2017 IL App (2d) 160845-U
No. 2-16-0845
Order filed March 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re GENAY M., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 14-JA-41
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Toenay J.,	)	Francis M. Martinez,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent's parental rights is reversed where the State failed to prove respondent is an unfit parent by clear and convincing evidence. Reversed.

¶ 2 The trial court found respondent, Toenay J., to be an unfit parent and determined that it was in the best interests of her minor child, Genay M., to terminate her parental rights. Respondent appeals only the unfitness finding. Because we have determined that the State did not prove respondent unfit by clear and convincing evidence on the alleged grounds, we reverse.

¶ 3 I. BACKGROUND

¶ 4 On January 30, 2014, the State filed a one-count neglect petition alleging that Genay M. (Genay) was a neglected minor and her environment was injurious to her welfare in that respondent, Genay's mother, had mental health issues that prevented her from properly parenting Genay, thereby placing Genay at risk of harm. Earlier, in November, 2013, the Department of Children and Family Services (DCFS) had received a "hot line" call reporting that a student (Genay) was absent from school for two days and brought to the school by her older sister. The sister reported that the mother (respondent) has known mental health issues and, when she does not take her medications, becomes paranoid, hears voices and does not allow Genay to go to school. The mother has these issues yearly when the seasons change.

¶ 5 Also, on March 4, 2013, DCFS investigated an incident in which a police officer, following up on a call from Catholic Charities, found respondent and Genay sitting on the steps of their residence. After speaking with respondent, the officer took her to Swedish American Hospital, and Genay was left in the care of her older sister.

¶ 6 As part of her investigation, the DCFS Child Protection Investigator (CPI) visited Genay at her school. Genay appeared clean, healthy and appropriately dressed for the weather. She told the CPI that her mother has episodes when the seasons change, becoming stressed out and talking to herself.

Respondent was arraigned on February 4, 2014, and, by agreement of the parties, temporary guardianship and custody were awarded to respondent. On April 16, 2014, respondent and her court-appointed counsel appeared in court, and the court accepted respondent's stipulation to the facts underlying the State's single-count petition. The court entered an order finding Genay to be a neglected minor, and a dispositional hearing was scheduled for May 8, 2014.

¶ 7 Reports filed at the dispositional hearing by DCFS and CASA noted that respondent and Genay were receiving counseling through Youth Services Network (YSN). The DCFS report stated that respondent appeared to have a good relationship with the safety plan monitors, and the CASA report further noted that Genay was residing with the safety monitor and respondent was being compliant with her prescribed medication regimen. Both reports also noted that respondent was easily distracted and agitated. The parties informed the court that they had reached a dispositional agreement whereby the father would be found unfit or unable to care for Genay, and guardianship and custody of Genay would be granted to respondent. The court reluctantly entered the dispositional order requested by the parties. In response to a stern admonishment from the court, respondent explained that her agitation was caused by her being bipolar.

¶ 8 A status report filed by DCFS on July 8, 2014, included a report from YSN noting respondent's consistent attendance at individual counseling sessions and steady improvement in focus and engagement during the sessions, resulting in some insight into her mental health challenges as they related to her parenting. When respondent was not experiencing a relapse, she presented as a functional adult and high achiever. The CASA report filed the same day noted that Genay continued to reside with the safety plan monitor and that, despite the family situation, remained a happy and hopeful child. CASA recommended to the court that Genay remain with respondent and continue to maintain a safety plan with the assistance of a mental health professional.

¶ 9 On August 25, 2014, the State moved to modify the dispositional order, alleging that circumstances had changed, including two incidents of respondent's experiencing auditory hallucinations during visits with Genay. When the parties appeared in court on the motion, the

court inquired as to what steps had been taken to address the issue of hallucinations. The DCFS case worker responded that respondent had been referred to Rosecrance, had completed an assessment, and had been found "in no need of services at this time." Upon further inquiries from the court, the case worker noted that Rosecrance services to a non-crisis client were limited by contractual and funding issues, whereas if guardianship and custody were vested in DCFS, psychiatric services could be funded from a different source. The court entered an agreed order temporarily transferring custody and guardianship to DCFS, which the court indicated was in the best interests of Genay and would allow DCFS to access additional resources to dedicate to respondent. The motion to modify the dispositional order was continued to November 12, 2014.

