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FILED
May 30, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.H., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-16-0769) NICOLE GEE BUCKNER, Respondent-Appellant.	)	Appeal from Circuit Court of Logan County No. 15JA4
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In re: C.H., a Minor, THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner-Appellee, v. (No. 4-16-0774) NICOLE GEE BUCKNER, Respondent-Appellant.	)	No. 15JA5 William G. Workman, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: If a parent claims to have received ineffective assistance of counsel in proceedings for the termination of his or her parental rights, and if the record on appeal is inadequate to fully evaluate that claim, a remand is necessary to develop the necessary factual record.

¶ 2 Respondent, Nicole Gee Buckner, appeals from a judgment in which the trial court terminated her parental rights to A.H. and C.H. She contends that she received ineffective assistance of counsel in the proceedings. Because the record does not enable us to fully evaluate this claim of ineffective assistance, we remand the two cases for development of an adequate factual record.

¶ 3 I. BACKGROUND

¶ 4 A. The Petition for Adjudication of Wardship

¶ 5 On February 19, 2015, Bradley Hauge, an assistant State's Attorney, petitioned the circuit court of Logan County to adjudicate A.H. (born April 14, 2000) and C.H. (born August 6, 2009) wards of the court on the grounds that they were neglected and abused. The children's parents were respondent, who lived in Beason, Illinois, and her ex-husband, Christopher Harris, who was imprisoned in the Illinois Department of Corrections, and the children allegedly were neglected in that they were in an "environment *** injurious to [their] welfare." 705 ILCS 405/2-3(1)(b) (West 2014) (defining a "[n]eglected *** minor" to include "any minor under 18 years of age whose environment is injurious to his or her welfare"). The State claimed their environment was injurious in that (1) respondent had been using illegal drugs, and (2) domestic violence had occurred between her and A.H. Also, the State claimed the children were abused in that respondent had inflicted (1) physical injury upon A.H. by other than accidental means, thereby impairing A.H.'s mental and physical health (see 705 ILCS 405/2-3(2)(i) (West 2014)); and (2) excessive corporal punishment on A.H. (see 705 ILCS 405/2-3(2)(v) (West 2014)).

¶ 6 B. The Shelter-Care Hearing

¶ 7 On February 19, 2015, the trial court held a shelter-care hearing (see 705 ILCS 405/2-10 (West 2014)), in which the State offered the following documents as evidence: (1) the information in Logan County case No. 14-CF-40, in which respondent was charged with the Class 4 felony of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) and the Class A misdemeanor of possession of drug paraphernalia (720 ILCS 600/3.5 (West 2014)); (2) a sworn report, dated February 17, 2015, by the arresting officer; and (3) a

finding of probable cause in that case by Judge Thomas W. Funk. (We note that, according to the website of the Logan County circuit clerk, respondent pleaded guilty, on September 2, 2015, to this charge of unlawful possession of a controlled substance and that the paraphernalia count was dismissed on the State's motion. The sentence was 24 months' probation, 50 hours of public service, and a stayed jail term of 90 days.)

¶ 8 After the trial court admitted these documents (which do not appear to be in the record), the State called Nancy Britten as a witness. She testified she was an investigator with the Department of Children and Family Services (Department), and that at 7:15 p.m. on February 17, 2015, she was called to the Logan County sheriff's office to investigate something that reportedly happened earlier that evening.

¶ 9 When Britten arrived, respondent was under arrest, and the sheriff's office also had taken protective custody of C.H. and A.H. The younger child, the boy, C.H., was too tired to talk. But the girl, A.H., told Brittin the following. For as long as A.H. could remember, respondent, her mother, had used drugs. Not only had respondent taught A.H. how to make crack cocaine in a microwave oven, but, on several occasions, respondent had tried to persuade A.H. herself to use crack cocaine. That evening, A.H. told respondent she was tired of her drug habit. Apparently, this criticism enraged respondent, who grabbed A.H. by the hair. A.H. in turn grabbed her by the hair, and they fought. In this struggle, respondent scratched A.H. on the back of the neck and on the arms. Some of the scratches on her arms were rather deep.

¶ 10 That night, Britten telephoned several relatives, whom respondent had recommended, to see if the children could be placed with them. Because of one reason or another, usually a lack of room, these relatives were unable or unwilling to accept the children into their homes. Respondent said there were no other relatives. She suggested, however, that she

could move out of her house and a relative could take care of the children there. Britten checked with her supervisor, and the Department was unwilling to go along with that idea.

¶ 11 After hearing Britten's testimony and receiving the documentary evidence, the trial court found probable cause to believe that the children had been neglected or abused, and the court found that reasonable, but unsuccessful, efforts had been made to keep the children in the home. Therefore, the court authorized the Department's guardianship administrator to "place the minors" and to consent to their medical care. The court appointed Edwin C. Mills III to represent respondent in these two juvenile cases, which the court consolidated.

¶ 12 C. The Adjudicatory Hearing

¶ 13 On April 16, 2015, the trial court held a hearing on the question of whether the children were neglected or abused as alleged in the State's petition for adjudication of wardship. See 705 ILCS 405/2-21 (West 2014). Respondent appeared along with her appointed attorney, Mills. The father, Christopher Harris, likewise appeared along with his appointed attorney.

¶ 14 The parents offered to admit paragraph 1 of the petition for adjudication of wardship, the paragraph alleging: "The minors are under 18 years of age and are NEGLECTED, pursuant to [section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2014))], in that the minors' environment is injurious to their welfare as evidenced by [respondent's] drug use." In return, the State offered to dismiss the remaining allegations of the petition. After admonishing the parents and hearing a factual basis (A.H.'s statement to Britten), the trial court concluded that the proposed admission was knowing and voluntary, and the court therefore accepted it. The court found the minors to be neglected as alleged in the admitted paragraph, paragraph 1.

¶ 15 The parents waived the statutory 30-day deadline for holding a dispositional hearing (see 705 ILCS 405/2-21(3) (West 2014)), and, accordingly, the trial court scheduled the dispositional hearing for May 28, 2015. Subsequently, on Mills's motion, the dispositional hearing was rescheduled for June 11, 2015.

¶ 16 D. The Dispositional Hearing Report by the Center for Youth and Family Solutions, Filed on May 19, 2015

¶ 17 1. *Criminal Proceedings Against Respondent*

¶ 18 Respondent had been charged with domestic battery, causing a child to be endangered, possession of a controlled substance, possession of drug paraphernalia, and driving when her driver's license was revoked.

¶ 19 She was on bail, and one of the conditions of bail was that she have no contact with the children.

¶ 20 2. *Criminal Proceedings Against Christopher Harris*

¶ 21 The father, Christopher Harris, was serving five terms of life imprisonment for homicide, 30 years' imprisonment for attempt (first degree murder), 30 years' imprisonment for home invasion, and 20 years' imprisonment for armed robbery. The murder victims were respondent's father and stepmother and their three children.

¶ 22 3. *Respondent's Living Arrangements*

¶ 23 Since 2006, respondent, who was 33 years old, had been living in a three-bedroom house in Beason, Illinois. It was her grandmother's house (more precisely, her grandmother was buying it on a contract for deed).

¶ 24 4. *Respondent's Employment*

¶ 25 Respondent was self-employed. She did cleaning, painting, and seasonal yard work.

¶ 26 5. *Where the Children Were Living*

¶ 27 Since March 21, 2015, A.H., who was 15 years old, and C.H., who was 5 years old, were in a "relative foster placement" with Shawn and Amanda Harris. Before that, they were in a traditional foster home.

¶ 28 6. *Goals in Respondent's Service Plan*

¶ 29 There were five goals in respondent's service plan.

¶ 30 The first goal was to maintain a constant, adequate residence and to have a legal means of income that met the family's needs. The house in Beason was clean and adequately furnished, and it contained no apparent safety hazards. The odd jobs, however, were not steady, and respondent struggled to pay her bills.

¶ 31 The second goal was to cooperate with a substance-abuse evaluation and with treatment and to maintain an alcohol-free and drug-free level of functioning. On March 2, 2015, respondent underwent an initial assessment at Tazwood Mental Health Center (Tazwood), and she was referred for Level 2 treatment. On April 10, 2015, she was discharged, however, because of poor attendance, and she had not completed the program. The Center for Youth and Family Solutions (Center) tried, without success, to reach respondent on April 2, 8, 14, 20, and 29, 2015, and on May 29, 2015, to ask her to undergo drug screening. Respondent's telephone was out of minutes, or its voice mailbox was full. She underwent only one drug screen on April 14, 2015, and it was negative.

¶ 32 The third goal was to cooperate with a mental-health and aggression assessment and to follow through with all recommendations. On February 27, 2015, the Center for Youth

and Family Solutions (Center) referred respondent for a mental-health and aggression assessment, and she was put on a waiting list. The Center recommended that because she was on a waiting list, she seek a counseling referral from her primary-care physician. As it turned out, she could not do that because she had missed medication monitoring appointments, and therefore her primary-care physician was unwilling to see her. She reported she had been prescribed diazepam and trazodone for anxiety and sleeplessness but that she had run out of these medications and that because she had state insurance, other doctors had turned her away.

¶ 33 The fourth goal was to cooperate in parenting classes. Respondent was doing so.

¶ 34 The fifth goal was to cooperate with the supervising agency and with its recommendations. The Center often had difficulty reaching respondent by telephone due to her changes of telephone numbers and lack of minutes.

