2017 IL App (2d) 160772-U
No. 2-16-0772
Order filed January 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JAZMIN M., RAYMOND M., JOSEPH M., JR., and JAMES M., Minors	)	Appeal from the Circuit Court of Winnebago County.
	)	Nos. 13-JA-176
	)	13-JA-177
	)	13-JA-178
	)	13-JA-493
(The People of the State of Illinois, Petitioner-Appellee, v. Joseph M., Sr., Respondent-Appellant).	)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings, that respondent was unfit as to four children and that it was in their best interests to terminate his parental rights, were not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Respondent, Joseph M., Sr., appeals from the trial court's rulings terminating his parental rights to his daughter, Jazmin M., and his sons, Raymond M., Joseph M., Jr., and James M. Respondent argues that the trial court's finding, that he failed to make reasonable progress towards their return within specified nine-month periods after the abuse and neglect adjudications (750 ILCS 50/1(D)(m)(ii) (West 2014)), was against the manifest weight of the

evidence. He also argues that the trial court erred in finding that it was in the children's best interest to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Jazmin was born on January 9, 2010; Raymond was born on July 28, 2008; and Joseph Jr., the eldest, was born on June 10, 2006. James was born on October 13, 2013, after the other three children had already been taken into care.

¶ 5 On April 29, 2013, the State filed a petition alleging that Jazmin was: (1) abused in that a family or other household member inflicted excessive corporal punishment, causing her to sustain marks and/or bruises; and (2) neglected in that her environment was injurious to her welfare because one or more family or household members struck her. The State filed neglect petitions for Raymond and Joseph alleging that (1) family members had abused their sibling through excessive corporal punishment, and (2) their environment was injurious to their welfare because their sibling was struck by one or more household members.

¶ 6 A report to the court, filed the same day, stated that the Department of Children and Family Services (DCFS) became involved after Jazmin complained that her bottom hurt and was examined by the school nurse, who found various bruises. The report further stated that respondent had been described as " 'extremely violent' " and had threatened school staff. Three orders of protection had been issued against him, from 2005 to 2009. Respondent was aware that the children were being hit by their aunt but did not make any efforts to protect them.

¶ 7 Also on April 29, 2013, respondent and the children's mother waived their right to a temporary shelter care hearing, and the trial court found probable cause to believe that the children were neglected and/or abused. It gave temporary guardianship and custody of them to DCFS.

¶ 8 On June 28, 2013, a report to the court stated that respondent had been hostile and argumentative with the caseworker. At the first visit with the children, he became upset when one child was never brought and another needed to leave, to the point that he was screaming in the lobby. He also initially refused to allow an aid to take Joseph, though he eventually calmed down. He had difficulty managing the children and used a loud voice to address negative behaviors.

¶ 9 The State filed amended neglect petitions on August 22, 2013, based on the same circumstances. A DCFS report to the court stated that respondent had continued to act "in an agitated state" with DCFS.

¶ 10 A DCFS report to the court filed on September 9, 2013, stated that at an August 29, 2013, visit, Raymond was running and tripped. A worker reached out and caught him so that he would not fall and hit his head on the table. Respondent yelled, " 'Turn him loose. You don't touch my kid. You don't tell my kids what to do.' " Respondent threatened to get his mother and his lawyer involved and have the worker fired.

¶ 11 A hearing on the amended neglect petitions took place on September 9 and October 2, 2013. DCFS investigator Andy Saunders testified as follows. A report regarding the minors came in on April 24, 2013. Two days later, Saunders was present at a medical exam of Jazmin. He observed bruising on her face, back, butt, and other locations, and he identified photographs of the bruising. Saunders spoke to Jazmin's older half-sister, Brandy B.[1] Brandy said that she and Jazmin lived with their siblings and their mother in an upstairs apartment, and that their mother's parents and sister lived in a lower apartment. Brandy said that all of these adults and respondent hit her and Jazmin hard with hands, belts, and a wooden board. Brandy said that the

[1] Brandy is not respondent's child.

bruises on Jazmin's back, butt, and arm were caused by the wooden board or belt, and that a scratch and a bite mark were caused by their aunt's son. Saunders called the children's mother, and she denied knowledge of any bruises. Saunders also spoke to respondent, who was not living with the children. He said that he had not personally seen marks or bruises on Jazmin. He also said that the children had been telling him that their aunt hit them. A few days after that, Saunders met with Joseph. He also said that the same individuals had hit him with hands, a belt, and a wooden board. Saunders met with the children's mother on May 21, 2013. He asked to see the wooden board, and she said that they had gotten rid of it.

¶ 12 James was born on October 13, 2013. Four days later, the State filed a petition alleging that James was neglected because his environment was injurious to his welfare, in that his siblings had been removed from their parents' care, and the parents had failed to cure the conditions that had caused the removal of the siblings.

¶ 13 On October 24, 2013, the trial court adjudicated Jazmin to be abused and Raymond and Joseph to be neglected. The trial court stated that Jazmin's medical records showed clear and convincing evidence that she had multiple injuries on different parts of her body that were in various stages of healing. The trial court stated that the children provided corroborating testimony, and their mother admitted that a board was used and later thrown away. The trial court made the children wards of the court, with guardianship given to DCFS.

¶ 14 At a hearing on January 22, 2014, the parties stipulated to the neglect allegations regarding James. James was adjudicated neglected and made a ward of the court, with guardianship given to DCFS.

¶ 15 At an April 15, 2014, permanency review hearing for all of the minors, the State recommended that the trial court find that respondent had made reasonable efforts, and that the

goal for the minors remain at return home within 12 months. The trial court entered this finding.

