2017 IL App (3d) 170035

Order filed June 1, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re Z.E.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0035
	)	Circuit No. 12-JA-147
v.	)	
	)	
E.L.,	)	
	)	Honorable David A. Brown,
Respondent-Appellant).	)	Judge, Presiding.

In re M.E.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0036
	)	Circuit No. 12-JA-148
v.	)	
	)	
E.L.,	)	
	)	Honorable David A. Brown,
Respondent-Appellant).	)	Judges, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not consider an inappropriate factor in finding respondent unfit. (2) The trial court did not abuse its desertion in denying respondent's motion for expert witness fees. (3) The trial court did not abuse its discretion in finding that respondent failed to make reasonable progress toward the return of her children during the relevant nine-month time period. (4) Family Core's actions did not violate respondent's right to fundamental fairness in the proceedings.

¶ 2 Respondent, E.L., appeals the trial court's termination of her parental rights to her children, Z.E. and M.E. Specifically, respondent argues the trial court erred by (1) finding her to be an unfit parent based on her refusal to believe that Z.E. had been physically abused by her father and by measuring her subsequent progress in counseling on the same factor, (2) denying her request for the payment of expert witness fees, and (3) finding that she failed to make reasonable progress toward the return of her children. In addition, she asserts that Family Core's actions violated her right to fundamental fairness in the proceedings. We affirm.

¶ 3 FACTS

¶ 4 E.L. is the mother of Z.E. (born March 31, 2012), M.E. (born June 16, 2011), and two other minors who are not involved in this appeal. Z.E. was born prematurely at 25 weeks and was hospitalized until June 21, 2012, when she was released with an apnea monitor. On June 28, 2012, E.L. left the children in the care of Z.E.'s father, Michael. When she returned home in the early morning hours of June 29, 2012, she noticed Z.E.'s apnea alarm indicated Z.E. had a low heart rate. She called Z.E.'s nurse who came to the house to check on Z.E. and left after finding everything was okay. Shortly thereafter, E.L. called 911 because the apnea alarm continued to indicate a low heart rate. Z.E. was transported by ambulance and readmitted to the hospital

where she was diagnosed with subdural and subarachnoid hematomas and preretinal and intraretinal hemorrhages in both eyes.

¶ 5 On July 5, 2012, the State filed neglect petitions, alleging that Z.E., M.E., and their two minor siblings were neglected minors. In particular, the petitions alleged that the minors' environment was injurious to their welfare in that Z.E. had been physically abused by Michael or respondent between June 21 and June 29, 2009, resulting in retinal hemorrhages to both eyes and bilateral subdural hematomas. Following a shelter-care hearing later that day, the minors were placed in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6 Following a December 2012 adjudicatory hearing, the trial court found the minors were neglected in that their environment was injurious to their welfare as a result of Z.E.'s injuries, which could not have occurred absent abuse and/or neglect by respondent or Michael. Respondent and Michael were admonished that they must cooperate with DCFS and Family Core, comply with the terms of any service plans implemented, and correct the conditions that required the minors to be in care or risk termination of their parental rights. Although Michael was involved in the proceedings below and his parental rights were also terminated, he is not a party to this appeal.

¶ 7 Jenna Rieker, a child-welfare specialist for Family Core, submitted a report to the trial court in anticipation of the January 2013 dispositional hearing. The report recommended that respondent attend scheduled visits with her children and demonstrate appropriate parenting conduct during the visits, participate in random drug drops, successfully complete a parenting class, and attend all medical appointments for Z.E. and M.E. Following the hearing, the court found respondent unfit based on her lack of empathy for Z.E.'s injuries and lack of concern regarding Z.E.'s medical conditions, her refusal to believe Michael caused Z.E.'s injuries, her

on-and-off relationship with Michael even after a domestic violence incident between the two, and her failure to complete the required drug drops. The court ordered respondent to (1) execute all authorizations and releases of information requested by DCFS, (2) cooperate fully with DCFS, (3) perform random drug drops once per month, (4) participate and successfully complete counseling (the section which typically provides the type of counseling necessary was left blank), (5) participate and successfully complete a parenting course, (6) participate and successfully complete a domestic violence course, (7) obtain and maintain stable housing, (8) keep the caseworker up-to-date with any changes in address, phone numbers, or members of her household, (9) attend scheduled visitations with her children and demonstrate appropriate parenting conduct during the visits, and (10) attend all medical appointments for Z.E. and M.E.