¶ 35 E. The Dispositional Hearing

¶ 36 On June 11, 2015, the trial court held a dispositional hearing. See 705 ILCS 405/2-21(2) (West 2014). None of the parties presented any testimony. The State requested that the court make the children wards of the court and place custody and guardianship with the Department. The State argued the father was unfit because of his incarceration. The State argued that respondent was unfit for seven reasons: (1) she lacked stable employment, and she struggled to pay her bills; (2) she had a problem with substance abuse; (3) because of poor attendance, she had been discharged from substance-abuse treatment; (4) she had missed almost all of her drug screens; (5) she had missed medication-monitoring appointments for her mental-health problems; (6) she still needed help with domestic violence and anger management; and (7) she had failed to keep in contact with her caseworker. He recommended setting a goal of returning the children home within 12 months.

¶ 37 When the trial court asked Mills for his response, he stated:

> "MR. MILLS: Thank you, your Honor. We agree with the State's assessment insofar as the custody and guardianship with [the Department]. [Respondent's] fitness we'll leave to the discretion of the Court, and I believe that the goal should be return home within twelve months. Thank you, your Honor."

¶ 38 The trial court found both parents to be unfit, for reasons other than financial circumstances alone, to care for, protect, train, educate, supervise, or discipline the minors and that placement of the minors with either parent would be contrary to the health, safety, and best interest of the minors. See 705 ILCS 405/2-27(1) (West 2014). As to respondent, the factual basis was her lack of stable employment and her difficulties with substance abuse, anger management, and domestic violence. See *id.* As to the father, the factual basis was his imprisonment. See *id.* The court made the minors wards of the court and placed custody and guardianship with the Department.

¶ 39 F. The Permanency Hearing Report Filed on October 29, 2015

¶ 40 On October 29, 2015, the Center filed a permanency hearing report, which assessed respondent's progress in meeting the prescribed goals.

¶ 41 1. *Maintain a Constant, Adequate Residence, and Have a Legal Means of Income That Meets the Family's Basic Needs*

¶ 42 Although the caseworker, Jeanna Daughty, previously found the Beason residence to be clean, adequately furnished, and apparently free of any safety hazards, it was necessary to periodically reinspect the residence to ensure it remained in that condition. For that purpose, Daughty attempted to schedule a home visit, but respondent put her off by stating that, for the past six months, she had been staying with her grandmother, in Lincoln, Illinois, and that

because she was working in Lincoln, it was inconvenient for her to meet with Daughty in Beason. Besides, respondent said, she had the utilities turned off in the Beason house to save money. When Daughty requested the grandmother's address in Lincoln, respondent insisted that the Beason house was still her primary residence.

¶ 43 2. *Cooperate With Evaluation and Treatment for Substance Abuse, and Remain Free of Alcohol and Drugs*

¶ 44 On August 6, 2015, respondent underwent another evaluation at Tazwood. The staff there recommended Level 2 rehabilitative treatment. Because respondent was unhappy with that recommendation, she left before the evaluation was complete and before a drug screen was performed.

¶ 45 The Center attempted to reach respondent and Paula Gee, her mother, to have respondent undergo weekly drug screens. The Center had made a total of 21 requests since June 1, 2015. "[O]ften the phones [were] out of minutes, or there [was] no answer[,] and the voicemail boxes [were] full, or not set up," Daughty wrote. Consequently, respondent had undergone only three drug screens: on July 8, July 24, and October 13, 2015. The test on July 24, 2015, "was diluted[,] but the other two were negative for illegal substances."

¶ 46 This difficulty of reaching respondent had caused delay in the implementation of services. For example, on April 16, 2015, respondent signed consents for Chestnut Health Systems (Chestnut) in Bloomington, Illinois, and Gateway Foundation in Springfield, Illinois, but because of Daughty's inability to reach her either by telephone or at home, it was not until nearly a month later, on May 12, 2015, that respondent was provided contact information for those two organizations.

¶ 47 On October 27, 2015, respondent reported it was a condition of her probation that she undergo substance-abuse treatment and that court services had provided her the information

to contact Chestnut. She admitted to Daughty, however, that she had not yet contacted Chestnut to schedule an assessment.

¶ 48 3. *Cooperate With a Mental-Health and Aggression-Management Assessment and Follow Through With All Recommendations*

¶ 49 On July 15, 2015, respondent began counseling services at the Center. She attended only four sessions and was dropped from the program for poor attendance. On September 9, 2015, and again on October 14, 2015, she was informed she could reengage in the program if she called the counselor. Respondent left a message for the counselor on October 14, 2015. The counselor attempted to call her back a couple of days later but was unable to reach her.

¶ 50 4. *Cooperate in Parenting Classes*

¶ 51 On May 16, 2015, respondent successfully completed parenting classes.

¶ 52 She began visitation with her son, C.H., on September 9, 2015, and "displayed appropriate parenting during the visits." (The no-contact order, which had prevented respondent from visiting her children, was lifted when she entered a negotiated guilty plea on September 2, 2015.)

¶ 53 The daughter, A.H., did not want any contact with respondent and was opposed to being returned to her custody, even if respondent completed services.

¶ 54 5. *Cooperation With the Supervising Agency and Its Recommendations*

¶ 55 Because of changes in telephone numbers and lack of minutes, the Center often had difficulty reaching respondent. When trying to reach respondent through her mother, the Center experienced the same difficulties. Daughty sent letters to the Beason address and made unannounced visits there until July 15, 2015, when respondent divulged that she actually was

living in Lincoln most of the time. She refused to give Daughty the Lincoln address. Now and then, Daughty received telephone calls from respondent, but often these calls were weeks apart.

¶ 56 In the Center's view, failure to keep in regular contact with the caseworker was a lack of cooperation, as was the failure to participate in mental-health and substance-abuse services and the failure to undergo the majority of her random drug screens. Also, the Center saw noncooperation in respondent's being arrested four times since her children were placed in foster care. One of the arrests was for resisting a peace officer.

¶ 57 The Center recommended changing the goal from "Return Home within 12 months" to "Return Home Pending Status."

¶ 58 G. The Permanency Hearing of November 5, 2015

¶ 59 On November 5, 2015, the trial court held the first permanency hearing. See 705 ILCS 405/2-28(2) (West 2014). Mills stated he had the following update for the permanency hearing report filed on October 29, 2015. Respondent met with Aaron McCorder of Chestnut on November 4, 2015, "to initiate a substance abuse evaluation," and "the recommendations [were] pending." She was scheduled to return in a week and complete the evaluation.

¶ 60 None of the other parties had any further updates to the permanency hearing report or any evidence to offer beyond the report. Therefore, the trial court heard arguments.

¶ 61 The State argued (1) it would be in the best interest of the children that they remain wards of the court; (2) both parents were unfit; and (3) the goal should be changed to "return home pending status," since respondent had become grown less cooperative with services. The State argued her cooperation had fallen off in the following ways:

> "As far as her residence, she has refused to tell the caseworker where she was living during the summer and has not allowed the caseworker to go inside her

> home since March 23rd of 2015, has not provided proof of any legitimate income at this time, and substance abuse treatment has not gone well, been discharged unsatisfactory in April [2015] from Tazwood, and did another assessment in August [2015] with Tazwood, but did not return, and just yesterday apparently went to go start an evaluation process with Chestnut. She has missed a significant amount of drug screens over the last reporting period, missed 18 screens and had [1] dilute screen with [2] negative screens. Mental health treatment, she has failed to contact a primary care physician, was discharged from counseling through the [C]enter in September, 2015; has not re-engaged. Again, cooperation has not been good with [respondent], has failed to stay in contact with the [C]enter, has failed to drug test, and has also been arrested four times since her children were taken into care."

¶ 62 The trial court asked Mills for his response. He stated:

> "MR. MILLS: Your Honor, my client has had a couple of difficulties during this reporting period, but there have been some positives. She has completed her parenting class, she has re-engaged with [Chestnut], and I believe that she's re-engaging with her counselor. Your Honor, I leave the efforts, progress, fitness to the discretion of the court, and my client intends to do much better during the next reporting period."

¶ 63 H. The Permanency Order of November 5, 2015

¶ 64 In a permanency order of November 5, 2015, the trial court found that neither parent had made reasonable and substantial progress toward the return of the children and that both parents still were unfit. "[T]o justify a finding of reasonable efforts and progress,"

respondent would have had to "engage in services, cooperate with [the] agency, [and] keep [in] contact with [the] agency." The trial court changed the permanency goal to "Return Home Pending Status," as the Center, State, and guardian *ad litem* Thomas L. Van Hook had recommended.

¶ 65 I. The Permanency Hearing Report of April 14, 2016

¶ 66 1. *Maintain a Constant, Adequate Residence, and Have a Legal Means of Income That Meets the Family's Basic Needs*

¶ 67 a. Housing

¶ 68 When visiting the Beason residence on February 17, 2016, Daughty found it to be "generally clean and appropriate." The only problem was that the upstairs banister was missing. This was a safety hazard. Respondent said she intended to have a banister put in during the coming weekend. Daughty was unable to schedule a follow-up appointment to confirm that a banister had been installed.

¶ 69 b. Income

¶ 70 Respondent reported that on October 28, 2015, she started a waitressing job at a restaurant in Bloomington, Illinois, but that in December 2015 she left that job and began a new job at a restaurant in Clinton, Illinois. She provided Daughty, as proof of income, her work schedule for the week at the new restaurant. Daughty received no other updates about respondent's employment at the new restaurant. In March 2016, respondent reported that she was cleaning rooms for income.