¶ 16 Respondent married a woman named Candice on July 19, 2014, and a child, Madison, was born to them a few months later. The three of them lived together, along with Candice's daughter from a previous relationship.

¶ 17 At a permanency review hearing on October 28, 2014, the State asked that the trial court find that respondent had made reasonable efforts and progress. It stated that he had completed domestic violence services, engaged in other required services, was participating in Jazmin's therapy, and was attending the children's medical visits when he was made aware of them. The State also asked that the goal remain at return home in 12 months. The guardian *ad litem* mentioned that three of the five children had special needs. The trial court agreed with the State's requested findings and entered an order to this effect.

¶ 18 A DCFS service plan filed on April 14, 2015, was dated October 16, 2014. Respondent was rated satisfactory in the areas of domestic violence services, engaging in individual counseling, housing, and working with DCFS. Respondent was rated unsatisfactory in the area of employment, as he reportedly worked odd jobs and did not provide information about specific hours. The report noted that there was ongoing concern regarding respondent's agitation, anxiety, and moodiness.

¶ 19 A DCFS report to the court also filed on April 14, 2015, stated as follows. Respondent had continued to maintain regular contact with DCFS and remained engaged in individual counseling. In November 2014, he and Candice moved into a home next door to respondent's mother. The house was a small, three-bedroom duplex. They lived with Madison and Candice's daughter. A check conducted in December 2014 revealed that the home appeared safe. That month, visits began taking place in the home. In January 2015, the visits were increased from

two to four hours. Respondent was very authoritative in his parenting style and used one-word directives. On a visit on March 26, 2015, there was an extreme amount of prompting from the parent coach and case aide. For the prior three months, the aides had reported that respondent became easily agitated and engaged in threatening behavior, specifically when he was presented with information with which he did not agree.

¶ 20 The report stated that when the case first opened, there were concerns about respondent's ability to parent due to his explosive temper, extreme corporal punishment in the home, and domestic violence between the parents. Respondent had made some progress in these areas but continued to display frustration during the visits, sometimes with the workers and sometimes with the children. Providers had stated that they were not sure how he would react if he were unsupervised with the children. It was concerning that he did not appear to be internalizing the skills learned through counseling and coaching. His mental health issues may have been affecting his progress. He would generally comply with requested services but was not able to identify warning signs and ask for help. Doing so was crucial to show that he could care for his mental health and parent children with special needs.

¶ 21 Respondent called two witnesses at the April 14, 2015, hearing. The first, Clifford Johnson, provided the following testimony. He was a therapist and began meeting with respondent in October 2013. The visits started off weekly but were decreased to bi-weekly due to respondent's progress. The goals for respondent were to "process events," modulate his emotions when interacting with others, and work on parenting based on the children's specific needs. In the past six months, Johnson had seen some improvement in these areas. Respondent was aware that the older boys had specific mental health needs, and he was working on identifying strategies or tactics to be effective with them. He was able to tell Johnson when he

was angry, and they were working on finding coping skills. Johnson had diagnosed respondent with bipolar disorder NOS (not otherwise specified). Respondent did not fully agree with the diagnosis but instead believed that he had ADHD. Respondent reported to Johnson that he had gone for a mental health assessment. The counseling had been going on longer than average because issues had come up that were not apparent in the beginning.

¶ 22 Darlene Baldwin, a parent engagement specialist with the Youth Services Network, testified as follows. She had been working regularly with respondent since October 2014. Baldwin originally attended the entire two-hour visit with the children, but she now attended half of the visit. Her time was reduced because respondent had made progress, and she wanted to give him the opportunity to parent without her presence.[2] Respondent had completed the parenting training that he had been asked to do. He had made progress in how he disciplined the children, and he understood each of the children's personalities and needs. Baldwin had observed respondent becoming frustrated and irritable during some of the visits, though it depended on the circumstances of the visits. She opined that he was capable of administering basic parenting skills.

¶ 23 Baldwin agreed that a March 26, 2015, visit was "chaotic." The house was full of people, including respondent, six children, herself, the case manager, and two transporters. Respondent's wife also arrived home during the visit. However, Baldwin agreed that of these people, only the case manager was not usually present. Some of the kids were playing, and others were watching TV. Respondent's wife had recently started working outside the home, and respondent was preparing dinner. A glass broke, and someone told respondent to take James

[2] Even though Baldwin herself may not have supervised the entire length of each visit, the record indicates that visits were never unsupervised.

out of the kitchen. Baldwin suggested that respondent's step-daughter put something on her feet because of the broken glass.

¶ 24 The State asked that the trial court find that respondent had made reasonable efforts because he maintained regular contact with DCFS and had been engaged in individual counseling for a long time. However, it asked that the trial court find that he had not made reasonable progress because he was not acknowledging any mental illness and following through with services for it. The State further argued that visits were generally reported as chaotic; that there were reports of respondent being agitated and argumentative with the adults assisting; that he had been described as directing the children with one-word commands in an angry tone; that he had been engaged in parenting coaching for a long time but did not appear to be applying the skills appropriately; and that he had not been able to progress to unsupervised visits.

¶ 25 The trial court stated that the goal would remain return home in 12 months, but it was putting everyone on "notice" that the goal could not remain there "forever." It found that respondent had made reasonable efforts but not reasonable progress. It ordered him to cooperate with all psychological and mental health assessments.