¶ 8 Rieker submitted an updated report to the trial court for the June 2013 permanency review hearing that indicated respondent "ha[d] not been very cooperative with the services or orders by the [c]ourt during this reporting period." In particular, respondent had not attended counseling consistently, had been removed from the domestic violence class because she missed too many classes, did not always perform the drug drop on the days requested, and failed to attend any of Z.E. or M.E.'s medical appointments. Respondent's counseling goals included being honest, understanding the role she played in her children being placed in foster care, and improving her understanding of healthy verses unhealthy relationships. According to Rieker, respondent "ha[d] been very inconsistent in counseling appointments until recently, despite efforts by this worker and the clinician, encouraging [her] to be engaged." The report also detailed Rieker's concerns regarding respondent's behavior during a recent car trip to Wisconsin so that respondent could to visit her two older children who had been placed with their father. Specifically, Rieker reported that Z.E. and M.E. were craving respondent's attention in the car

and respondent would respond with "shut up," "be quiet," or "go to sleep." On the positive side, respondent had obtained stable housing, provided the caseworker with updated contact information, completed a parenting class, consistently attended visits with her children and interacted well during the visits although she was often late. Rieker recommended that respondent successfully complete a domestic violence class, attend Z.E.'s and M.E.'s medical appointments, and submit to a psychological evaluation. She further recommended that the court continue to find respondent unfit with a goal of returning the children to her home in 12 months.

¶ 9 At the permanency review hearing, the evidence presented corroborated Rieker's report. The State argued that respondent had not made reasonable efforts because she had not drug dropped on the date requested, had not consistently attended counseling, had not attended any of Z.E.'s or M.E.'s medical appointments, and was annoyed and upset with her children during the Wisconsin trip. In addition, the State noted respondent had been having unauthorized visits with her older children. Thereafter, the trial court found respondent had not made reasonable efforts and changed the goal to return home pending status.

¶ 10 A December 2013 permanency review order indicates mothers progress was "overall reasonable, more reasonable lately." The goal remained return home pending status.

¶ 11 Megan Goforth, a child-welfare specialist for Family Core, submitted an updated report to the trial court for the March 2014 permanency review hearing that indicated respondent had made minimal efforts during the reporting period. Specifically, respondent was often late to her counseling sessions and missed three sessions entirely without having called to cancel. She also showed up late or missed Z.E.'s medical appointments, did not attend her January 2014 case review, used corporal punishment during visits with her children, and used the television as a parenting technique.

¶ 12 Goforth noted respondent used corporal punishment again during a February 2014 visit, when she "forceful[ly]"slapped M.E.'s hand and made her cry. When Goforth informed respondent the use of corporal punishment was not acceptable, respondent "became belligerent" and stated "she will do as she pleases with her children." In addition, the report noted that respondent had a "friend" named Gregory who was her "main source of support" and who "she would like to become more serious with." Although Goforth had requested information about Gregory, respondent failed to provide it. The report indicated respondent had completed all requested drug drops which produced negative results, accepted a telemarketing job but quit the first day because it "it was not what she expected," completed a domestic violence course, and maintained stable housing although Goforth had concerns with cleanliness of the house. Goforth recommended the goal remain return home pending status.

¶ 13 Following the permanency review hearing, the trial court found respondent remained unfit for failing to make reasonable efforts. Specifically, the court found respondent unfit for (1) failing to attend counseling, (2) not providing her caseworker with information regarding her boyfriend, and (3) inappropriate conduct during visits. The goal remained return home pending status.