¶ 71 2. *Cooperate With Evaluation and Treatment for Substance Abuse, and Remain Free of Alcohol and Drugs*

¶ 72 On December 29, 2015, respondent completed a substance-abuse assessment at Chestnut. As a result of the assessment, Chestnut recommended that before she entered the Level

1 outpatient program, respondent seek alternative medications to those she had been prescribed, which included Valium and hydrocodone. Respondent "did not follow up with Chestnut about her medications until February 2016." At that time, she "received a scheduled start date of [March 8, 2016,] for substance abuse treatment." She reported that this start date conflicted with her anger-management classes and therefore she planned to reschedule the dates of her treatment at Chestnut. She was looking for treatment facilities closer to Lincoln. Respondent had not informed Daughty "of any changes to her treatment provider."

¶ 73 Respondent had "missed approximately 18 drug screens since her last court hearing." The two drug screens she did take, on November 19 and December 30, 2015, "were negative for substances." She "also completed drug screens during her assessment at Chestnut on [December 29, 2015,] for probation. These tests were also negative for substances, even though [respondent] had a prescription for medications that should have shown up in these screens."

¶ 74 3. *Cooperate With a Mental-Health and Aggression-Management Assessment and Follow Through With All Recommendations*

¶ 75 a. Mental-Health Assessment

¶ 76 From her primary-care physician, respondent received a referral to Mental Health Centers of Central Illinois (as of Mar. 7, 2016, changed name to Memorial Behavioral Health). She attended an appointment there on January 9, 2016, and then missed the following four appointments scheduled for January 22, February 18, February 29, and March 15, 2016. The first three of these missed appointments were no-calls, no-shows. Respondent called in for the fourth appointment, explaining she had car trouble. Thus, she had not finished the mental-health assessment, which would have been performed during both the first and the second appointments. Because of the four absences, she had been put on a waiting list and could not schedule any appointments until May 2016.

¶ 77 When asked if she had looked into an alternative to Valium, as Chestnut had recommended, respondent stated she "had stopped taking the Valium as she was able to manage her mental health symptoms without it."

¶ 78 b. Aggression Management

¶ 79 Respondent was enrolled in an aggression-management group at the Center. The sessions began on February 16, 2016. She missed the first two sessions, but she called in and explained her schedule conflict. She was asked to come in on March 25, 2016, to make up the sessions. She arrived in the office on that date but told the receptionist she could not stay because she had an emergency. She did not pause long enough to speak with the counselors, who were in the building. She was a no-call, no-show for the next two aggression-management sessions and consequently was dropped from the program.

¶ 80 4. *Cooperate in Parenting Classes*

¶ 81 Respondent completed parenting classes on May 16, 2015. The instructor reported that respondent was cooperative in class: she engaged in group conversations and completed the coursework.

¶ 82 On September 9, 2015, respondent began visiting with C.H. She "displayed appropriate parenting skills during the visits." The only concern was that she asked C.H. to convey messages to A.H., although respondent knew that A.H. did not want to have any communication with her.

¶ 83 5. *Cooperation With the Supervising Agency and Its Recommendations*

¶ 84 Because of changing telephone numbers and a lack of minutes, the Center continued having difficulty reaching respondent. Respondent had "failed to participate in mental health and substance abuse services" and had "failed to complete the majority of her random

drug screens." Also, respondent had "been caught providing misinformation to [Daughty] about her services, as she [had] claim[ed] to have completed or attended several appointments when the service providers report[ed] otherwise."

¶ 85 On the positive side, there had been no more arrests in Logan County since the last court hearing, and Daughty was aware of no arrests anywhere else.

¶ 86 Even so, Daughty and her supervisor, Jessica Laurence, recommended that the permanency goal be changed to "Substitute Care Pending Court Determination on Termination of Parental Rights."

¶ 87 J. The Permanency Hearing of April 21, 2016

¶ 88 The trial court held another permanency hearing on April 21, 2016, and asked if any updates or corrections should be made to the permanency hearing report of April 14, 2016. The State answered that, earlier that week, the children had been removed from the foster home (the Harris residence) and had been placed in respite care. The reason was that the Department was investigating "corporal punishment that was being done inside of the home with the foster parents." Because the investigation was still ongoing, he was "not privy to all the details."

¶ 89 None of the parties had any further updates or corrections, or any evidence to offer beyond the permanency hearing report. Therefore, the trial court heard arguments. The State argued that respondent remained unfit for the following reasons:

> "[She] has not made reasonable efforts or progress, has not maintained consistent contact with the caseworker in these matters, and missed several drug screens, 18 drug screens since the last court hearing, has been unsuccessfully discharged from multiple treatments and services, non-complying mental health recommendation, not complying with substance abuse, anger management recommendations, is

frequently late to visits, and [A.H.] has mostly denied wanting to visit with [respondent] during this last reporting period as well ***."

The State recommended "set[ting] a permanency hearing report within six months of today" and requested "a 30-day status date on the petition to terminate parental rights."

¶ 90 The trial court asked Mills for his response. He stated:

"MR. MILLS: My client has some excuses for the things that have happened within this reporting period, but I'm going to leave the determination of progress and efforts and fitness to the discretion of the court."

¶ 91 The trial court next turned to the guardian *ad litem*, Van Hook, who agreed with the State's recommendation.

¶ 92 K. The Permanency Order of April 21, 2016

¶ 93 In its permanency order of April 21, 2016, the trial court found that the parents had not made either "reasonable and substantial progress" or "reasonable efforts" toward the return of the children. The court found that they remained unfit, and it changed the permanency goal to "Substitute Care Pending Court Determination of Termination of Parental Rights."

¶ 94 L. The Petition for the Termination of Parental Rights

¶ 95 On April 20, 2016, the State filed a petition for the termination of parental rights. The State alleged that respondent met two of the statutory definitions of an "unfit person": (1) she had failed to make reasonable efforts to correct the conditions that had been the bases of removing the children from their parents (see 750 ILCS 50/1(D)(m)(i) (West 2014)), and (2) during the nine-month period following the adjudication of neglect, *i.e.*, from April 16, 2015, to January 16, 2016, she failed to make reasonable progress toward the return of the children (see 750 ILCS 50/1(D)(m)(ii) (West 2014)). (The State alleged that the father, Christopher Harris,

met four of the statutory definitions of an “unfit person” (750 ILCS 50/1(D)(i), (D)(m)(i), (D)(m)(ii), (D)(s) (West 2014)).)

¶ 96 M. The Fitness Hearing

¶ 97 On July 21, 2016, the trial court held a fitness hearing. At the beginning of the hearing, the State moved for the admission of some certified court records from other cases. These records showed that the parents had been convicted of various offenses. People’s exhibit No. 1 showed that, in Logan County case No. 09-CF-171, Christopher Harris had been convicted of multiple counts of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), among other offenses. People’s exhibit No. 2 showed that, on September 2, 2015, in Logan County case No. 15-CM-59, respondent pleaded guilty to the domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) of A.H., an offense she committed on February 17, 2015. People’s exhibit No. 10 showed that, on September 2, 2015, in Logan County case No. 15-CF-101, respondent pleaded guilty to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), specifically, a substance containing cocaine, an offense she committed on June 18, 2015.

¶ 98 In addition, the State requested the trial court to take judicial notice of the following court records in this case: three service plans (bearing the plan dates of March 15, 2015; August 15, 2015; and February 22, 2016); the adjudicatory order of April 16, 2015; the dispositional order of June 11, 2015; and two permanency orders, entered on November 2, 2015, and April 21, 2016. There was no objection to the proposed judicial notice.

¶ 99 The State then called Jeanna Daughty to the stand. She testified substantially as follows.

¶ 100 She was a foster-care case manager at the Center. She had been the case manager for A.H. and C.H. and their parents since late February 2015.

¶ 101 Each parent had a service plan, and each service plan contained "desired outcomes," or goals. For respondent, there were three service plans, and the goals and subgoals remained the same from one service plan to the other (so, basically, it was the same service plan repeated twice). Daughty had provided respondent copies of each service plan and had discussed with her the goals and subgoals and, in the periodic assessments, her progress in meeting those goals and subgoals.

¶ 102 The first service plan was dated March 15, 2015. The second service plan was dated August 15, 2015, and in that service plan, the Center assessed respondent's progress since March 15, 2015 (that is, her progress in meeting the goals and subgoals). The third service plan was dated February 22, 2016, and, in that service plan, the Center assessed respondent's progress since August 15, 2015.

¶ 103 1. *Goal No. 1: Cooperate With the Agency and Successfully Complete Services*

¶ 104 a. Subgoal A: Keep All Appointments With Daughty, "Both Scheduled and Unscheduled Visits"

¶ 105 Generally, respondent attended scheduled appointments with Daughty, but "unannounced drop-ins and unannounced schedules ha[d] been more difficult."

¶ 106 b. Subgoal B: Cooperate With All Court Orders Regarding Services and Visitation

¶ 107 All in all, respondent had cooperated with weekly visitation, although she tended to show up a couple of minutes late and there had "been a couple of [incidents] of her being around the children unsupervised."

¶ 108 c. Subgoal C: Signing All Consents for the Release of Information

¶ 109 In the beginning, respondent was "pretty compliant" with signing consents. At times, though, "it was difficult to find her, so consents would not get signed right away." After

she reported receiving treatment from a new mental-health-care provider, it took a couple of months to obtain a consent from her for that provider, because she wanted to consult an attorney.