¶ 26 A CASA/guardian *ad litem* report to the court filed on August 28, 2015, stated as follows. Respondent's visits with the children were changed to Saturdays for four hours. During visits with the children, respondent was able to keep order in the home, though he did so with a loud voice and commands. He served the children a meal while they watched TV. However, respondent did not change James's diapers. There was also concern that respondent was not able to apply the parenting skills that he had learned. The parenting coach had been a support for him, but she recently reported that the home was dirty and had some safety issues. Respondent became upset with her and said that he wanted her off the case. Respondent was also upset

because he and his family had adopted a cat, but during a July 2015 visit, Joseph said that he was allergic to cats. Respondent did not believe him. CASA recommended that the goal be changed to substitute care pending court determination of termination of parental rights.

¶ 27 A DCFS service plan was filed the same day; the plan was dated April 10, 2015. Respondent was rated unsatisfactory for individual counseling because although he had made some progress, there were still concerns about his agitation, anxiety, and moodiness. DCFS was also concerned about respondent's level of honesty with Johnson, as Johnson had rarely seen the agitation that other service providers reported. Johnson said that during a March 24, 2015, session, respondent was in an agitated state and claimed that the investigator, judge, and others were not doing their jobs, and that the case should be closed by now. Respondent was rated unsatisfactory in the area of parenting his children because his application of parenting techniques was inconsistent, depending on his frustration level. Providers were concerned about his ability to manage six children and his ability to follow through with discipline. He was observed to have bursts of anger during visits, when he would yell at the kids. Respondent was rated unsatisfactory in the area of employment, as DCFS had not received any pay stubs. Respondent was rated satisfactory in the areas of cooperating with DCFS and service providers, though the report noted that he continued to struggle with agitation. He was also rated satisfactory for domestic violence services and for housing, though the report noted that there had been some reports of his house being cluttered and unclean.

¶ 28 A DCFS report to the court also filed on August 28, 2015, stated as follows. Respondent had continued to maintain regular contact with DCFS and had continued to engage in individual counseling with Johnson. Candice had lost her job and was now a stay-at-home mom. On August 18, 2015, a caseworker made an unannounced visit to assess the home's cleanliness.

Respondent became agitated when discussing the " 'demands' " of the parenting coach and stated that he wanted her thrown off the case. He became defensive about the cleanliness issue, and Candice attempted to calm him down. Respondent brought up the subject of the cat and said that he still had not received documentation of Joseph's allergy. The caseworker said that it was being requested from the doctor in writing and that there would then need to be a discussion about having the cat in the home. Respondent became "irate" and said that the worker was threatening him. He moved toward the worker, yelling profanities and expressing frustration about the case. Respondent said that he should have 24-hour notice for visits and that his attorney should be present. The worker ran out of the home and could still hear him yelling. The worker was not able to view the entire home to assess its safety. Respondent had also yelled during his April 2015 administrative case review.

¶ 29 Visitation had been increased to give respondent a greater opportunity to parent the children. All visitation had remained in the home and appeared to be stressful at times. The report restated concerns about respondent's perceived inability to apply the skills he was being taught through services.

¶ 30 Following the permanency review hearing on August 28, 2015, the trial court found that respondent had made reasonable efforts but not reasonable progress. The trial court was keeping the goal at return home in 12 months, but only due to a change in Raymond's and Joseph's foster placement.

¶ 31 A CASA/guardian *ad litem* report to the court filed on December 1, 2015, stated as follows, in pertinent part. Respondent's visitation with the children had been moved to St. Charles because Raymond and Joseph had been relocated to foster placements that were further away. Respondent still did not appear to be able to apply the skills he had been taught in

services. At times he tried reasoning with the children, but when that failed he would revert to yelling at them. CASA still had serious concerns as to how he would deal with all of the children if no one else were around. It recommended that the goal be changed to substitute care pending court determination of termination of parental rights.

¶ 32 A DCFS report to the court filed on the same day repeated much of the same information contained in the prior report. It additionally stated as follows. There had been investigations regarding the minors who were living with respondent and the home's cleanliness, and both turned out to be unfounded. Respondent had participated in a psychological assessment by Dr. Nicholas O'Riordan, who diagnosed him with "Bipolar II" disorder. Respondent continued to disagree with any type of bipolar diagnosis and believed that DCFS was pushing the diagnosis. Johnson's new treatment plan for respondent had several goals. First, Johnson wanted respondent's focus on parenting Raymond and Joseph to change from concerns about the management of their medication to his own parenting skills. The second goal was to decrease the intensity and frequency of respondent's frustration. Last, Johnson wanted respondent to obtain a psychiatric assessment and follow its recommendations. However, the only resource DCFS had available for such an assessment in the area was Rosecrance. That organization based its mental health evaluations on self-reports, and respondent had been there twice and denied symptoms associated with bipolar disorder. Therefore, respondent's aunt had paid for him to be evaluated by Dr. Zaffar Rizvi. DCFS had not yet received documents from that doctor.

¶ 33 After Raymond and Joseph changed foster placements, they had to travel two hours each way for visits. They would get into physical fights in the car, try to get out of their booster seats, and distract the driver to the extent that the driver had to pull over. In October 2015, the decision was made to move the visits to St. Charles to reduce the drive time. When respondent was

notified of this, he became agitated and yelled. During the visits, most of James's caretaking was left to Candice. Respondent had taken a defensive stance regarding his mental health, but addressing his mental health symptoms was crucial in being able to demonstrate an ability to care for and parent the children. DCFS recommended that the goal be changed to substitute care pending termination of parental rights.