¶ 14 Goforth submitted an updated report to the trial court for the July 2014 permanency review hearing that indicated respondent had made minimal efforts during the review period. Since her release from jail for a prior traffic offense, respondent had been more engaged during her visits with M.E. and Z.E. She had also been "more consistent" in attending her counseling sessions, although she missed two counseling sessions during the reporting period and did not call to cancel those appointments. Goforth noted, however, that respondent's counselor informed her respondent saw counseling as a "chore" and was not applying the skills she was

being taught in everyday situations. According to Goforth, respondent's counselor recommended that counseling sessions be discontinued until respondent was "ready to fully participate in counseling." Respondent had also been evicted from her apartment and was currently living with her cousin who passed a background check. Respondent did not attend any of Z.E.'s medical appointments nor had she completed her parenting class during the review period.

¶ 15 In Goforth's opinion, respondent had not made the necessary changes to be reunited with her children. In particular, Goforth noted, "[w]hile [respondent] has completed most of her services, she still has not accepted responsibility in the part she played in her children coming into care. [She] has told this worker that she does not believe [Michael] physically abused Z.E. and that the hospital discharged Z.E. with the brain hemorrhage." Goforth recommended the goal change to substitute care pending court's decision on terminating parental rights.

¶ 16 A July 2014 progress report authored by respondent's counselor, Kristy Hemmele, noted that respondent's counseling goals included understanding the part she played in her children being placed in foster care and improving her understanding of healthy versus unhealthy relationships. Respondent had attended 10 of 14 scheduled counseling sessions during the review period. She did not call to cancel the appointments she missed. Although respondent had been attending counseling more consistently since her release from jail, "the quality of her participation in sessions has not improved," and she was not applying the skills she learned in counseling. Accordingly, Hemmele recommended counseling services be discontinued "until [respondent] decides that she is ready to apply the skills that she is being taught."

¶ 17 At the July 2014 permanency review hearing, Goforth testified that the quality of respondent's visits with Z.E. and M.E. had improved since March. Goforth stated respondent

had a bond with M.E. and was no longer using corporal punishment. Respondent testified that she was working as an exotic dancer and that she had one class left to take in order to complete her parenting classes.

¶ 18 Following the hearing, the trial court found respondent had made "mixed efforts." It admonished respondent that she cannot miss Z.E.'s medical appointments. It also noted respondent had not yet found stable housing and had been discharged from counseling. The court ordered respondent to undergo a psychological evaluation. The goal remained return home pending status.

¶ 19 Goforth submitted an updated report to the trial court in anticipation of the January 2015 permanency review hearing, which was continued to February 2015 on respondent's motion. The report indicated respondent had made minimal efforts to have her children returned to her during the reporting period. Although she had maintained stable employment at Hy-Vee and as an exotic dancer, she had not fully engaged in services. She only attended one of Z.E.'s two medical appointments and had not yet completed the parenting course. Further, Goforth noted that respondent's older children had been living with her during August 2014, despite a court order that she was not to have unsupervised or overnight visits with them. When Goforth went to respondent's apartment, respondent lied about the children being there and denied her access to the apartment. However, once Goforth gained access, she found the children hiding in a closet where respondent had put them.

¶ 20 Attached to the permanency report was a psychological evaluation of respondent by Dr. Barbara Toohill, completed in October 2014. Dr. Toohill's evaluation noted that respondent does not believe Michael hurt Z.E., but respondent "blames him and feels as though he is responsible for all for the negative consequences that have arisen." Dr. Toohill diagnosed

respondent with adjustment disorder with anxiety and depressed mood and panic disorder. She noted that anger was not "a significant concern" for respondent and "she is unlikely to be an active risk to her children." Dr. Toohill's recommendations for respondent included participating in weekly to bimonthly outpatient counseling to develop "effective coping skills, a willingness to seek out social or emotional support when necessary, and a decrease in defensiveness in terms of her approach to understanding herself, her children, strengths and weaknesses, and her goals in life." She noted that counseling should focus on healthy versus unhealthy relationships. In addition, Dr. Toohill suggested that respondent might benefit from a mentoring relationship with a "slightly older female" who could provide respondent supportive feedback and healthy advice.