¶ 110 d. Subgoal D: Not To Discontinue Services Without Approval

¶ 111 Respondent "ha[d] discontinued almost every single one of her services without prior approval."

¶ 112 e. Subgoal E: Refrain From Illegal Behaviors and From Situations That Could Lead to Police Involvement

¶ 113 "Early on in the case, [respondent] was arrested on a couple of occasions for possession of controlled substance, trespassing, [and] those types of things."

¶ 114 f. Subgoal F: Call Within 24 Hours Ahead of Time To Cancel Appointments

¶ 115 "A lot of her missed appointments have been no calls, no shows."

¶ 116 g. Overall Rating on Goal No. 1

¶ 117 On both August 18, 2015, and February 22, 2016, the Center rated respondent's progress as unsatisfactory on the first goal. "That was due to her missed appointments, discharging from services, [and Daughty's] inability to reach her on a regular basis."

¶ 118 2. *Goal No. 2: Maintain Adequate Housing and Income*

¶ 119 a. Subgoal A: Notify Daughty Whenever Anyone Moves Into or Out of the House

¶ 120 In summer or fall 2015, respondent moved out of the Beason house and into a relative's house to save money on utilities, and Daughty did not learn about the move until three or four months later. Further, respondent refused to give her the new address.

¶ 121 b. Subgoal B: Maintain Stable Income Through Employment, Child Support, or Public Assistance

¶ 122 At the beginning of the case, respondent admitted she was not always able to make ends meet doing odd jobs, such as painting, cleaning, and yard work. Her monthly income

remained unknown. The only proof of income that respondent ever provided to Daughty was a week's schedule when she was a waitress in Clinton.

¶ 123 c. Subgoal C: Notify Daughty of Any Changes in Address, Telephone Number, or Income

¶ 124 Respondent moved out of the Beason house without giving Daughty a new address. "When [Daughty] really tried to push the issue," respondent said she was still checking her mail at the Beason address and that it therefore was unnecessary for her to give Daughty the address where she currently was staying. Respondent's "phone number ha[d] been off or changed a couple of times and so [it had] been hard to reach her via phone."

¶ 125 d. Overall Rating on Goal No. 2

¶ 126 On August 18, 2015, and again on February 22, 2016, respondent's progress was rated as unsatisfactory on the second goal, "[b]ased on not being able to reach her at her addresses, not getting proof of income, [and] just general issues with not knowing how to reach her [or] where she was at."

¶ 127 3. *Goal No. 3: Obtain and Maintain an Alcohol- and Drug-Free Level of Personal Functioning*

¶ 128 a. Subgoal A: Completing a Substance-Abuse Assessment and Any Recommended Treatment

¶ 129 Respondent completed two evaluations and started a third evaluation, but she did not complete it. She never followed through with the recommendations that were made in the assessments.

¶ 130 b. Subgoal B: Stop Using Alcohol, Nonprescription Medications, and Illegal Substances

¶ 131 It was "hard to really know if [she was] satisfactorily refraining," considering that, "[d]uring the lifetime of this case, [she had] been asked to complete almost 60 drug screens" and she had "completed 10" or so.

¶ 132 c. Subgoal C: Notify Daughty or the Treatment Provider of Any Relapse

¶ 133 Respondent never notified Daughty of any relapse, although, early on in the case, respondent was charged with unlawful possession of a controlled substance—as Daughty learned from public records, not from respondent.

¶ 134 d. Overall Rating on Goal No. 3

¶ 135 Both on August 18, 2015, and on February 22, 2016, respondent's progress on the third goal was rated as unsatisfactory, "based on her inability to complete services as recommended and her failure to comply with drug screens."

¶ 136 4. *Goal No. 4: Achieve an Appropriate Level of Understanding of Mental Illness and How It Affects Parenting and Relationships*

¶ 137 a. Subgoal A: Attend Scheduled Appointments With Physicians, To Monitor Psychotropic Medications and To Ensure That Prescriptions Stay Current

¶ 138 The State asked Daughty:

> "Q. And how has she done on that goal?
>
> A. That's kind of a tricky one for me to evaluate because I have to rely on her, kind of, to tell me how she's doing with taking her medications, however, I know throughout the case and when it opened she told us she was on [V]alium and then there was a period of time where she told me that she was discharged from her physician for failing to attend appointments, so she didn't have an active script. She later on in the case told me that she was re-prescribed [V]alium again

and I didn't—she never gave me the dates exactly of when she was on it and when she was off of it.

Q. And to your knowledge, was she prescribed [V]alium and then subsequently not taking it against doctor's advice?

A. I believe because she wasn't attending her medical appointments, she couldn't get the prescriptions, so I believe that that would have been against doctor's advice."

¶ 139 b. Subgoal B: Address Certain Issues in Treatment, Including Mental Health, Self-Esteem Issues, and Past Trauma Affecting the Ability To Parent

¶ 140 Daughty testified: "She has not completed counseling services, so that has been unsatisfactory."

¶ 141 c. Overall Rating on Goal No. 3

¶ 142 On August 18, 2015, respondent "was rated satisfactory because even though counseling referrals had been made, it took a while for her to start counseling services, and so [Daughty] evaluated it at the point where [respondent] had only attended four sessions."

¶ 143 Immediately after that evaluation period, however, respondent stopped attending counseling sessions. In mid-September 2015, she was discharged for missing four sessions in a row.

¶ 144 Therefore, on February 22, 2016, the overall rating on goal No. 3 was unsatisfactory.

¶ 145 5. *Goal No. 5: Develop Parenting Skills and Use Those Skills in Interactions With the Children*

¶ 146 Respondent's progress on this goal was rated as satisfactory on both of the dates of evaluation. Early on in the case, she completed the parenting course at the Center. In

September 2015, she began supervised visitation with C.H. "[S]he provided snacks, she talked to him on his level, she got on the floor, she played games with him, her interaction with him was very positive." Her physical affection, however, tended to be rather excessive or "smothering," in Daughty's opinion (C.H. told respondent to stop, and she refused).

¶ 147 On cross-examination by Mills, Daughty testified that around April 2016, A.H. "re-engaged in a relationship with [respondent]." It first started with Facebook communications, and then A.H. began attending the supervised visitations. "The visits went well."

¶ 148 Mills asked:

> "Q. Do you have any reason to think anything other than the relationship is currently either good or on its way to becoming good?
>
> A. I definitely have some concerns about their relationship and the type of relationship they have.
>
> Q. Why?
>
> A. It, in recent conversations with [respondent] and [A.H.],
>
> it is clear that [respondent] treats [A.H.] more as a good friend, close buddy, shares things with her that shouldn't be put on the stress of a minor child, things like her pregnancy and miscarriage, her own mental health symptoms. [A.H.] has shared with us that [respondent] is talking to her about these things.
>
> Q. Are those the only concerns that you have?
>
> A. Well, I just have a lot of concerns about how much [A.H.'s] behaviors have regressed since re-engaging in a relationship with her mom.
>
> Q. I'm sorry, could you say that again?

A. I have a lot of concerns about [A.H.'s] behaviors, mental health has regressed since re-engaging in a relationship with [respondent]."

¶ 149 Van Hook asked Daughty on cross-examination:

"Q. You had mentioned earlier in your testimony about [respondent's] having two substance abuse evaluations. Is that what you testified?

A. Yes.

Q. And do you know what the recommendations of those assessments were?

A. I believe the recommendations of the first one she completed with Tazwood was that she participate in Level 2 treatment, which is multiple appointments a week.

Q. Is Level 2 treatment for some sort of a dependency of either drugs or alcohol?

A. Yes, sir.

Q. Do you recall whether the diagnosis was for drugs or alcohol or both?

A. I believe it was on drugs.

Q. And do you recall what the second assessment, what the results of that assessment were?

A. The second assessment was completed in December of 2015 and they recommended Level 1 treatment.

Q. So the assessments were different in their conclusions?

A. Yes."

¶ 150 This was substantially the evidence regarding respondent. The State also presented evidence that because of his imprisonment, the father, Christopher Harris, was unable to make reasonable progress or to fulfill his parental responsibilities.

¶ 151 After the presentation of evidence, the trial court heard arguments. The prosecutor argued the State had proved that both parents were unfit persons as alleged in the petition for the termination of parental rights. With respect to respondent, he argued:

> "The [S]tate has also met its burden on the counts relating to [respondent], in that she has failed to make reasonable efforts to correct the conditions and that she has failed to make reasonable progress towards the return of the children after nine months of adjudication. The [S]tate went through its service plan in detail and described the desired outcomes and the subcategories of those outcomes and the evaluations and reasons why [respondent] was rated how she was, and almost all of them she was rated unsatisfactory for not completing any subcategories and not completing the desired outcomes of her service plans, that she has not kept appointments, that she has not cooperated, that she didn't return consents in a timely manner, that she has discontinued services without approval, that she has not refrained from illegal behaviors, and in fact the [S]tate provided People's Exhibit No. 3 that shows that she had committed the new offense while this case was open and that's possession of a controlled substance, being cocaine. [Respondent] has also not maintained consistent housing, she has not informed the caseworker of her housing where she was for months periods, three or four months at a time, and without knowing her address.

[Respondent] has not had stable employment, has not shown proof that she can sustain supporting a child, supporting herself, that [respondent] has also not maintained a substance-abuse[-free] lifestyle, that she *** again has a felony for possession of a controlled substance, that she was discontinued from her mental health treatment by her physician, that she was prescribed [V]alium and she was taking and not taking as prescribed, and that she has failed to show up for drug drops, that she was asked to screen over close to 60 times, and that she has maybe dropped 10 times.