¶ 34 The next permanency review hearing took place on January 28, 2016. Elizabeth Kroening testified as follows. She had initially been the caseworker for all the minors, and she remained the caseworker for Jazmin and James until November 30, 2015. About 1½ years prior to that, the case management portion for Joseph and Raymond changed to the "Aunt Martha's" agency for special foster care services.

¶ 35 From August 1 to December 1, 2015, respondent had weekly visitation with the children. He had four-hour visits in the home, which changed to four hours in the community due to pending investigations. That was difficult on the minors, so it was reduced to two hours in a community setting. The investigations turned out to be unfounded, and there were one or two more four-hour home visits. However, due to the distance Joseph and Raymond needed to travel, the visits were then changed to a different location for two hours in a community setting. Kroening described the incident on August 18, 2015, when she went to assess the home's cleanliness and ending up running away after respondent started yelling at her.

¶ 36 Based on notes from case aides' reports, respondent was frustrated during most of the visits for the 2½ years that the children had been in care. At the last family meeting, the new parent coach noted that respondent had left James in the high chair for two hours. At most of the visits, James was usually wandering around, with no one really interacting with him. Also, last summer the kids mostly stayed in the house and watched TV or played video games rather than

playing outside.

¶ 37 Respondent always attended the visits and parent coaching sessions, but the parent coach still had concerns about the home environment and respondent applying the skills that were being taught. Respondent had a psychological assessment as requested in July 2015, and the results came back in August 2015. The primary recommendation was that his contact with the children be supervised and that he have a parenting capacity assessment. Kroening had started the paperwork to obtain the latter assessment, and she passed it on to the new caseworker. Respondent was also to obtain mental health treatment. He sought a psychiatrist through his family, and he had done two or three sessions with Dr. Rizvi. Respondent was very vocal about his disagreement with the bipolar diagnosis from Johnson and the psychological assessment.

¶ 38 Respondent provided the following testimony. After receiving the psychological report, he tried to obtain treatment, but the providers either were not accepting new clients or did not take his insurance. His aunt then paid for sessions with Dr. Rizvi. Respondent initially disagreed with the bipolar diagnosis because he had seen a psychiatrist until age 18 and was never diagnosed as bipolar. Also, being bipolar and having ADHD resulted in a lot of the same symptoms, and respondent thought that the providers were misdiagnosing him. However, Rizvi had arrived at the same diagnosis, and after August that year, respondent started accepting the fact that he was bipolar. Rizvi had recommended only counseling with him, and not medication.

¶ 39 Respondent had acted poorly when the children were first taken away, but he had since recognized that he had to improve himself. Respondent had been meeting with Johnson for about 2½ years. He felt that he had made a lot of progress and was able to see things from different perspectives. Johnson had taught him techniques to help calm him down and not let little things bother him. He had also learned different ways to look for help. He had learned to

control his anger, making him and his children closer. An example of how he had changed was that he used to yell at Raymond when Raymond was having fits. He later learned that they should separate and take a break. Now, he would take Raymond out of the room to sit and talk one-on-one, which seemed to calm Raymond down more quickly. He had also learned other discipline techniques related to time outs, which were effective with all of the children.

¶ 40 Respondent did not agree that James wandered around alone during visits. Rather, Madison would tag along and play with him. James had started calling him " 'Daddy' " and wanting respondent to pick him up. Joseph and Raymond both had ADHD, which made it hard for them to concentrate. Joseph had also been diagnosed with oppositional defiance disorder and had asthma. Raymond additionally had speech and potty training issues. Respondent had looked up information about their disorders on the Internet.

¶ 41 When Kroening had come over to check the home's condition, she had brought up the cat issue. She said that it would come down to either the kids or the cat. This put respondent on the defensive, and they both started raising their voices. She did not run out of the house but rather walked down the stairs and slammed the door. Respondent had later learned some coping skills that he could use in a similar situation. Respondent agreed that as recently as August, he was still getting frustrated with people and raising his voice. He still had the cat.

¶ 42 The State argued that respondent was unaware of all of Raymond's and Joseph's special needs. It argued that although he claimed to have improved greatly in dealing with frustration since August 2015, in October 2015 he yelled when told that visits would be moved to St. Charles. The State maintained that respondent talked about parenting skills that he had learned, but that according to caseworkers, he was not able to implement the skills during visits. It argued that even when confronted with a bipolar diagnosis from two different providers, he still

had not accepted the diagnosis until very recently. His psychological evaluation by Dr. O'Riordan specifically said that he should not be left unsupervised with the children.

¶ 43 The trial court found that respondent had made reasonable efforts but not reasonable progress. It further found that it was in the children's best interests to change the goal to substitute care pending court determination on termination of parental rights.

¶ 44 The State filed motions to terminate parental rights on February 25, 2016. The State alleged that respondent was unfit in that he had: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); and (2) failed to make reasonable progress towards the return of the children within certain nine-month periods after the adjudications of abuse or neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). For Jazmin, Raymond, and Joseph, the periods alleged were from October 24, 2013, to July 24, 2014; from July 24, 2014, to April 24, 2015, and from April 24, 2015, to January 24, 2016. For James, the periods alleged were from January 22, 2014, to October 22, 2014; from October 22, 2014 to July 22, 2015; and from April 24, 2015, to January 24, 2016.

¶ 45 A DCFS report filed with the court on February 25, 2016, stated as follows. Johnson reported that respondent had made progress in being able to identify triggers that agitated him, and he had some success in being able to reframe his thinking. Still, Johnson believed that while respondent could understand and talk about his behavior, he had a difficult time apply the coping skills in a day-to-day setting. Case aides indicated that respondent would begin visits with the children with good intentions, but he would easily get frustrated and revert to yelling at them. During one instance, respondent told a staff member that he had always been loud. Based on the change in the goal, DCFS had reduced respondent's visits to two hours twice per month.