¶ 21 The permanency report further noted that Goforth spoke with respondent about Dr. Toohill's recommendations, but respondent "did not feel it was necessary to re-engage in counseling at this time or find a mentor." Although respondent had made a counseling appointment with Hemmele for January 8, 2015, she failed to attend or call to cancel the appointment.

¶ 22 At the February 5, 2015, permanency review hearing, Goforth testified that respondent had taken a "slightly more active role" since the last court date. Respondent had reengaged in and been attending counseling for the last three weeks. E.L. testified that she had started the parenting classes and had four classes left to take. Nonetheless, the State recommended that the goal be changed to substitute care pending the trial court's decision on termination of parental rights. The court agreed, noting the case had been ongoing for two years and it "just can't keep having kids tread water."

¶ 23 In June 2015, the State filed a petition for termination of parental rights pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2012)). Specifically, the petition alleged respondent failed to make reasonable progress toward the return of the minors during any nine-month period following the adjudication of neglect. The particular nine-month period indicated in the petition was May 1, 2014, to February 1, 2015.

¶ 24 Goforth submitted an updated report to the trial court in preparation of the July 2015 permanency review hearing. The report noted a petition to terminate parental rights had been filed the month before. The report also indicated that respondent completed her second court-ordered parenting class on March 4, 2015. While no issues manifested during respondent's monthly visits with Z.E. and M.E., Goforth saw no evidence of a bond between respondent and the children.

¶ 25 At the July 2015 permanency review hearing, Goforth testified that respondent still needed counseling, but she had not reengaged in counseling since Family Core would no longer pay for the services. Respondent testified that she was still working at Hy-Vee and had moved in with a friend. The trial court declined to make a reasonable-effort determination and the goal remained substitute care pending court's decision on termination of parental rights.

¶ 26 In September 2015, respondent filed a motion for substitution of judge as a matter of right, which was granted and a motion for a finding of fitness.

¶ 27 In November 2015, respondent filed a motion for payment of expert witness fees. Specifically, respondent asked for money in order to hire an expert witness to testify regarding her counseling goals, measurement of progress, and whether it was reasonable to expect a parent to admit to an event of which they have no actual knowledge to improve parental competency or fitness. Following a December 2015 hearing, during which respondent's counsel acknowledged

no statutory authority existed to support her request, the trial court denied the motion. The court noted that an expert opinion would not be "particularly helpful" in this case, since respondent could simply argue it was unrealistic to have a goal that required her to admit to an event for which she had no actual knowledge. The court further stated that respondent was not "at a particular disadvantage" because the counselor the State intended to call was not the State's expert.

¶ 28 In October 2016, the fitness hearing on the State's motion for termination of parental rights commenced. Prior to hearing testimony, the trial court took judicial notice of the entire case file.

¶ 29 Megan Goforth testified that she had been respondent's caseworker during the relevant time period of May 1, 2014, through February 1, 2015. During that period, respondent's goals included participating in counseling, attending Z.E.'s medical appointments, visiting her children, completing a second parenting class, and maintaining stable housing.

