influence of alcohol to the point she did not act with ordinary care. Turner was also arrested and found to have marijuana in his pocket.

¶ 16 Respondent also testified at the hearing. Respondent admitted she did not complete individual counseling due to a "misunderstanding" with the counselor. She did not testify concerning her arrest by Meeker as the charges were still pending. However, the permanency review report of September 13, 2011, considered by the trial court, stated respondent told the caseworker Deputy Meeker was disrespectful and yelling and "cussing" at her and Turner. She admitted Meeker told her to go inside but she did not do so. Respondent stated she asked Meeker for his name and he would not provide it. She told him she wanted to make a complaint as he was disrespectful and then he told her she was under arrest. Respondent stated Turner had given her a ride to the motel to visit her cousin visiting from out of state and she was not in a relationship with Turner. The court found respondent to be unfit on all grounds alleged by the State.

¶ 17 On March 6, 2012, the trial court held the best interest hearing. Respondent did not appear. The State presented its evidence by way of the best interest report prepared by Catholic Charities. The minor had been in the same foster home throughout this case with her

maternal grandmother, who also cared for a half sibling, respondent's older daughter, whom she had adopted after respondent's parental rights were terminated. A.T. had bonded with her foster mother who was willing to adopt her and provide a permanent home for her. A.T. was doing well in preschool and in her placement. Respondent had failed to cooperate with service providers since October of 2011. As she had throughout the case, she continued to have successful and happy visits with A.T. who looked forward to seeing respondent. Respondent did not appear at the hearing and her attorney did not present on her behalf.

¶ 18 The trial court found it was in the best interests of the minor that respondent's parental rights be terminated. The court noted the fact respondent was not present for the hearing "spoke volumes." This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 Respondent appeals both the finding of unfitness and the termination of her parental rights. A trial court's finding of unfitness in a termination of parental rights case will not be reversed unless it is against the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114, 762 N.E.2d 701, 705 (2002). Once a court has found a parent to be unfit, whether that parent's rights should be terminated is determined by the best interests of the child, and that decision also will not be reversed unless it is against the manifest weight of the evidence. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259-60, 810 N.E.2d 108, 125 (2004).

¶ 21 A. Unfitness

¶ 22 When reviewing a finding of unfitness, great deference is afforded the trial court, given its far superior opportunity to view and evaluate the witnesses and their testimony. *In re D.L.W.*, 226 Ill. App. 3d 805, 811, 589 N.E.2d 970, 974 (1992). In this case, the trial court found

respondent to be unfit on three different grounds. Only one ground of unfitness need be proved to find a parent unfit. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 23 A parent is unfit if she fails to make reasonable progress toward the return of the minor to her within nine months or in any subsequent nine-month period after an adjudication of neglect or abuse in violation of sections 1(D)(m)(ii) and (iii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii), (iii) (West 2010)). Reasonable progress is an objective standard focusing on the amount of progress toward the goal of reunification under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). The standard by which progress is measured is parental compliance with the court's directives, the service plan, or both. *Id.* Reasonable progress requires, at a minimum, measurable progress or demonstrable movement of sufficient quality the trial court will be able to order the minors returned to parental custody in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 460-61, 577 N.E.2d 1375, 1386-87 (1991).

¶ 24 Respondent was rated unsatisfactory on a majority of tasks in her service plan for the first nine months of this case. Any modest and sporadic progress she made was undone by the events leading up to and her arrest on September 3, 2011. There was no measurable progress and no indication A.T. could be returned to her custody. She did not make reasonable progress during the period of December 14, 2010, to September 14, 2011. The trial court's finding of unfitness as to respondent was not against the manifest weight of the evidence.

¶ 25 B. Best Interests

¶ 26 Once parental unfitness has been found, the parent's rights must yield to the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 352, 818 N.E.2d 1214, 1220 (2004). The State bears the burden of proving by a preponderance of the evidence termination is in the child's best interest.

In re T.A., 359 Ill. App. 3d 953, 961, 835 N.E.2d 908, 914 (2005). Although a parent may still possess an interest in maintaining the parent-child relationship, the force of that interest is lessened by the trial court's finding the parent is unfit to raise her child. *T.A.*, 359 Ill. App. 3d at 959, 835 N.E.2d at 912.

¶ 27 The State presented evidence the minor had been living with her foster mother for over two years and was flourishing. The foster parent was addressing the child's medical, educational, and developmental needs.

¶ 28 Respondent presented no evidence at this hearing and did not even attend. The minor needed permanency in her placement and would receive this by terminating respondent's parental rights, allowing her to later be adopted by her foster mother. It was in the best interests of the minor and was not against the manifest weight of the evidence for the trial court to terminate respondent's parental rights.

¶ 29 III. CONCLUSION

¶ 30 The trial court's findings as to both unfitness and best interests are not against the manifest weight of the evidence. We affirm.

¶ 31 Affirmed.