¶ 46 The fitness hearing took place on April 5, 2016, June 6, 2016, and July 20, 2016. At the

beginning of the hearing, the children's mother signed consents to their adoption. DCFS caseworker Luis Fernandez then testified as follows. He had been a caseworker for the case since December 1, 2015. The service plans dated April 22, 2014, October 26, 2014, April 10, 2015, and October 15, 2015, each rated the six months prior to their dates. From the time he took over the case to the end of January 2016, respondent's visits with the children were supervised because he had not demonstrated that he could parent all of them unsupervised. On January 12, 2016, Fernandez attempted to discuss visitation with respondent in a phone call, but respondent became angry and hung up.

¶ 47 We next summarize respondent's testimony. He had consistently visited the children and attended doctor's appointments when he could. In general, he was not allowed to contact them outside of visits. The visits could get a little "wild," especially because Madison and his stepdaughter would also attend visits. However, he had learned to deal with the children calmly. Raymond tended to be the one getting out of control, and respondent would ask him to come into the hallway to talk about why he was getting upset. Respondent would tell Raymond to think of a song that made him happy, and that usually calmed him down. Respondent would use a similar technique with Joseph.

¶ 48 Jazmin called him "visiting Daddy" or "Daddy" and would sometimes hug him and sit on his lap. They talked about their week and what Jazmin did in school. Last year, Jazmin said that she wanted to come home for Christmas. Raymond gave respondent hugs and kisses and said that he loved him. They talked and played games. Joseph talked a lot about guitar lessons and recently described a White Sox game he had attended. James tended to play with Madison quite a bit, but he also called respondent "Daddy" and gave him hugs and kisses. James wanted to interact and sit on respondent's lap. Respondent and Candice celebrated the kids' birthdays with

cake and presents. They also celebrated Halloween with snacks, and they had a story, snacks, and presents for Christmas. Respondent provided the food for the visits, and he also brought diapers.

¶ 49 Respondent had anger issues in the past but had worked on handling those. He had learned to hum tunes to calm himself, and he had taught this technique to the kids. Johnson had taught respondent to look at things through multiple perspectives. Johnson first diagnosed him with ADHD, but he later changed the diagnosis to bipolar NOS. Respondent did not agree with the diagnosis. Dr. O'Riordan performed a psychological evaluation in July 2015. Neither Dr. O'Riordan nor DCFS went over the evaluation with him. However, respondent had brought his aunt to a meeting to read the evaluation and explain it to him. Johnson also discussed the evaluation, though he did not provide respondent with any guidance on how he should respond to it.

¶ 50 Respondent had engaged in all services that DCFS requested of him, including taking the required parenting classes. The parenting coach was more interested in the home's organization rather than teaching parenting. He was also to engage in therapeutic treatment, and he had been involved with Johnson for most of the case. After the psychological evaluation, DCFS wanted him to see a psychiatrist. No one would take his insurance, so he had to pay out of pocket to see Dr. Rizvi. He had been seeing Dr. Rizvi since October 15, 2015, initially weekly and then bi-weekly. Dr. Rizvi diagnosed him with bipolar NOS. He had not prescribed medication but rather worked with respondent on techniques to calm him down and think about the consequences of his actions. Respondent did not believe that there were any documented incidents of him losing his temper since his therapy with Dr. Rizvi began.

¶ 51 When the case came into care, respondent had not been living with the children and their

mother for about six months because he did not get along with the mother's parents. At that time, he still had contact with the children and dropped off and picked up the older boys at school. Respondent spoke to Saunders on April 26, 2013. He told Saunders that he had not seen any abnormal bruising on the children and denied that there was domestic violence between him and the mother. The mother had previously filed orders of protection against him, but they were "dropped." Respondent acknowledged the events that occurred on August 18, 2015, when Kroening came to check on the home's cleanliness. Respondent currently worked at a car dealership car wash and made about $1,000 per month.

¶ 52 Dr. O'Riordan's report, prepared in August 2015, was admitted into evidence. It included the following six recommendations:

> "1. Current services and therapies should remain in place. In his current mental and emotional state, [respondent] cannot be trusted to parent unsupervised for any significant period of time.
>
> 2. Visitation should always be supervised, but can be lengthened, perhaps to six or eight hours.
>
> 3. A parenting capacity evaluation should take place. Ideally, this should be done during a regular visitation with all four children (plus the two already in the household) being present.
>
> 4. [Respondent] should undergo a psychiatric evaluation. The psychiatrist should be provided with this report and other relevant documents.
>
> 5. Once the two new assessments are completed and once a series of longer visits have been observed[,] then a determination should be made as to whether return home is a viable goal. If [respondent] appears more stable and responsible[,] then a move might

be considered. Furthermore, it might be decided to move slowly with unsupervised visitation and/or only deciding to move some of the children back into [respondent's] care.

6. If there is no change in [respondent's] functioning[,] then a return to his care would have to be removed from consideration."

¶ 53 Candice provided the following testimony. She and respondent moved in together in September 2014. She had attended all visitation, unless she was sick. Respondent wanted to be a part of his children's lives and know what was happening in their lives, so he talked to them constantly during the visits. He loved them all equally. If respondent noticed something with the children or learned about an incident, he would talk to the caseworker. They celebrated birthdays and holidays with the children.