She is not fulfilling her part in these service plans and that she has not made satisfactory progress throughout ***."

The trial court asked Mills for his response. He argued:

"MR. MILLS: Your Honor, it's true that my client has not done every single thing that was demanded of her, but some of the things she has done. She completed her parenting skills class, she's engaged in visitation, and most of the visitations was described by Ms. Daughty, I think, as satisfactory or good interaction.

I, not being a parent or [Department] person or otherwise experienced in psychology, bonding and things like that, I'm having a hard time trying to figure out why hugging the child might be objectionable and Ms. Daughty referred to as too much hugging or too close, but, in any event, her employment has been sporadic, but she doesn't have any training for, I suppose, some higher level positions, and when she works in manual labor positions such as cleaning houses and yard mowing and so forth and so on, I would expect that that would entail

> being paid probably by cash or check, and she doesn't make that much money, it wouldn't surprise me that she doesn't have a bank account or checking account for which she could provide statements, a schedule from these types of jobs. So even though she may not have had the type of employment that might be desirable in so far as a 40-hour work week, 9:00 to 5:00, Monday through Friday, she was still making income and I'm sure it was hard for her to make ends meet working those types of jobs.
>
> She also did attend two evaluations. She did not follow up with the recommendations as she should have, but she was trying, at least, going through the two evaluations, and at our next hearing we'll hear a little bit more about certain other efforts. Even though she hasn't completed everything that she's been asked, she's been doing some of the things, and the things that she has been doing she's been doing satisfactorily, and so we leave the matters of fitness and whether or not the [S]tate's met its burden to the discretion of the court. Thank you."

¶ 152 Van Hook stated his belief that the State had met its burden of proof as to both parents. With respect to respondent, he remarked:

> "I think it's clear that her drug use and failed drug drops and failure to take a great majority of her drug drops and her failure to complete counseling after given two evaluations recommending counseling is very telling in this matter that she did not complete the very necessary things in this case to be able to maintain her parental rights ***."

¶ 153 After hearing the arguments, the trial court found the State had met its burden of proof as to both parents. The father was serving life terms and hence was unable to be a parent.

The court reasoned that although respondent had completed the parenting course and had performed well in visitations, those things were "just a small portion of what she was required to do." She never opened a bank account so as to be able to document her income and her ability to support the children. She was convicted of possessing cocaine, an offense she committed during the pendency of these cases. Of the 60 times she was requested to undergo drug screening, she did so only 10 times. Neither her employment nor her residence had been consistent, and the caseworker had experienced great difficulty just maintaining contact with her. Consequently, unscheduled meetings could not occur. She unilaterally discontinued all of the services other than the parenting course and visitation.

¶ 154 N. The Best-Interest Report

¶ 155 In her best-interest report, which she filed on August 25, 2016, Daughty stated that the children had been removed from a foster home, and then from another foster home, because of problems with the foster parents. In the relatives' home, the Harris residence, in which the children had been placed, the foster mother separated from the foster father, moving out of the house on January 30, 2016. Then, on April 20, 2016, the Center received a report that the foster father had injured C.H. through the infliction of corporal punishment.

¶ 156 Consequently, the Center moved the children out of the Harris residence and into a "fictive kin home in Beason." But a problem emerged in that home, too. On July 8, 2016, after receiving reports that the caregiver and another adult had been getting drunk and "displaying unsafe behaviors around the children," the Center moved the children yet again, to a traditional foster home.

¶ 157 A.H. ran away from that home. After she was located and returned home five days later, she threatened to run away again.

¶ 158 The Center then decided to move her to a different traditional foster home, in Lincoln, Illinois, while keeping C.H. in the same traditional foster home (the one that had taken over from the "fictive kin home"). On July 25, 2016, A.H. ran away from that home, too, but returned the same day. She remained there until August 17, 2016, when she ran away again (in her report, Daughty uses the word "eloped"). A.H. insisted she wanted to live with relatives and, in eight months, when she turned 17, seek emancipation. The trouble was, none of the relatives met the qualifications to be foster parents. And now the foster home from which A.H. had twice run away was unwilling to accept her back.

¶ 159 Upon learning that his sister, A.H., would be living elsewhere, C.H. threw tantrums and said he wanted to die. The repeated changes of residence have been rough on him. His behaviors tend to spring up when he is moved to someplace new. He has been rereferred for counseling. He sees Terri Clayton twice a month at the Center to address his behaviors, help him learn more acceptable ways to express his anger, and help him endure the separation from his sister. It appears that his current foster parents are willing to continue being his foster parents, but they have no plans to adopt him.

¶ 160 O. The Best-Interest Hearing

¶ 161 A best-interest hearing was scheduled for August 25, 2016, but, on that date, the trial court granted a motion by Mills to continue the hearing, on the ground that respondent had "committed herself to [a] mental hospital for [a] reported nervous breakdown" (to quote the docket entry). The court rescheduled the hearing for October 20, 2016, and the hearing took place as rescheduled.

¶ 162 At the beginning of the hearing, the State offered the following exhibits in evidence.

¶ 163 People's exhibit No. 1 was a certified copy of a court record showing that Christopher Harris had been convicted of multiple counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)), among other offenses, in Logan County case No. 09-CF-171.

¶ 164 People's exhibit No. 2 was a certified copy of court records showing that respondent had been convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) in Logan County case No. 15-CM-59. The victim was A.H., and the date of the offense was February 17, 2015.

¶ 165 People's exhibit Nos. 3 to 8 were photographs of A.H.'s injuries from domestic battery, *i.e.*, scratches on her arms and neck.

¶ 166 People's exhibit No. 9 was a statement that A.H. wrote for the Logan County sheriff's department on February 17, 2015, regarding the domestic battery. According to the statement, A.H. was in her bedroom when respondent entered and threatened to "trash [her] room and break things." A.H. responded, " ['G]o ahead and do it[,'] " and walked out of her bedroom. Respondent followed her out of the bedroom and down the stairs, pushing her and threatening to "whoop [her] butt." A.H. then yelled at respondent that she was tired of her doing drugs, called her a drunk, and added, sarcastically, " 'Why don't you go do more crack?' " Respondent grabbed A.H. by the hair and the arm, and they went down to the floor, with A.H. saying, " 'I can't do this anymore. I'm done with this.' " A.H. managed to extricate herself, left the house, and went to a friend's house. The statement concludes by saying: "My mother has also offered me drugs[,] which would be crack that she made in front of me[,] in a shot glass[,] then she put it in the microwave[,] and I left the kitchen. She has offered it to me to smoke multiple times. I said no every time."

¶ 167 People's exhibit No. 10 was a certified copy of court records showing that respondent had been convicted of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) in Logan County case No. 15-CF-101. The controlled substance was cocaine, and the date of the offense was June 18, 2015.

¶ 168 People's exhibit No. 11 was a digital video disk recording of an interview respondent gave on June 19, 2015, regarding her unlawful possession of a controlled substance.

¶ 169 Respondent's exhibit No. 12 was a printout of electronic communications between respondent and A.H. in October and November 2015. In a message dated October 24, 2015, A.H. tells respondent:

> "What do you want to talk about? How you ALWAYS only care about yourself? How you never put us first? You wouldn't have gotten in trouble all the time if you actually cared. You would have a job[;] you would have supported us like a REAL mother. *** [C.H.] and I BOTH deserve a fun, loving[,] and memorable childhood. You took it all away from me[,] and I will not stand by and let you do the same to my brother. *** How is it fai[r] that I've seen the stuff I have[?] Like in Florida you being a 'dancer' and having me count your stripper money[,] or walking the streets homeless[,] or having physical abuse from your boy toy[,] in front of us[,] and him harming [C.H.] What about you bringing guys in[to] our hotel room when you 'thought' I was asleep[?] What about you doing drugs in front of me[,] saying 'it's okay'[?] How about you trying to get me to do crack with you or showing me how to make it out of cocaine[?] What about continually letting a stalker co[m]e around and do crack around us? Parties at the house? Saying you want to kill yourself? You feeding in to a drug problem and

buying me a marijuana hookah for Christmas? What do you think my dad would say to all of this? What about when I was a child and I was taken to the doctor for sexual contact[:] did you ever try and see if that happened? No[,] you didn't. But[,] guess what[,] it did[,] by [D]illen[,] from [nine] and under. You have put me through so much that I will NEVER forget. I'm glad [C.H.] was to[o] little to understand. What about all the [t]imes with no food, power, or water? Where did the money go to? DRUGS. How about I mention you selling your [L]ink card for money instead of food[?] Please, enlighten me. Is all of this something a good mom does? *** You have already been arrested [two] times since the last court date. And [in one of the arrests,] you had drugs on you. Did you learn? No. You obviously don't care. So back to the beginning. I want NOTHING to do with you! EVER! My life is the best it ever had been. We are loved. Very well taken care of, hot food every night, enough cloth[e]s for an army. We eat whenever we want. *** Do you know what happened when I was with you? Me crying myself to sleep, hurting myself, hating my life and myself, because of . . . guess who? YOU. *** How about we talk about [C.H.]? Yeah? When we first got taken[,] he was awful. He had huge behavior issues. He wouldn't eat or be good in school. JUST LIKE WHEN WE WERE WITH YOU. He peed his pants on purpose. *** He always had these behaviors[,] especially at your house. After several weeks in a good home[,] it all stopped. He's a perfect child now. He eats everything. And never has behaviors. He learned to ride a bike with no training wheels in one day. He's been happy. Never once did he ever talk about you[;] up until now[,] he obviously was happy without you. Funny how[,] right after he sees you[,] his