¶ 30 Regarding counseling, Goforth testified that respondent was in jail for most of the month of May 2014 as a result of an old traffic offense. Upon her release from jail, respondent participated in counseling until Goforth referred her for a court-ordered psychological evaluation in July 2014. At that time, respondent chose to discontinue counseling pending the psychologist's recommendations. Goforth acknowledged there was a delay in ordering the psychological evaluation because she did not immediately realize that the court had ordered the evaluation in March 2014. Respondent underwent a psychological evaluation in October 2014, and Goforth received the results of the evaluation in December 2014. Dr. Toohill recommended that respondent continue counseling. Upon receiving Dr. Toohill's recommendations, Goforth met with respondent and gave a copy of the evaluation to respondent's counselor. Shortly

thereafter, however, the goal changed to substitute care and Family Core ceased paying for counseling, so respondent never returned to that counselor. Goforth stated she encouraged respondent to seek counseling at the Human Service Center.

¶ 31 Goforth further testified that she attended at least one visit per month between respondent, M.E., and Z.E. Respondent always provided snacks for the children, but some of the visits went better than others. According to Goforth, respondent was very involved with the children at times, but during other visits respondent was less engaged and sat in a chair while the children watched videos. On cross-examination, Goforth explained that while respondent was visiting with her children, there were times she was late or missed altogether.

¶ 32 Goforth testified that respondent's cooperation decreased between July 2014 and February 2015, the last seven months of the relevant period. Specifically, respondent had her older children living with her during the month of August 2014, even though respondent knew she was not to have unsupervised visits with them. When Goforth learned of the living arrangements and went to respondent's apartment, respondent lied and said the children were not there. Upon obtaining access to respondent's apartment, Goforth found the children hiding in a closet. On the positive side, Goforth noted respondent had obtained part-time employment at Hy-Vee. Overall, Goforth opined that respondent had made "little to no progress" from May 2014 to February 2015. Although respondent had restarted her parenting class, she did not complete it during the relevant period despite having had sufficient time to do so. On cross-examination, Goforth testified respondent did not want to do the parenting classes—which she had been ordered to do after being observed slapping her children's hands—and only started the classes after Goforth talked to her about doing so in July, August, September, possibly in October, and twice in November 2014.

¶ 33 Goforth further testified that respondent missed one of Z.E.'s two medical appointments because her friend had a death in her family and respondent was "helping [her] deal with the loss." Respondent also never took responsibility for the fact that her children were in foster care and counseling did not have any positive effect on her reunification efforts. On cross-examination, Goforth testified that respondent should have at least recognized "it was a possibility" that Michael hurt Z.E., because in her opinion, "that could be part of accepting" responsibility.

¶ 34 Kristy Hemmele testified that she was a licensed clinical professional counselor and worked for Family Core. Hemmele was respondent's counselor between May 2014 and February 2015. Hemmele stated that she and respondent were "[w]orking on how to be a better parent," by learning how to recognize healthy relationships and developing coping skills. According to Hemmele, it was never a counseling goal during the relevant time period for respondent to admit Michael harmed Z.E. They had "moved on past that" and were focused more on healthy relationships and coping skills. On cross-examination, Hemmele acknowledged having written, "[respondent] stated that she still believes [Michael] is innocent of the child abuse charges that resulted in her children being placed in care" in one of the reports prepared for the July 2014 permanency hearing. Hemmele stated she may have put that in the report due to "a conversation with the caseworker or the caseworker supervisor to say that the [c]ourts were looking to see if we've talked about it or if there was—that's just a guess." However, she reiterated that she and respondent had moved past that in their counseling sessions and that statement would have reflected some earlier period of time.

¶ 35 Hemmele further testified that respondent failed to show up to her counseling appointments on July 10 and July 17, 2014. Thereafter, Hemmele scheduled no further

counseling sessions with respondent since the goal had changed to substitute care pending the trial court's decision on termination of parental rights and counseling services were no longer being paid for by Family Core. Hemmele agreed that in a July 2014 counseling progress report she noted, "[t]he only real evidence of progress that [respondent] has displayed has been regular attendance since her release from jail," and "[t]his writer has not observed or been informed of any application of the skills that [respondent] has verbally indicated that she's learned during counseling." In Hemmele's opinion, respondent made "[v]ery little" progress toward reunification between May 1, 2014, and the last time she saw respondent on July 3, 2014.