¶ 54 On July 25, 2016, the trial court found that the State had proven by clear and convincing evidence that that respondent had not made reasonable progress during the specified time periods. The trial court noted that it had previously found that he had not made reasonable progress on April 14, 2015, August 28, 2015, and January 28, 2016. His visits were always supervised and there was never any movement toward actually returning the minors to him. The psychological assessment also found the prognosis for reunification to be "very guarded."

¶ 55 The trial court then proceeded to the best interests hearing. Fernandez testified as follows. Jazmin was six years old and had been living with Brandy in a foster home for about three years. They were the only two children in the home. Jazmin originally had an "IEP" (individualized education program), but the foster parents had worked with her, and the IEP was removed earlier that year. The foster parents made sure that she went to her individualized therapy, and they had a very close, mutual bond. Jazmin was considered part of the family and

included in all family events. Jazmin appeared very comfortable in the home and talked about family activities such as going out to eat or to the pool. The foster parents wanted to adopt her and stated that they would make sure that Jazmin could maintain a relationship with all of her siblings in the future. Jazmin's therapist felt that it would be in her best interest to remain with her foster parents due to the stability that she felt with them and because removing her could cause attachment disorders. DCFS also recommended that it would be in her best interest to stay in her current placement given her relationship with her foster parents.

¶ 56 James was two years old and had resided only with his foster parents his entire life. There were other children in the home, and they all had a deep connection with each other and with the foster parents. James did not have any special needs or an IEP. Based on reports, at visits James seemed very isolated and would just stand in one place. However, at his foster home he was "a totally different child" and was comfortable and bonded. The foster parents wanted to adopt him. DCFS felt that it would be in his best interest for him to stay in his foster placement because he had never resided anywhere else. It had taken respondent years to decide what he needed to work on to move forward, and there was no timeframe as to how long it would take for him to make all the corrections necessary to meet the children's needs. In contrast, the children had been in care for over three years and needed stability in their lives.

¶ 57 Fernandez agreed that he had made monthly visits to observe the children in their foster homes but had not seen firsthand how they interacted with respondent. It was normal, as part of DCFS case management, to rely on the observations of other people regarding visits. He also agreed that Johnson reported that respondent had improved since he started his psychiatric treatment.

¶ 58 Brian Roseboro testified that he was the caseworker for Raymond, who was seven, and

Joseph, who was 10. Raymond had ADHD, an IEP, an emotional disorder, developmental delays, and speech and language issues. Joseph had ADHD, an IEP, and asthma. Both boys were on psychotropic medications. Based on their needs, they were in specialized foster care. DCFS would have ideally placed the boys together, but due to their behavioral and emotional issues, they could not find a family that would accept both of them. They had been very stable since their placement in two separate homes and had all of their food, clothing, and shelter needs met. They were fully involved in the family activities of their foster homes and were involved with their foster parents' extended families.

¶ 59 Raymond had been in his current placement for less than one year. His relationship with his foster parents was very good, and his behavior at school had improved greatly. The foster parents were willing to adopt him. Raymond requires a high level of attention and services, so DCFS was concerned that respondent could not meet his needs. Joseph was doing very well in school and was taking private guitar lessons. He had a very good relationship with his foster parents and got along well with another child in the home. Joseph "worship[ped]" respondent, but even taking that into consideration, DCFS felt that he needed permanency and that it would be in his best interest to be freed up for adoption by the foster parents.

¶ 60 Candice testified regarding respondent's interactions with the children during visitation. She testified that visitation was currently two hours every two weeks. James called respondent "Daddy," gave him hugs, and sat on his lap. There were times that he would go off and play on his own, but then he would come back and play with respondent or Madison. Jazmin hugged respondent and played with him. She especially liked playing with her younger siblings. Raymond could "be a handful at times," but respondent would make a symbol, and Raymond would quiet down. If Raymond got upset or angry, respondent would take him out of the room.

Otherwise, they constantly played together and had a good time. Joseph's relationship with respondent was the strongest because he was the oldest. Joseph looked up to respondent and wanted to tell him everything going on in his life. Candice herself had been actively involved with the children since she married respondent. She felt that she would be able to meet Raymond and Joseph's specialized needs because she had some psychology education. They would work with the schools regarding the boys' IEPs and enroll them in counseling.

¶ 61 Candice agreed that she had never seen the children's IEPs or talked to their therapists. She did not know what medications they were taking and had not been to their doctor's appointments. She also agreed that she had never lived with the children, nor had they lived with her two daughters.

¶ 62 The best interests hearing was continued to August 18, 2016, for the completion of the testimony. Respondent testified consistently with his previous testimony and Candice's testimony regarding his interactions with the children. He further testified that his relationship with the children was going "really well," especially considering that they did not see him every day. He had attended every visit unless there was an illness or bad weather. Respondent described celebrating holidays with the children and the types of gifts that he had given them. If the children became loud during a visit, he used a hand sign to indicate that they should lower their voices. He spent one-on-one time with each child, and they were all affectionate towards him. Respondent and Candace had set up bunk and trundle beds in their home so that they could all live together. Respondent described photographs of himself interacting with the children. He cared for them very much and believed that it was in their bests interests that he maintain contact with them because Joseph had a strong bond with him; Raymond and Joseph looked up to him; Jazmin was starting to "come back around like she was before they were taken," and James was

starting to "come around more too" even though he had never lived with respondent.

¶ 63 Respondent lived with Joseph from 2006 to 2008 and 2011 to 2012. Raymond was born in 2008, and respondent lived with him part of that year and from 2011 to 2012. Jazmin was born in 2010, and he lived with her from 2011 to 2012. Respondent agreed that Jazmin was very close with Brandy, who was not his daughter. Respondent also agreed that beginning in December 2015, he was able to visit the children a total of eight hours each month, and the rest of the time they were living in their foster homes.