¶ 10 On November 12, 2014, the Lutheran Social Services of Illinois (LSSI), the agency to which the case was transferred, filed a report to the court. In a meeting with the LSSI case worker, respondent had reported that she was homeless and living in a women's crisis center. She showed the case worker freshly filled bottles of medications that she takes twice a day, stating that the crisis center personnel dispense the medications and maintain a log. She also stated that she visited Rosecrance on a weekly basis and had seen their psychiatrist.

¶ 11 The LSSI case worker testified that she had no confirmation that respondent was consistently taking her medication. She stated that when respondent visited Genay, she did little to interact with Genay beyond asking her about her day and how school was going. She acknowledged that respondent had not displayed any psychiatric issues since she was assigned to the case in the middle of September, 2014, but she was concerned that respondent was not "following with psychiatric care and not dealing with her health issues."

¶ 12 At the end of the hearing, the CASA guardian ad litem pointed out that respondent was diagnosed with "schizoaffective" disorder and was homeless and unemployed. The court found that it was in Genay's best interests that guardianship be vested in DCFS.

¶ 13 Permanency review hearings were held on August 31, 2015, January 25, 2016, and April 28, 2016. In August, respondent was found to be making reasonable progress and the goal was changed to return home in five months; in January, she was found to have made reasonable efforts but not reasonable progress, and the goal was changed to return home in 12 months; in April, she was found to have made neither reasonable efforts nor progress, and the goal was changed to substitute care pending termination of parental rights.

¶ 14 The evidence showed respondent had engaged in mental health treatment at Rosecrance throughout the life of the case and, through August of 2015, was making progress in that treatment, as well as in her individual counseling with LSSI. Over the January, 2016, review period, however, respondent suffered a decline in her mental health. She was hospitalized twice in December, 2015, and again in February, 2016. Around the time of the February hospitalization, her care at Rosecrance was changed from a community outreach program to the high intensity Assertive Community Treatment (ACT) program.

¶ 15 At the permanency hearing in April, 2016, the court considered an LSSI report and an attached family service plan. The agency expressed concerns that respondent did not acknowledge the severity of her mental illness and believed her paranoid thoughts to be real, and reported that she had gone to a crisis center complaining of people trying to break into her home, and of smelling blood coming from the walls. The report noted that the case worker had received records from Rosecrance indicating missed appointments and that Genay had reported

not feeling safe living with either of her parents and wished to be adopted by her foster parent.[1] The court found sufficient factual basis to change goal to substitute care pending termination of parental rights.

¶ 16 Pursuant to the State's motion, a fitness hearing began on August 1, 2016. The LSSI case worker testified that respondent consistently attended individual counseling sessions but only made intermittent progress through August, 2015. Family counseling was suspended in October of 2015 because respondent was "not engaging" in it and "not engaging with Genay." The case worker was unable to explain what she meant by "not engaging with Genay." She was not sure whether respondent's hospitalizations were specifically discussed during the family counseling or brought up during individual counseling. She stated that respondent was taking medications, but she could not recall what medications were prescribed for her. The case worker acknowledged that respondent was actively involved with Rosecrance but stated that her phone calls to Rosecrance had not been returned, and she had not communicated with Rosecrance counselors for "several months." She also affirmed that respondent would show some improvement, then relapse into paranoia and hospitalization, at which time she was not capable of properly caring for Genay. Three DCFS service plans and a DCFS "Investigation Transition/Handoff Document" were admitted into evidence.

[1] Although the State repeatedly advised the trial court of Genay's wishes, the record does not show that the court improperly considered them in determining respondent's fitness. See *In re D.T.*, 212 Ill. 2d 347, 364 (2004) ("At the unfitness hearing, the focus is on the parent's conduct relative to the ground or grounds of unfitness alleged by the State. The trial court is not permitted to consider the child's interests.").

¶ 17 The Rosecrance ACT case manager testified on respondent's behalf, stating that respondent was actively involved in their multiple disciplinary program, was seen four times a week and was doing "really well." Her medications were monitored by a psychiatrist and a nurse. Since joining the program, respondent had not displayed any bizarre or unusual behavior, and she had had no further hospitalizations. The case manager further testified that DCFS did not contact anyone in the ACT program from February to June, 2015.