> behaviors suddenly come back. After the first visit with you[,] he hit [B]raydin, bloodied [M]ikayla[']s nose[,] and broke [A]manda's sunglasses[.] I then had an anxiety attack. Where [was] the problem? YOU! *** You had your chance[,] a 15[-]year chance. Did you change? No. *** I am not begging you[;] I am telling you leave us alone. We deserve at least this after all you have done. If you love us[,] you will. Oh[,] and enough with the pity party about my dead family. It make[s] me sick that you use that to your advantage. But if you'll please excuse me, I'm going to have a fun time at a haunted house with family that actually cares. Thanks for 'EVERYTHING.' "

¶ 170 In addition to moving for the admission of People's exhibit Nos. 1 to 12, the State requested the trial court to consider the best-interest report and also to take judicial notice of Logan County case No. 16-CF-142, in which, most recently, respondent had been charged with criminal damage to property (720 ILCS 5/21-1 (West 2014)). That charge was still pending, and as the court file would reveal (the State asked the clerk to fetch the file and bring it into the courtroom), respondent had been in the sheriff's custody since September 4, 2016 (at the beginning of the hearing, the court granted Mills's request to remove her handcuffs). There was no objection to these exhibits or to the proposed judicial notice, and none of the attorneys had any additions or corrections to make to the best-interest report. Therefore, the court admitted all these materials or accepted them for consideration. The State rested.

¶ 171 Next, Mills moved for the admission of the following exhibits.

¶ 172 Respondent's exhibit No. 1 was a letter, dated January 14, 2016, from Erin McQuirter, a clinician at Chestnut, to respondent and memorializing that, on December 29, 2015, upon Daughty's referral, respondent "presented [herself] to complete a substance abuse

evaluation." "Based on the information gathered," McQuirter believed that respondent "could benefit from participating in" the "Level 1 Primary Treatment Group," which met every Tuesday, from 5 to 7 p.m., for 10 weeks. McQuirter further recommended that respondent confer with a physician to see if she could obtain alternatives to her prescribed medications of Valium and hydrocodone, because those medications were so addictive. She advised respondent, however, against unilaterally discontinuing Valium and hydrocodone without a physician's advice, "due to the serious physical and emotional health problems that [might] result."

¶ 173 Respondent's exhibit No. 2 was a certificate from the Center showing that, on May 19, 2015, respondent completed the "parenting curriculum."

¶ 174 Respondent's exhibit No. 3 was a comprehensive assessment from the Mental Health Centers of Central Illinois, which stated that on January 19, 2016, respondent began an assessment and that, four months later, on May 20, 2016, she completed the assessment. The document notes:

> "[Respondent] missed several appointments and had a long period of noncompliance between the beginning and completing this assessment. When she presented in May [2016] to complete her assessment, she stated that she had found a new primary care doctor willing to prescribe her Valium. During her most current appointment she states that the Valium has significantly decreased her symptoms of anxiety to the point that they no longer impact her life. She reports feeling as though everything is under control."

Although the evaluator recommended adult outpatient therapy, respondent "reported feeling as though it was not needed at this time. [She] state[d] that she wishe[d] to continue with

medication management through her [primary care physician]. [Her] prognosis [was] guarded as she lack[ed] desire to participate in treatment."

¶ 175 Respondent's exhibit No. 4 was a letter, dated July 20, 2016, from Ashley Cox, a child and family therapist at the Center, to Mills. According to this letter, respondent returned to the Center "on her own accord" and "request[ed] completion of the Anger Management program that she stopped attending in March 2016." The letter continues: "[Respondent] and I have been working in a counseling setting to address the remaining aspects of the Anger Management session that she missed. As of today, [respondent] has attended [four] sessions. She reports a plan to continue attending these sessions until completion, and has been paying for these sessions out of her pocket."

¶ 176 Respondent's exhibit No. 5 was a certificate from the Center showing that, in 2016, respondent completed the nine-week course in anger management.

¶ 177 Respondent's exhibit Nos. 6 and 7 were signed documents, dated August 18, 2016, in which respondent agreed to make "donations," to the extent she was able to do so, to a psychotherapist, Cheryl Walton Strong, in return for counseling services.

¶ 178 Respondent's exhibit No. 8 was a letter, dated August 31, 2016, from Daisy Cravens, of St. Mary's Hospital, to Mills and stating that, on August 28, 2016, respondent was admitted to the behavioral health unit. The letter said that no discharge date had been set as of yet and that the purpose of the letter was to explain respondent's absence from a scheduled court hearing.

¶ 179 Respondent's exhibit No. 9 was a note from St. Mary's Hospital, dated August 30, 2016, and stating that respondent was an inpatient at the behavioral health unit of the hospital and that she was under the care of Dr. Rohi Patel.

¶ 180 Respondent's exhibit No. 10 was a letter from respondent to Judge William G. Workman, in which she insisted she was a "good, loving[,] and nurturing mother" and that the accusations A.H. had made against her, and which had served as the basis for removing the children from her care, were untrue. The truth was that on February 17, 2014, respondent explained, A.H. had been refusing, for three days straight, to do chores that respondent had been paying her $20 a week to do. Respondent confronted her about this, and A.H. did not take it well. She screamed and threw things down the hallway, frightening her brother, and then she left the house in a huff. Respondent decided it would be best to let her go and cool down. She assumed A.H. would go to a friend's house across the street. Dinnertime arrived, and respondent began calling friends and neighbors to locate A.H. The next thing respondent knew, the police were at her door, putting her in handcuffs, and taking her children. Some of the scratches on A.H. were self-inflicted, and other scratches were from A.H.'s attempts to pull away as respondent was holding onto her arm, trying to "prevent her from backing into a mirror."

¶ 181 In an addendum to the letter, respondent explained to the judge why she currently was incarcerated:

> "The in[c]ident took place at my grandmother[']s property[,] o[n] which I had been working[,] to help for up for sale [*sic*]. I didn't re[a]lize it at the time[,] but I had been having mental breakdowns. I spoke to my grandmother about this and decided to admit myself into St. Mary[']s [Hospital]. The decision was made to best benefit my state of mental health[,] which was compromised due to having [two] miscar[ri]ages in [a six-month] period, the loss of my kids, and at that time my daughter ran away with a 19[-year-]old male adult doing drugs. I was assured my grandmother wasn't pressing charges and didn't want the law involved. But

> she made insurance claims[,] which brought it to the State[']s attention. I am to plead out on the 25th [of October] with a PTR [(petition to revoke probation)] and time served. Let it be known I am now stable and fully mentally capable upon release to care for my children to their best benefit ***."

¶ 182 Respondent's exhibit No. 11 was a letter, dated October 7, 2016, from respondent to Daughty. The letter informed Daughty that respondent was to "plea[d] out on [October 25, 2016,] at time served plus 30 probation [*sic*]." Respondent did not think it would be "healthy" for C.H. to visit her in jail. But she enclosed a letter she had written to C.H. (respondent's exhibit No. 12) as well as a letter she had written to A.H. (respondent's exhibit No. 13), asking Daughty to forward them to the children.

¶ 183 None of the other attorneys had any objection to these exhibits offered by respondent, and the trial court admitted them.

¶ 184 Mills then called respondent to the stand. She testified that, in four days, she would be released from jail pursuant to plea negotiations, and that she then would return to her home in Beason, which she was buying from her grandmother for $250 a month. Her husband, Lonnie Buckner, and his son were now living in the home, but there was still plenty of room there for A.H. and C.H.

¶ 185 She intended to support A.H. and C.H. by doing housecleaning, painting, and home renovations for people in town, as she always had done. She anticipated earning $20,000 to $24,000 that year. She and the children had medical cards, and she received a little bit of food assistance from the government.

¶ 186 On cross-examination, the State asked respondent:

> "Q. You've cleaned Matthew Henderson's residence?

A. Yes, I did.

Q. And that was in exchange for cocaine?

A. No.

Q. You never cleaned his house in exchange for cocaine?

A. No, I cleaned his house on a weekly basis for quite some time.

Q. Did you ever tell the police that you cleaned his house for cocaine?

A. It's possible in my drug influenced days.

Q. Do you remember giving an interview on June 19, 2015, to the Logan County sheriff's department in which you said that you cleaned Matthew Henderson's residence for cocaine?

A. No, I don't remember."

¶ 187 Respondent admitted, on cross-examination, that her husband, Lonnie Buckner, had obtained an order of protection against her and that the order required her to keep away from the Beason house. She was working things out, however, with her husband, and she believed the order of protection would be lifted.

¶ 188 Mills next called A.H., who testified that the electronic message she sent respondent in October 2015 was "slightly over[-]exaggerated" and that her foster parents had "encouraged" her to make these exaggerated accusations against respondent. Actually, A.H. testified, respondent had taken pretty good care of her and C.H. up until February 2015. A.H. insisted she loved respondent and that she did not want to see her parental rights terminated.

¶ 189 On cross-examination by the State, A.H. testified she saw respondent use cocaine in the home on perhaps two occasions and that, toward the end of 2014 or in early 2015, respondent offered her cocaine.

¶ 190 Mills next called Paula Gee, respondent's mother, who testified she had seen the children with respondent plenty of times and that respondent always had been a "good, nurturing mother" who provided for the children's needs.