¶ 36 Respondent testified on her own behalf. She stated that Z.E. was born premature and remained in the hospital for three months after her birth. Respondent explained that on the morning before she called the ambulance for Z.E., she had first called Z.E.'s nurse who came to the home around 1 a.m. and checked on Z.E. However, shortly after the nurse left, she called for an ambulance.

¶ 37 Respondent further testified that prior to serving her jail sentence in May 2014, she had started a parenting class. However, upon her release from jail, she was required to start the classes over. According to respondent, she did not start the new parenting classes until December 2014 because that was the first session offered following her release. She further stated that her counseling sessions with Hemmele following her release from jail and up to July 31, 2014, focused on whether she believed Michael hurt Z.E. According to respondent, this was the main topic they always talked about. She tried to go back to counseling after July 31, 2014, but Hemmele informed her Family Core would no longer pay for services. She then asked about paying for counseling herself and Hemmele was "supposed to look into something, and we just never talked about it again." On cross-examination, respondent was asked why she kept going to

counseling. She responded, "I didn't want to do counseling and—at all period, but I had to do it as far as to get my kids back, so—I didn't feel like I needed counseling at all."

¶ 38 Following closing arguments, the trial court took the matter under advisement. On October 25, 2016, the trial court issued its ruling, finding the State had proven by clear and convincing evidence that respondent remained unfit for failing to make reasonable progress toward the return of M.E. and Z.E. during the relevant time period. Specifically, the court found respondent had completed some of her court-ordered tasks during the review period, including submitting to a psychological evaluation and obtaining and maintaining employment, but she had made no progress in the majority of services. The court recognized that confusion between respondent, her caseworker, and her counselor resulted in an extended period of time where respondent did not attend counseling. As a result, the court did not hold respondent's failure to attend counseling during that period against her. Of the counseling sessions respondent should have attended, the court noted respondent missed several of those appointments. It further found respondent's testimony regarding her offer to personally pay for counseling not credible. Additionally, the court (1) noted the psychological evaluation indicated respondent suffered from low motivation to complete the recommendations, which could explain why she failed to complete the second parenting class within the relevant time period despite having adequate time to do so, (2) found respondent's evasive actions regarding her older children visiting from Wisconsin evidenced a lack of cooperation and notification on her part, and (3) noted respondent put a friend before her own child when she chose to stay home and comfort her friend rather than attend Z.E.'s medical appointment.

¶ 39 In December 2016, the trial court conducted a best interest hearing. At the conclusion of that hearing, the court found it was in the minors' best interest to terminate respondent's parental rights.

¶ 40 This appeal followed.

¶ 41 ANALYSIS

¶ 42 On appeal, respondent asserts the trial court erred by (1) finding her to be an unfit parent based on her refusal to believe that Z.E. had been physically abused by her father and by measuring her subsequent progress in counseling on the same factor, (2) denying her request for the payment of expert witness fees, and (3) finding that she failed to make reasonable progress toward the return of the minor children. In addition, she asserts that Family Core's actions violated her right to fundamental fairness in the proceedings.

¶ 43 I. Trial Court's Alleged Reliance on an Improper Factor in Finding Respondent Unfit

¶ 44 Respondent's first contention on appeal is that the trial court abused its discretion in "[(1)] initially finding [her] unfit for not admitting or not believing that [Michael] harmed Z.E., and [(2)] then to measure her subsequent progress in counseling, based on that same thing."

¶ 45 The State responds that respondent is precluded from challenging the trial court's consideration of the above factor at the dispositional hearing because she did not file a timely appeal from that order. In her reply brief, respondent asserts that the State "completely missed the point" and that "[t]he first issue [she] raised [in her initial brief] was actually whether the trial court, in the termination proceeding, should have measured [her] progress in counseling on whether she explicitly admitted or believed that [Michael] harmed Z.E."