¶ 18 On September 8, 2016, the court found that respondent had not made reasonable progress toward Genay's return during two of the three nine-month periods selected by the State: June 17, 2015, to March 17, 2016, and September 20, 2015, to June 20, 2016. The court also found that the State had proven by clear and convincing evidence that respondent's mental health episodes had put Genay at risk of harm before Genay was removed from respondent's care.

¶ 19 After a best interests hearing the same day, the trial court ordered that respondent's parental rights be terminated and Genay be made available for adoption. Respondent timely appealed.

¶ 20 II. ANALYSIS

¶ 21 Illinois law recognizes that the interest of parents in the care, custody, and control of their children is the oldest of the fundamental liberty interests guaranteed by law. *In re M.H.*, 196 Ill. 2d 356, 362 (2001). Accordingly, to support a judgment of termination of a mother's or father's parental rights, there must first be a showing of parental unfitness based upon clear and convincing evidence, and then a subsequent showing that the best interests of the child are served by severing parental rights based upon a preponderance of the evidence. *In re C. W.*, 199 Ill. 2d 198, 210 (2002); *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45. This appeal involves only the first showing, parental unfitness. See *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990)

("Where the rights and interests of a parent are sought to be permanently severed, the best interests of the child can be considered only if the court finds by clear and convincing evidence that the parent is unfit or consents to the severance." (Internal quotation marks and citations omitted.)) The clear-and-convincing standard requires proof greater than a preponderance of the evidence, but "not *quite* approaching the criminal standard of beyond a reasonable doubt." (Emphasis added.) *In re D.T.*, 212 Ill. 2d 347, 362 (2004).

¶ 22 As noted above, the evidence of a parent's unfitness must be clear and convincing because terminating parental rights has a devastating effect upon the parent-child relationship. *In re M.H.*, 313 Ill. App. 3d 205, 211 (2000) (citing *Syck*, 138 Ill. 2d at 275). "Just because a court has found a mother unfit to have custody of her children, it does not automatically follow that she is unfit to be their mother with attendant rights and privileges." *In re M.H.*, 313 Ill. App. 3d 205, 212 (2000).

¶ 23 We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the ruling is unreasonable, arbitrary, or not based on the evidence presented. *In re B.B.*, 386 Ill. App. 3d 686, 697–98 (2008).

¶ 24 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). Here, the trial court determined the State had proven respondent's unfitness by clear and convincing evidence on two statutory grounds, raised in counts II and III of the State's amended termination motion. Count II alleged that respondent was unfit because she failed to make reasonable progress toward the return of Genay to her during a nine-month period following the

adjudication of neglected minor. See 750 ILCS 50/1(D)(m)(ii) (West 2014). Count III alleged that respondent failed to protect Genay from conditions within the environment injurious to Genay's welfare. 750 ILCS 50/1(D)(g) (West 2014). The court found that the State had not proven count I of its motion, which alleged that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to Genay's welfare. 750 ILCS 50/1(D)(b) (West 2014).

¶ 25 A. Unfitness under Section 1(D)(m)(ii)

¶ 26 Preliminarily, we note that the State's argument that respondent failed to make reasonable progress toward the return of Genay rests on its allegation that the condition of respondent's mental health rendered her unfit to be Genay's parent. Yet the State chose to file its motion under section 1(D)(m)(ii) of the Adoption Act, not under section 1(D)(p), which provides that a parent may be found unfit on the ground of an "[i]nability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation." 750 ILCS 50/1(D)(p) (West 2014). Although filing under section 1(D)(m)(ii) technically released the State from the obligation and burden of presenting expert medical testimony, such testimony would have been helpful to the court in reviewing and disposing of this case on appeal. Instead, we must rely solely on respondent's compliance with service plan requirements, a poor substitute for expert medical testimony when mental illness is the primary issue.