¶ 64 The trial court found that the State had proven "by at least a preponderance of the evidence" that it was in the children's best interests to terminate respondent's parental rights. It then found that it was in their best interests to set the goal at adoption. A complete written order to this effect was filed on August 19, 2016. On September 9, 2016, the trial court filed a corrected order terminating respondent's parental rights, *nunc pro tunc* to August 19, 2016.

¶ 65 Respondent timely appealed.

¶ 66 II. ANALYSIS

¶ 67 On appeal, respondent argues that it was against the manifest weight of the evidence for the trial court to find (1) that he failed to make reasonable progress during the alleged time periods, and (2) that it was in children's best interest to terminate his parental rights.

¶ 68 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the

second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 69 A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 26. A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 28. In child custody cases, we afford even more deference to the trial court's ruling than under the traditional manifest-weight-of-the-evidence standard, due to the cases' delicacy and difficulty. *Id.*

¶ 70 Respondent challenges the trial court's determination that he failed to make reasonable progress during the time periods alleged. One statutory ground of unfitness is a parent's failure to make reasonable progress towards the child's return during any nine-month period after the initial nine-month period following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). Our supreme court has defined reasonable progress as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211 (2001) (quoting *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000)). Progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal and conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. We review reasonable progress using an objective standard, and reasonable progress can be found if the trial court can conclude that it can return the child to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. In contrast to reasonable progress, reasonable efforts is related to the goal of

correcting the conditions which caused the child's removal and is judged by a subjective standard of the amount of effort that is reasonable for the particular parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006). Reasonable efforts is not at issue here, as respondent was found to have always made reasonable efforts.

¶ 71 Respondent argues that the trial court's finding that he is an unfit parent is against the manifest weight of the evidence. Respondent notes that he, as a parent, has a fundamental liberty interest in raising his children. We agree but note that the Juvenile Court Act's two-step process to involuntarily terminate a parent's rights is designed to safeguard this interest (*In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 51) by providing due process (*In re A.L.*, 2012 IL App (2d) 110992, ¶ 14). Respondent also points out that families have an interest in reunification but that, under the trial court's ruling, his four children will be with different adoptive families. The Juvenile Court Act directs that a child's family ties should be preserved wherever possible, but it also requires other considerations, such as the child's welfare and the need to establish permanency as soon as possible. 705 ILCS 405/1-2(1) (West 2014).

¶ 72 Respondent asserts that he had done what the trial court and contracting agencies asked him to do. Respondent notes that the trial court's April 14, 2015, order provided that he was to cooperate with all psychological and mental health assessments, and he maintains that he complied by meeting with Dr. O'Riordan and Dr. Rizvi. Respondent argues that although the trial court found that he had not made reasonable progress during various reporting periods, the trial court should have considered what was reasonable for him as an individual with a bipolar diagnosis and with reference to Dr. O'Riordan's recommendations. Respondent acknowledges that there were complaints about his anger management and stability, but he maintains that he was seeking treatment for those issues, and that he could only do his best.

¶ 73 Respondent's position, that the trial court should have considered his progress based on a subjective standard of what was reasonable for someone with a bipolar diagnosis, is patently without merit. As stated, reasonable progress is assessed using an objective standard, and it is present where there is demonstrable movement toward reunification. *In re C.N.*, 196 Ill. 2d at 211. A parent's mental health issues may contribute to his or her inability to make progress, but a parent's mental deficiencies do not eliminate the requirement of making measurable progress towards the return home of the child. See *In re J.P.*, 261 Ill. App. 3d 165, 175-176 (1994); *In re Edmonds*, 85 Ill. App. 3d 229, 233-34 (1980); see also *In re Devine*, 81 Ill. App. 3d 314, 320 (1980) (a "child is no less exposed to danger, no less dirty or hungry because his parent in unable rather than unwilling to give him care").

¶ 74 We conclude that the trial court's finding that respondent failed to make reasonable progress is not against the manifest weight of the evidence. We focus on the period of April 24, 2015, to January 24, 2016, as this nine-month period applies to all four children.[3] When the case came into care, respondent's temper was a concern, and a report to the court stated that he had threatened school staff. Respondent began counseling with Johnson in October 2013, and a central goal was to learn to control his emotions. However, the evidence showed that respondent was unable to do so during the alleged time period, which was years later. Specifically, a DCFS report to the court noted that on August 18, 2015, the caseworker made an unannounced visit to respondent's home to assess its cleanliness. Respondent reportedly became agitated after discussing the parenting coach, saying that he wanted her thrown off the case. He then raised the issue of the cat and Joseph's allergy, saying that he had not received documentation from a

[3] The other nine-month periods alleged differ for James because he was born and taken into care later than the other three children.

doctor. When the caseworker said that the documentation was being requested and that there would then need to be a discussion about respondent keeping the cat, respondent became "irate" and began yelling and swearing, to the extent that the caseworker reported running from the home. The DCFS report to the court filed on December 1, 2015, stated that when respondent was notified in October 2015 that visits would be moved to St. Charles to reduce the drive time for Raymond and Joseph, respondent became agitated and started yelling. Respondent also could not control his temper during visitation. The DCFS report and a CASA/guardian *ad litem* report filed the same day both stated that respondent was not applying the skills he learned from services during the visits. The latter report stated that respondent would sometimes try reasoning with the children, but he would then revert to yelling at them.