¶ 46 Initially, we note that respondent's argument on this issue in her brief is difficult to follow. However, in contrast to her contention in her reply brief, respondent clearly asserts error

with the trial court's finding at the January 2013 dispositional hearing. Because she failed to timely appeal that decision, we lack jurisdiction to consider it. See *In re Janira T.*, 368 Ill. App. 3d 883, 891 (2006) (a court lacks jurisdiction to consider an issue where an appeal was not filed within 30 days of the dispositional order).

¶ 47 Respondent further argues that the trial court erred by measuring her progress in counseling at the termination stage of the proceedings on an unwritten goal that she "must admit, accept, or believe that either she or [Michael] harmed Z.E. before she could be deemed to have made reasonable progress toward the return home of the child." Citing *In re A.W.*, 231 Ill. 2d 92 (2008), and *In re L.F.*, 306 Ill. App. 3d 748 (1999), she maintains that is it is impermissible for the court and DCFS to compel counseling that would require a parent to admit to injuring a child. While we agree with that general contention, we find *In re A.W.* and *In re L.F.* distinguishable.

¶ 48 Notably, *In re A.W.* and *In re L.F* stand for the proposition that it is impermissible for a court to compel counseling that would violate ones' right against self-incrimination by requiring a parent to admit to committing a crime or face losing his or her parental rights. Here, however, the trial court never ordered counseling that required respondent to admit to committing a crime. Further, while the trial court occasionally commented on respondent's failure to recognize the role she played in her children being in foster care during the court of the proceedings, it did not find her progress in counseling was due to her refusal to admit Michael injured Z.E. Rather, as we explain in greater detail below, the court's finding that respondent failed to make reasonable progress toward the return of her children during the relevant nine-month period was based on a number of relevant factors, none of which included respondent's refusal to admit Michael was responsible for Z.E.'s injuries.

¶ 49 II. Respondent's Motion for Payment of Expert Witness Fees

¶ 50 Respondent next argues the trial court erred in denying her motion for payment of expert witness fees. Respondent concedes no statutory authority exists for the payment of expert witness fees in a civil case, but she maintains it was an abuse of discretion for the court to deny her motion. See *In re E.S.*, 246 Ill. App. 3d 330, 336 (1993) (whether to pay for an expert witness is a decision that lies within the trial court's sound discretion). According to respondent, the court abused its discretion by denying her motion without addressing her argument that "[t]here is case law to support [her] position that the standards for ineffective assistance of counsel [are] the same in civil cases as in criminal cases, and to deny the motion would be akin to not providing [her] effective assistance of counsel."

¶ 51 Respondent does not elaborate on how the trial court's decision to deny her motion for expert witness fees is similar to receiving ineffective assistance of counsel. The cases she cites in support of her contention merely note that minors and their parents have the right to effective assistance of counsel in juvenile proceedings and that ineffective-assistance-of-counsel claims in such proceedings are reviewed under the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *In re Ch. W.*, 408 Ill. App. 3d 541, 546 (2011); *In re S.G.*, 347 Ill. App. 3d 476 (2004). We note, however, that ineffective-assistance-of-counsel claims concern the deficient performance of counsel. Here, respondent's counsel filed the motion seeking expert witness fees. At the hearing on the motion, counsel essentially argued that she would not be "completely effective" if she was not allowed to put on an expert witness, someone who was "unbiased" and who could review respondent's counseling records and testify "as to what was an appropriate measure in terms of progress in counseling." The court disagreed, noting an expert witness would not be "particularly helpful" in this case, especially since respondent could simply argue that it was not realistic to have a goal that required her to admit to an event for which she

had no actual knowledge. Further, the court stated that respondent was not "at a particular disadvantage" because the counselor the State intended to call was not the State's expert. Moreover, at the fitness stage of the hearing on the State's petition to terminate parental rights, Kristy Hemmele, respondent's counselor, explicitly denied that one of respondent's counseling goals during the relevant time period included admitting that Michael could have harmed Z.E. We are unaware of any authority allowing a trial judge to award expert witness fees in this case. However, as did the Fourth District in *In re E.S.*, 246 Ill. App. 3d 330 (1993), we decline to tilt at that windmill in this case. Assuming that such authority exists, the trial court did not abuse its discretion in denying respondent's request. See *id.*

¶ 52 III. Propriety of the Trial Court's Fitness Determination

¶ 53 Next, respondent challenges the trial court's finding that she was unfit at the termination stage of the proceedings.