¶ 27 Under section 1(D)(m)(ii), a parent is unfit if he or she failed "to make reasonable progress toward the return of the child to the parent during any [nine]-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2014). "Reasonable progress" includes the parent's failure to substantially fulfill his or her obligations

under a service plan, if those services were required and available, and to correct the conditions that brought the child into care during any nine-month period following the adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2014) (referencing section 8.2 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/8.2 (West 2014)). See also *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001) ("the benchmark of measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent"). Reasonable progress under section 1(D)(m)(ii) requires "demonstrable movement toward the goal of reunification." *Id.* at 211.

¶ 28 Here, the State alleged that respondent failed to make reasonable progress toward Genay's return during three nine-month periods; the court, without explanation, determined that that the two "relevant nine-month periods" identified by the State were June 17, 2015, to March 17, 2016, and September 20, 2015 to June 6, 2016. Respondent argues that because these nine-month periods overlap, the trial court could not have found respondent's lack of progress by clear and convincing evidence in a full nine-month period selected by the State. For support, respondent cites only to a disposition filed under Illinois Supreme Court Rule 23 (eff. July 21, 2011), *In re D'Maiah J.*, 2012 IL App (2d) 120626-U. Besides being non-precedential, the Rule 23 Order states a concern not about overlapping periods but only as to whether the State gave proper notice of which periods it would focus on. Absent valid support, we must reject respondent's contention that the State's allegations in count II of its motion are erroneous as a matter of law. See Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) (argument must contain citation of the authorities relied on); *People v. Ward*, 215 Ill. 2d 317, 332 (2005) (points

not supported by citation to relevant authority are forfeited); *In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004) ("reviewing court is entitled have issues clearly defined with relevant authority cited"). At the same time, we note that the evidence pertinent to the trial court's finding of unfitness under section 1(D)(m)(ii) is limited to the twelve months from June 17, 2015, to June 20, 2016, during which the two designated nine-month periods fall.

¶ 29 We find that the evidence of unfitness under section 1(D)(m)(ii) is not clear and convincing during the time periods targeted by the trial court. The record shows that respondent made reasonable progress toward return home during the first three months of the first nine-month time period, that is, from June to August, 2015, and the proof that she failed to make reasonable progress during the last two months of that nine-month period, February and March, 2016, as well as the last five months of the second nine-month period, February to June, 2016, is less than clear and convincing.

¶ 30 The services required of respondent were individual and family counseling, mental health treatment, and remaining medication-compliant. Her Lutheran Social Services of Illinois (LSSI) case worker testified that respondent attended individual counseling consistently starting in November of 2014 and had a period of progress from March through July or August of 2015. She was also compliant in attending the family counseling sessions, which began in August, 2015. The LSSI case worker further stated that respondent engaged in mental health treatment throughout the life of the case and was making progress through August of 2015. The August 31, 2015, permanency review found that respondent had made reasonable progress toward Genay's return home.

¶ 31 The LSSI case worker testified that family counseling was suspended in October of 2015 because respondent "wasn't engaging" in it; the case worker, however, was unable to explain

what she meant by "not engaging." When asked by respondent's counsel what she meant, the case worker recalled an instance when respondent fell asleep during one of the sessions, which she conceded was a one-time occurrence that was corrected. When pressed by respondent's counsel as to what she meant when she said respondent was "not engaging with Genay during the sessions," the case worker responded that she was "not sure" and that she was unable to say what not engaging Genay entailed. Since such phrases as "not able to engage Genay appropriately" and "inability to fully engage appropriately" also appear in the service plan evaluation reports, the case worker's inability to explain what the word "engage" means in the context of respondent's mental condition creates doubt that respondent's unfitness to be Genay's parent due to her mental issues was established by clear and convincing evidence.

¶ 32 The January, 2016, permanency review found reasonable efforts but not reasonable progress. According to the case worker, "t]here just seemed to be a decline in [respondent's] mental health." She was not taking her medications consistently and was "paranoid," reporting that she was in danger from unidentified persons and was hospitalized because she had been hit on the head with a hammer. She was hospitalized twice in December, 2015, and again in February, 2016. The April, 2016, permanency review found no reasonable efforts or progress, and in September, 2016, respondent was determined to be unfit to be Genay's parent.