¶ 75 Respondent testified that he did not believe that there were any documented incidents of him losing his temper since he began seeing Dr. Rizvi on October 15, 2015. However, this was already more than halfway through the nine-month period where respondent's progress was being assessed. More importantly, the evidence showed that respondent had not learned to control his temper even after that date. Fernandez testified that he attempted to speak with respondent about visitation on January 12, 2016, but respondent became angry and hung up. The DCFS report to the court dated February 25, 2016,[4] still described respondent as becoming easily frustrated and yelling at the children. It also stated that Johnson reported that although respondent could understand and talk about his behavior, he had a difficult time applying coping skills in a day-to-day setting.

[4] The nine-month period we are discussing ended on January 24, 2016, but the February 2016 report was discussing prior events.

¶ 76 On a related note, respondent had been diagnosed as bipolar by Johnson in 2013 and by O'Riordan in August 2015, but Kroening testified that respondent was very vocal about disagreeing with the diagnosis. Respondent had only begun to accept the diagnosis at some point after that, thus delaying for years his opportunity to get treatment which may have otherwise helped his ability to manage his temper and parent his children. Even with the years of counseling from Johnson and years of assistance from parent coaches, respondent was unwilling and/or unable to effectively apply parenting skills during the visits with the children, to the extent that they never progressed to becoming unsupervised visits.

¶ 77 Dr. O'Riordan's report supports rather than undermines this analysis. Although Dr. O'Riordan stated that visits could be lengthened, he also stated that respondent could "not be trusted to parent unsupervised for any significant period of time" due to his mental and emotional state. Dr. O'Riordan additionally recommended a parenting capacity evaluation and a psychiatric evaluation, but the evaluations were meant to determine, along with a series of longer visits, whether return home was even a "viable goal." He stated that without a change to respondent's current functioning, "a return to his care would have to be removed from consideration." Thus, Dr. O'Riordan implicitly concluded that at the time of the July 2015 evaluation, which is within the nine-month time frame we are examining, respondent was very far from having the children returned to him. Moreover, as respondent could be found unfit for failing to make reasonable progress towards the children's return during any nine-month period alleged (750 ILCS 50/1(D)(m)(ii) (West 2014)), the progress that he may or may not be able to make in the future would not negate a finding of unfitness for a specified period.

¶ 78 As reasonable progress requires a measureable movement toward the goal of reunification, the trial court's finding that respondent failed to make reasonable progress from

April 24, 2015, to January 24, 2016, was not against the manifest weight of the evidence. Based on this resolution, we need not examine the trial court's rulings that respondent also failed to make reasonable progress during the other nine-month periods alleged by the State.

¶ 79 Respondent next argues that the trial court's finding that it was in the children's best interests for his rights to be terminated was against the manifest weight of the evidence. A trial court's ruling that a parent is unfit does not automatically mean that it is in the child's best interest to terminate parental rights. *In re K.I.*, 2016 IL App (3d) 160010, ¶ 65. Still, during the best interest hearing, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court is required to consider the following statutory factors of the Juvenile Court Act in light of the child's age and developmental needs: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, sense of security, sense of familiarity, continuity of affection of the child, and least disruptive placement for the child; (5) the child's wishes and goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The court may also consider the nature and length of the relationship that the child has with his or her present caregiver and the effect a change in placement would have on the child's emotional and psychological well-being. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48. The State must show by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Curtis W., Jr.*,

2015 IL App (1st) 143860, ¶ 53. We will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *Id.* ¶ 54.

¶ 80 Respondent maintains that he is not taking the position that the foster parents are not fine people who would not be appropriate adoptive parents. He instead argues that under the trial court's ruling, the children will not be able to be raised by their father, together in one household. Respondent argues that Dr. O'Riordan's recommendations are worthy of being followed in an attempt to reunify the family, and such a course of action is consistent with his liberty interest in raising his children.

¶ 81 Respondent's argument focuses on his interest in raising the children, but after a parent is found to be unfit, the focus shifts to the child's best interest. *In re B.B.*, 386 Ill. App. 3d at 697-98. Respondent does not challenge the evidence regarding the children's bonds with their foster parents. The evidence showed that respondent had lived with Joseph, Raymond, and Jazmin for only a limited amount of time, and that he had never lived with James. In contrast, Jazmin had been living with her sister Brandy for about three years and had a stable, loving relationship with her foster parents. James had lived with his foster parents since shortly after his birth, meaning that it was the only home he had ever known. He was very close to his foster parents and the other children living with them. Fernandez contrasted James's behavior during visits, when he appeared isolated, to the deep connection he felt at the foster home, where he appeared to be "a totally different child." Raymond and Joseph had been in their foster homes for less than one year, having previously been moved, but Roseboro testified that they had very good relationships with their foster parents and were doing very well in school. They each had special needs, and their respective foster parents were meeting those needs. Roseboro acknowledged that Joseph

"worship[ped]" respondent, but Roseboro still felt that he needed permanency. All of the foster families were willing to adopt the children. On the other hand, respondent had not progressed to even unsupervised visitation with the children, and Dr. O'Riordan opined in his report that respondent could not currently be trusted to parent the children without supervision for any significant period of time. Even considering Dr. O'Riordan's recommendations for going forward, it cannot be determined when, if ever, the children would be able to return to respondent, impeding the children's need for permanence. Also, in the meantime, their strong bonds with their foster families would only continue to deepen. Accordingly, we conclude that the trial court's finding, that the State had proven by a preponderance of the evidence that it was in the children's best interests to terminate respondent's parental rights, was not against the manifest weight of the evidence.

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 84 Affirmed.