¶ 191 Mills then moved for a continuance. He told the trial court:

> "MR. MILLS: Your Honor, my client has asked me to ask for a continuance so we could obtain the testimony of Pat Lawson who's a former foster parent, and also my client's grandmother, Nancy Howard. Pat Lawson was planning on coming today but was having trouble getting a ride here, and Nancy Howard is, I think she's getting surgery, is that correct?
>
> [Respondent]: Yes."

The trial court asked Mills if he had subpoenaed Lawson and Howard. Mills answered he had not.

¶ 192 The trial court ruled as follows:

> "THE COURT: Well, this case was originally set for this hearing back on August [25, 2016], it was continued from that day when [respondent] did not appear, and it has been set again since September 1st of 2016. [Respondent] was present with her attorney and there has been ample time to prepare and to subpoena any witnesses that the parties would have preferred to have present here. This case has been continued now for a couple of months, since August [2016], here we are on October [20, 2016], the court is not going to allow another continuance. I'm going to deny that motion to continue."

Respondent rested.

¶ 193 In rebuttal, the State called Jeanna Daughty, who had this to say about respondent's testimony that she had provided Daughty with proof of income:

"A. In December of 2015 I recall her bringing me one work schedule from the restaurant in Clinton. It was just one week's worth of schedule. She also provided me with two letters from people she reported she was doing housework for, but those letters didn't specify how often she worked for them or how much money she got while working for them.

Q. Did she ever tell you how much money she was earning working?

A. On occasion when I asked her for proof of income, she would make statements like I recently made $2,000 doing this job, but she never provided proof."

¶ 194 Hauge also asked Daughty, on cross-examination:

"Q. And were you present during [A.H.'s] testimony?

A. Yes, I was.

Q. I want to ask you a little bit about that as well. There was some testimony regarding visitation with [respondent]. I want to talk about that. What was [A.H.'s] attitude towards visitation at the beginning of the case?

A. [A.H.] didn't want visitation with [respondent].

Q. Was that as soon as the case came into care?

A. Yes.

Q. And was that something that she voiced to you?

A. Yes.

Q. And at some point did that change?

A. Yes.

Q. And when was that?

A. I believe the first time that she talked about visitation was in March, 2016.

Q. So a year into the case?

A. Yes.

Q. And did anything correspond around March, 2016, in the foster home where [A.H.] was staying?

A. Yes, about a month prior to that, the mother of the foster home had left.

Q. And why was that?

A. She had began a relationship with another man and had chose[n] to leave the home.

Q. And was there an incident involving [C.H.] and the foster father?

A. Yes, there was.

Q. And what was that incident?

A. That incident happened in April of 2016. We received reports that excessive corporal punishment was used. I took [C.H.] to the ER [(emergency room)] and bruising on his lower back and buttocks was documented.

Q. And was it around this time that [A.H.] wanted to start having more visitation with her mother?

A. Yes.

Q. And was it around this time that the children were removed from that foster family?

A. Yes.

Q. And since then, [A.H.] has been having more contact with [respondent]?

A. Upon leaving the relative foster home with Mr. and Mrs. Harris, she was moved to another identified relative foster home who was identified by [respondent]. Her name was Pat Laughlin. The children stayed with her, I believe, approximately two months. She lived one block away from [respondent]. I could exit their back door and see [respondent's] home, and during that time we had approved for Pat to supervise some of the contact between [respondent] and the children and [A.H.] had expressed an increased want to see [respondent]."

¶ 195 There was no further evidence in rebuttal. After hearing arguments, the trial court found it would be in the children's best interest to terminate Christopher Harris's parental rights. Because he was serving five terms of life imprisonment, it was obvious he never would be able to provide for the children's needs.

¶ 196 For the following reasons, the trial court found it likewise would be in the children's best interest to terminate respondent's parental rights to both children:

"As for [respondent], since the fitness stage, quite frankly, it appears that she has gone even further backwards on the unfitness, that she has not complied with the service plan, has not completed mental health treatment. She did, in fact, place herself in St. Mary's [Hospital], but as for any of the other conditions of her safety plan or the plan that was put in place by the [D]epartment, she has woefully failed to comply with any of those aspects. The drug use has continued, the mental health treatment, the only thing that we can say positive is that she

completed the parenting class, but even from the reports and the testimony and the evidence we have received, even though she's completed the parenting class, it has had no effect on her and her abilities to parent a child.

She does not have the proper residence, her employment has been undocumented, although she constantly indicates that she has employment, one of the exhibits that was received by the people, People's Exhibit No. 11, clearly demonstrated on that interview that, yeah, she was cleaning houses for people, specifically for that one individual, Mr. Henderson, but she was cleaning it not to provide for her children, but to provide for her habit and was being paid in cocaine.

So[,] the parental rights of both Christopher Harris and [respondent] are hereby terminated as it refers to [C.H.]

As for [A.H.], I think the guardian *ad litem* and the attorneys that have been here today have pointed out that we should probably take stock in [A.H.'s] desires, but [A.H.] is 16 years old[,] and her desires or requests have fluctuated during the pendency of this case. Initially[,] she wanted no contact whatsoever with [respondent]; then it appears that there were problems with her placement. Once those problems with the placement became known, then her request or her desires have changed, and I don't believe that we—and this court is not going to just put it on [A.H.'s] shoulders on what is her best interests.

When I look at the evidence that has been presented, the testimony, even [A.H.'s] testimony here today where it is evident that when she first reported this and wrote the letter that she wrote earlier in which she described or called the

[‘]nasty letter,[’] some of her major complaints were the parties that [respondent] was presenting and exposing both her and her younger brother to, and it greatly disturbs the court the drug use of [respondent] and then [respondent’s] attempt to push that onto her daughter, offering her cocaine, and I am happy to hear the testimony of [A.H.] where she rejects that and rejects that partying lifestyle.

So[,] the court is going to find that it is in the best interests of [A.H.] that [respondent’s] parental rights be terminated.”

¶ 197 This appeal followed.

¶ 198 II. ANALYSIS

¶ 199 A. The Finding of Unfitness in the Dispositional Order

¶ 200 Under section 1-5(1) of the Act (705 ILCS 405/1-5(1) (West 2014)), minors and their parents in juvenile proceedings have the right to effective representation by counsel. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 12. Even though this right is statutory rather than constitutional, Illinois courts gauge the effectiveness of counsel in juvenile proceedings by applying the constitutional standard from criminal law, specifically, the standard in *Strickland v. Washington*, 466 U.S. 668 (1984). *In re Ch. W.*, 399 Ill. App. 3d 825, 828 (2010). Under *Strickland*, a party alleging ineffective assistance must prove two propositions: (1) “counsel’s representation fell below an objective standard of reasonableness” (*Strickland*, 466 U.S. at 669), and (2) there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

¶ 201 Merely showing that “counsel’s deficient conduct” had “*some conceivable effect* on the outcome of the proceedings” does not establish a “reasonable probability” of a different outcome. (Emphasis added.) *Id.* at 693. On the other hand, it is unnecessary to show that conduct

"*more likely than not* altered the outcome." (Emphasis added.) *Id.* A "reasonable probability" is somewhere between those two extremes: it is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. "The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Id.*

¶ 202 When, as in this case, the trial court never addressed the claim of ineffective assistance, we decide *de novo* whether the respondent has proved less than reasonable representation and resulting prejudice. See *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24.

¶ 203 Respondent first claims that Mills provided less than reasonable representation by "fail[ing] to make any objection to an unnecessary finding of unfitness" that the trial court made in its dispositional order of June 11, 2015. It cannot be ineffective assistance, though, to refrain from making a meritless objection. *People v. Edwards*, 195 Ill. 2d 142, 165 (2001). If Mills had objected to the finding of parental unfitness on the ground that the finding was unnecessary, the trial court surely would have overruled the objection—and rightfully so—for two reasons. First, both parents were, in fact, unfit: Christopher Harris because he was serving five terms of life imprisonment for as many murders, and respondent because she admittedly had created an environment injurious to the children's welfare by her use of illegal drugs. Both parents had knowingly and voluntarily admitted paragraph 1 of the petition for adjudication of wardship. Second, under section 2-27(1) of the Act (705 ILCS 405/2-27(1) (West 2014)), it was indeed necessary for the court to express, in writing, its determination that "the parents [were] unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train[,] or discipline the minor[s] or [were] unwilling to do so," because only then did the court have discretion to remove the children from respondent's custody, as the court reasonably saw fit to

do. 705 ILCS 405/2-27(1) (West 2014); see *In re M.M.*, 2015 IL App (3d) 130856 ¶ 19. Thus, contrary to respondent's assumption, the finding of unfitness was necessary, and Mills could not have been expected to contend otherwise. (Being found to be "unfit" for purposes of a dispositional order is not to be confused with being found to be an "unfit person" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Cf.* 705 ILCS 405/2-27(1) (West 2014) *with* 705 ILCS 405/2-29(2) (West 2014).)

¶ 204 B. The Finding of Unfitness in the First Permanency Order and the Changing of the Goal From "Return Home Within 12 Months" to "Return Home Pending Status"

¶ 205 Respondent also faults Mills for failing to object to "an unnecessary finding of unfitness" in the first permanency order, which the trial court entered on November 5, 2015, and for failing to object to the changing of the goal in that order from "Return Home Within 12 Months" (see 705 ILCS 405/2-28(2)(B) (West 2014)) to "Return Home Pending Status" (see 705 ILCS 405/2-28(2)(B-1) (West 2014)).