¶ 54 In a proceeding to terminate parental rights, the State must first prove by clear and convincing evidence that the parent is unfit. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent within 9 months period after an adjudication of neglect[] or abuse[]." 750 ILCS 50-1(D)(m)(ii) (West 2012).

¶ 55 "Reasonable progress is judged by an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060,

¶ 17. At a minimum, reasonable progress requires " 'measurable or demonstrable movement toward the goal of return of the child, but whatever amount of progress exists must be determined with proper regard for the best interests of the child.' " *Id.* (quoting *In re M.S.*, 210 Ill. App. 3d 1085, 1093-94 (1991)). "[T]he benchmark for 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." (Internal quotation marks omitted.) *Id.* "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.*

¶ 56 "A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony." *Id.* ¶ 15. A reviewing court will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d at 417. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id.*

¶ 57 In this case, the trial court found respondent failed to make reasonable progress toward the return of her children between May 1, 2014, and February 1, 2015. During that period, respondent completed some of the court-ordered tasks, including submitting to the psychological evaluation, obtaining and maintaining employment, and visiting with her children. However, respondent failed to successfully complete other tasks. In particular, respondent missed several counseling sessions, missed her child's medical appointment in order to stay home and comfort a

friend, failed to complete the parenting class despite having adequate time to do so, and failed to cooperate with and notify Family Core when her older children, with whom she was not to have unsupervised or overnight visits, lived with her for an entire month.

¶ 58 Based on the evidence presented, respondent failed to make measurable or demonstrable movement toward the return of her children within the relevant period of time, and thus, the trial court's determination that respondent failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 59 IV. Fundamental Fairness in the Proceedings

¶ 60 Finally, respondent argues that Family Core "completely bungled this case when it came to the counseling and the psychological evaluation, which set [her] up to fail." Essentially, she contends that Family Core's 4½ month delay in ordering the psychological evaluation negatively impacted her progress during the relevant time period because Dr. Toohill identified "some intellectual defects," diagnosed her with some mood disorders, and "gave some very specific directions to the agency as to how to approach [respondent]."

¶ 61 Initially, we note that the trial court did not hold respondent's failure to attend counseling over an extended period of time during the relevant review period against her. In fact, the court specifically recognized her failure to attend resulted from confusion between respondent, her caseworker, and her counselor. As such, the court explicitly stated, "I don't hold that against [respondent]. I don't think it would be fair to hold it against her because I think that there was a fair amount of confusion by everybody. And so I think everybody was kind of at a standstill until the psych evaluation was completed." On the other hand, the court appropriately considered respondent's progress in counseling when she was attending, and found that "the

purposes of counseling were not achieved or no substantial steps were made toward achieving those goals during the relevant time period."

¶ 62 In addition, the record shows that even after respondent's caseworker spoke with her about the results from her psychological evaluation, respondent continued to be of the opinion that she did not need counseling or a mentor. In fact, although respondent scheduled a counseling session with counselor Hemmele for January 8, 2015, she failed to attend or call to cancel the appointment.

¶ 63 In any event, we find that any mistakes made by Family Core were harmless because they did not impact the trial court's ultimate determination that respondent was unfit for failing to make reasonable progress toward the return of her children between May 1, 2014, and February 1, 2015.

¶ 64 CONCLUSION

¶ 65 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 66 Affirmed.