¶ 33 The record, however, contains evidence that respondent made "demonstrable movement toward the goal of reunification" (*C.N.*, 196 Ill. 2d at 211) during the last five months of the second ninth-month time period, February through June, 2016 (which includes the last two months of the first nine-month period, February and March, 2016). The case manager for the Assertive Community Treatment program at Rosecrance testified that respondent had been in the program since February of 2016. ACT is a multiple disciplinary program, with its own nurse,

vocational specialist, mental health and substance abuse specialist, licensed clinical social worker who does therapy, and psychiatrist, who sees her clients twice a week and is available 24 hours a day. Respondent is seen four times a week and does "really well" with the program. She always calls ACT when "she needs assistance or something." Her medications are monitored by both the psychiatrist and the nurse. Since joining the program, respondent has not displayed any bizarre or unusual behavior, and she has had no further hospitalizations.

¶ 34 In finding respondent unfit under section 1(D)(m)(ii), the trial court did not mention the Rosecrance case manager's testimony, nor is the testimony addressed in the State's argument on appeal.[2] We believe that the case manager's testimony directly refutes the State's assertion, and the trial court's determination, that respondent's failure to make reasonable progress from February to June, 2016, was proved by clear and convincing evidence. The case manager further testified that DCFS did not contact anyone in the ACT program during this time period. If the State and the trial court did not have all of the pertinent evidence, the State's proof of unfitness could not have been by clear and convincing evidence. On the other hand, the LSSI case worker testified that her phone calls to Rosecrance during this time period were not returned. This conflicting testimony at best creates an issue of fact that was not resolved in the trial court, further undermining the clear and convincing standard.

¶ 35 In her evaluation report of March 21, 2016, the LSSI case worker stated it had been determined that individual counseling through LSSI was no longer "clinically appropriate" due

[2] We note that the argument section of the State's brief violates Illinois Supreme Court rules, in that it only sporadically references the pages of the record where evidence relied on may be found. See Ill. S. Ct. R. 34(h)(7) (eff. Jan. 1, 2016) (argument must contain "citation of . . . the pages of the record relied on").

to respondent's decline in mental health. At the same time, the case worker stated at the fitness hearing in August, 2016, that she had not had any communication with Rosecrance for several months. She knew only that respondent was seeing "someone" at Rosecrance and her medications had changed, but she was not aware of whether respondent had become stable or any "other follow-up details."

¶ 36 In short, the best evidence of respondent's mental condition and progress during the five-month period following her last hospitalization was not known to DCFS prior to the unfitness hearing. Nor was it considered by the trial court in reaching its conclusion that respondent had not made reasonable progress towards the goal of return home in the last nine-month period designated by the State.

¶ 37 Accordingly, we find that there was not clear and convincing evidence of respondent's parental unfitness as defined by section 1(D)(m)(ii) of the Adoption Act, and we thus hold that the trial court's order to the contrary is against the manifest weight of the evidence. See *Syck*, 138 Ill. 2d at 281–82 (reaching the same conclusion under section 1(D)(b)).

¶ 38 B. Unfitness under Section 1(D)(g)

¶ 39 Count III of the State's termination motion alleged that respondent is unfit to be a parent because she had failed to protect Genay from conditions within the environment injurious to Genay's welfare. See 750 ILCS 50/1(D)(g) (West 2014). In evaluating whether the State has proved unfitness under section 1(D)(g), the trial court may not consider evidence of a parent's conduct after the child was removed from his or her care. *In re C. W.*, 199 Ill. 2d 198, 212 (2002) ("[W]here a child has been removed from an injurious home environment and placed in foster care, a parent cannot be found unfit based on a 'failure to protect' during the period the child is in foster care."). Rather, the court must consider only conditions or conduct that

occurred prior to the removal. In doing so, a court may find a parent unfit based on the same injurious environment that initially led to the removal of the child. *Id.* at 219.