¶ 206 The finding of continued unfitness served a logical purpose. Even if, strictly speaking, the finding was unnecessary in the permanency order, that does not mean it was objectionable. As we will explain, the finding of continued unfitness would have been, in any event, implied.

¶ 207 Pursuant to the parent's admission in the adjudicatory hearing, the trial court had found the children to be "neglected" within the meaning of section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2014)), and the court had found this neglect to have come about because of respondent's conduct, her use of illegal drugs. That was the substance of paragraph 1 of the petition for adjudication of wardship, the paragraph the parents had admitted. Section 2-28(4) of the Act provides:

> "Custody of the minor shall not be restored to any parent *** in any case in which the minor is found to be neglected *** under Section 2-3 [(705 ILCS 405/2-3 (West 2014))], unless the minor can be cared for at home without endangering his or her health or safety and it is in the best interest of the minor, and if such neglect *** is found by the court under paragraph (1) of Section 2-21 of this Act [(705 ILCS 405/2-21(1) (West 2014))] to have come about due to the acts or omissions or both of such parent ***, until such time as an investigation is made as provided in paragraph (5) [(705 ILCS 405/2-21(5) (West 2014))] and a hearing is held on the issue of the health, safety and best interest of the minor and the fitness of such parent *** to care for the minor and the court enters an order that such parent *** is fit to care for the minor." 705 ILCS 405/2-28(4) (West 2014).

Thus, in the absence of an order finding that respondent now was "fit to care for the minor[s]," it necessarily was implied that she remained unfit (and, hence, ineligible to have custody restored to her). *Id.* Respondent would have gained nothing from objecting to the explicit statement of what already was necessarily implied. The omission of such an objection caused her no prejudice. See *Strickland*, 466 U.S. at 697 ("[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.").

¶ 208 We likewise find no prejudice from Mills's lack of objection to changing the goal from "Return Home Within Twelve Months" (see 705 ILCS 405/2-28(2)(B) (West 2014)) to "Return Home Pending Status" (see 705 ILCS 405/2-28(2)(B-1) (West 2014)). For the following reasons, the objection surely would have been unavailing. The children had been removed from

respondent's custody because of her use of illegal drugs and her domestic violence against A.H. And yet, she terminated the substance-abuse evaluation at Tazwood before it was completed; she missed 21 out of 24 drug screens; and because of her no-calls, no-shows, she was dropped from the anger-management program at the Center. Given respondent's non-cooperation with services, there is no reasonable probability that an objection by Mills would have dissuaded the trial court from changing the permanency goal. See *Strickland*, 466 U.S. at 694.

¶ 209 C. The Changing of the Goal, in the Second Permanency Order, From "Return Home Pending Status" to "Substitute Care Pending Court Determination o[n] Termination of Parental Rights"

¶ 210 In the second permanency hearing, held on April 21, 2016, Mills did not object when the trial court changed the goal from "Return Home Pending Status" (see 705 ILCS 405/2-28(2)(B-1) (West 2014)) to "Substitute Care Pending Court Determination o[n] Termination of Parental Rights" (see 705 ILCS 405/2-28(2)(C) (West 2014)). Respondent argues that likewise, in this respect, Mills's representation fell below an objective standard of reasonableness. See *Strickland*, 466 U.S. at 669.

¶ 211 Again, proceeding directly to the question of prejudice (see *id.* at 697), we find no reasonable probability that an objection by Mills would have prevented the changing of the goal (see *id.* at 694). To reiterate, the children were removed from respondent in February 2015 because of her drug problem and her commission of domestic violence against one of the children. In April 2016, more than a year after the removal, respondent still had not completed substance-abuse treatment. Also, since the last court hearing, she had been dropped from the Mental Health Centers of Central Illinois (or, more euphemistically, put on a waiting list) because of absenteeism; she had been dropped from the aggression-management program at the Center because of absenteeism; and she had missed 18 out of 21 drug screens. Therefore, the

lack of an objection by Mills does not weaken our confidence in the changing of the goal from "Return Home Pending Status" to "Substitute Care Pending Court Determination o[n] Termination of Parental Rights." See 705 ILCS 405/2-28 (2)(B-1), (2)(c) (West 2014).

¶ 212 D. The Fitness Hearing

¶ 213 Respondent complains that Mills's representation in the July 2016 fitness hearing fell below an objective standard of reasonableness in that he "offered essentially no evidence on behalf of [r]espondent as to her fitness." She points out that it was not Mills but the guardian *ad litem*, Van Hook, who elicited evidence that, whereas Level 2 treatment previously was recommended for respondent, Level 1 treatment more recently was recommended. And it was not until later, in the August 2016 best-interest hearing, that the trial court received evidence that Level 1 was a less rigorous regimen than Level 2, requiring fewer outpatient meetings. Respondent argues: "This was a particularly important piece of information in light of the fact that the only paragraph which was admitted in the State's original petition was that the children were neglected due to [r]espondent's drug use, and instead of highlighting the fact that [r]espondent had made progress on correcting the one condition that she admitted, counsel for [r]espondent failed to put in any evidence of the fact at all."

¶ 214 On two occasions, in March and August 2015, Tazwood recommended Level 2 treatment for respondent. In December 2015, Chestnut recommended Level 1 treatment. Assuming, for the sake of argument, that these differing recommendations could be regarded as evidence of progress on respondent's part instead of merely a difference of opinion between Tazwood and Chestnut (which, by the way, would have made their recommendations largely on the basis of what she had told them), we see no reasonable probability that an elucidation of the distinction between Levels 1 and 2 would have changed the outcome of the fitness hearing. See

Strickland, 466 U.S. at 694. The fact still would have remained that, during the nine-month period following the adjudication of neglect (April 16, 2015, to January 16, 2016), respondent failed to complete substance-abuse treatment and failed to complete aggression-management counseling, even though drug abuse and domestic violence were the very reasons why the children had been removed. See *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001) ("[T]he benchmark for measuring a parent's progress toward the return of the child under section 1(D)(m) of the Adoption Act [(750 ILCS 50/1(D)(m) (West 2014))] 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 became known and which would prevent the court from returning custody of the child to the parent." (Internal quotation marks omitted.)). On top of being dropped from those programs for no-calls, no-shows, she missed most of the requested drug screens, and on June 18, 2015, she was in possession of cocaine, as her guilty plea in Logan County case No. 15-CF-101 had established. Given those damaging facts, there is no reasonable probability the trial court would have found it to be unproved, by clear and convincing evidence, that respondent failed to make reasonable progress from April 16, 2015, to January 16, 2016 (see 705 ILCS 405/2-29(2) (West 2014); 750 ILCS 50/1(D)(m)(ii) (West 2014))—even if Tazwood recommended Level 2 treatment and Chestnut, for whatever reason, recommended a somewhat less rigorous level of substance-abuse treatment a couple of months later. See *Strickland*, 466 U.S. at 694. Thus, as to the fitness hearing, the claim of ineffective assistance is unsubstantiated. The finding of a lack of reasonable progress was ineluctable, regardless of counsel's alleged acts or omissions.

¶ 215 It is true that a failure to make reasonable progress was not the only claim the State made in its petition for the termination of parental rights. The State also alleged that

respondent had failed to make reasonable efforts. See 750 ILCS 50/1(D)(m)(i) (West 2014). She argues: "Equally disturbing about the performance, or lack thereof, of counsel for [r]espondent is the fact that he was aware that there was evidence regarding [r]espondent's efforts and he chose not to put that evidence in front of the trial court[,] saying, '[A]t our next hearing[,] we'll hear a little more more [*sic*] about certain other efforts[,] so we leave the matters of fitness and whether or not the [S]tate's met its burden to the discretion of the court.' " But we need not discuss reasonable efforts, considering that (1) meeting only one of the definitions in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) would make respondent an "unfit person"; and (2) there is no reasonable probability that, but for counsel's alleged unprofessional errors, the trial court would have found the allegation of a lack of reasonable progress (see 750 ILCS 50/1(D)(m)(ii) (West 2014)) to be unproved. See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 83.

¶ 216 E. The August 2016 Best-Interest Hearing

¶ 217 Respondent accuses Mills of ineffective assistance in the best-interest hearing in that he failed to compel the attendance of two witnesses, Pat Lawson and Nancy Howard, by issuing them subpoenas. Because the record does not reveal what Pat Lawson and Nancy Howard would have said on the witness stand, we are unable to evaluate this claim of ineffective assistance. We cannot fairly rule out, *sight unseen*, that the testimony of these two witnesses would have created a reasonable probability of a different outcome. See *Strickland*, 466 U.S. at 694.

¶ 218 If this were a criminal case, we would say a decision on the claim of ineffective assistance should be deferred until a postconviction proceeding, in which an adequate record could be developed. See *People v. Erickson*, 161 Ill. 2d 82, 88 (1994). Obviously, though, the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2014)) is inapplicable to

proceedings for the termination of parental rights. Therefore, our practice, in such circumstances, is to remand the case for development of the necessary factual record, while retaining jurisdiction. See *Ch. W.*, 399 Ill. App. 3d at 830. We do so in these cases.

¶ 219 III. CONCLUSION

¶ 220 While retaining jurisdiction over these cases (see Ill. S. Ct. R. 366(a)(5)(eff. Feb 1, 1994)), we remand them for an evidentiary hearing and decision on the limited question of whether the failure to subpoena Pat Lawson and Nancy Howard in the best-interest hearing amounted to ineffective assistance of counsel.

¶ 221 Remanded with directions.