¶ 40 Respondent submits that the State did not prove by clear and convincing evidence that she failed to protect Genay from injurious conditions within the environment prior to November 12, 2014, when Genay was officially removed from respondent's custody. We agree, though not for the reason asserted by respondent. Respondent claims that the DCFS report relied upon by the State and the court cannot constitute clear and convincing evidence under section 1(D)(g) as a matter of law. Respondent cites *In re Enis*, 121 Ill. 2d 124 (1988), for the proposition that the supreme court found a provision of the Adoption Act, section 1(D)(f), which addresses physical abuse of minors, to be unconstitutional because it allowed the termination of parental rights based only on a preponderance of the evidence. Respondent extrapolates that this reasoning applies to other sections of the Adoption Act that involve termination of parental rights. This court has noted, however, that in *Enis*, section *1(D)(m)*, unlike section 1(D)(f), was not found to deprive the respondent of his due process rights. See *In re Jamarqon C.*, 338 Ill. App. 3d 639, 646-48 (2003), citing *In re S.A.*, 296 Ill. App. 3d 1029, 1031-35 (1998) (addressing whether section 1(D)(m) violated due process and concluding that the supreme court had not held in *Enis* that it did). Since the ruling in *Enis* applied specifically to section 1(D)(f), we reject respondent's argument that the DCFS case report cannot, as a matter of law, constitute clear and convincing evidence supporting the State's allegations under section 1(D)(g).

¶ 41 The trial court found the State proved by clear and convincing evidence that, prior to Genay's removal, respondent had "substantial episodes of mental health issues, which put Genay at risk of harm." On appeal, the State argues that "respondent's history of mental illnesses, which resulted in at least one psychiatric hospitalization in 2013, provided clear and convincing

evidence that she was unfit to parent, care for, and discipline the minor." We do not find, however, nor have we been directed to, clear and convincing evidence of respondent's failure to to protect Genay from conditions within the environment injurious to Genay's welfare. See *C.W.*, 199 Ill. 2d at 212 ("a finding of parental unfitness is *only* warranted where the evidence establishes that the parent failed to protect the child from conditions in the environment injurious to the child's welfare." (Emphasis added.)

¶ 42 Respondent did not fail to protect Genay when she let herself be taken by police to the psychiatric hospital in 2013. Resisting the police or attempting to leave the hospital without authorization might constitute failure to protect; however, there is no evidence of resistance, and respondent was released from the hospital within six days. During the hospitalization, Genay was in the care of her older sister, who, several days into the hospitalization, described Genay as being playful, fine and happy. Although Genay reported that her mother's conduct sometimes frightened her, she appeared to be doing fine when visited by a CASA worker two weeks after respondent's release, and she remained a happy and hopeful child four months later. A month after the hospitalization, the CASA case worker appointed to monitor the case reported to the court that she had maintained weekly contact with respondent and Genay and that during those contacts, respondent was appropriate with Genay.

¶ 43 The vesting of guardianship with DCFS occurred on November 12, 2014. Two months prior, the assigned DCFS case worker, in response to questions from the trial court, reported that, pursuant to a safety plan, Genay lived with Godparents, and respondent visited Genay in that household under DCFS supervision. Respondent was compliant with the plan, was doing a psycho-social assessment in Chicago and, following an assessment at Rosecrance, was found to be "in no need of services at this time."

¶ 44 Mental illness and hospitalization, by themselves, do not constitute clear and convincing evidence of unfitness under section 1(D)(g), as they do not automatically give rise to a need to protect a minor. Tellingly, no expert testimony was presented to show that respondent's condition was so injurious to Genay's welfare as to warrant protection. Moreover, when it was determined that Genay should live with her Godparents while respondent sought treatment, respondent complied with this safety plan.

¶ 45 There is no question that respondent has suffered from mental illness. From the evidence presented, however, we are not persuaded that termination of her parental rights is warranted by clear and convincing evidence. It may be that respondent is unable to have custody of Genay at this time; "it does not automatically follow that she is unfit to be Genay's mother with attendant rights and privileges." See *M.H.*, 313 Ill. App. 3d at 212.

¶ 46 As with section 1(D)(m)(ii) above, we find that there was not clear and convincing evidence of respondent's parental unfitness as defined by section 1(D)(g) of the Adoption Act, and we thus hold that the trial court's order to the contrary is against the manifest weight of the evidence. See *Syck*, 138 Ill. 2d at 281–82 (holding the same under section 1(D)(b)).

¶ 47 III. CONCLUSION

¶ 48 For the foregoing reasons, we reverse the judgment of the circuit court of Winnebago County, which found respondent to be an unfit parent and terminated her parental rights.

¶ 49 Reversed.