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FILED
October 4, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 170381-U

NOS. 4-17-0381, 4-17-0382, 4-17-0383 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re: Cn. D., a Minor</i>)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Sangamon County
Petitioner-Appellee,)	No. 14JA81
v. (No. 4-17-0381))	
Jason Darnell,)	
Respondent-Appellant).)	
_____)	
<i>In re: O.D., a Minor</i>)	No. 14JA84
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0382))	
Jason Darnell,)	
Respondent-Appellant).)	
_____)	
<i>In re: Cr. D., a Minor</i>)	No. 13JA97
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-17-0383))	
Jason Darnell,)	Honorable
Respondent-Appellant).)	Karen Tharp,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s unfitness determination and termination of respondent’s parental rights was not against the manifest weight of the evidence.

¶ 2 In May 2017, the trial court terminated respondent Jason Darnell's parental rights as to Cn. D. (born July 5, 2009), O.D. (born December 12, 2007), and Cr. D. (born June 26, 2013). Respondent appeals, contending the trial court's unfitness and best interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Events Preceding the Unfitness and Best Interest Hearings

¶ 5 Respondent is the biological father of Cn. D., O.D., and Cr. D., and he has a lengthy history of Department of Children and Family Services (DCFS) involvement, beginning in July 2007 in Macoupin County. In May 2010, respondent's paramour and the mother to all three minors, Sandra Hrnyak, threatened to inflict self-harm and overmedicate one of her children (who is not involved in this appeal), leading DCFS to place O.D. and Cn. D. in protective custody.

¶ 6 In August 2010, the Macoupin County trial court adjudicated O.D. and Cn. D. neglected due to an injurious environment caused by (1) domestic violence between Hrnyak and respondent and (2) lack of care. Following a dispositional hearing in October 2010, the trial court ordered O.D. and Cn. D. wards of the court, placing custody and guardianship of the minors with DCFS. Both minors were placed in foster care.

¶ 7 In July 2012, O.D. and Cn. D. returned to the custody of Hrnyak and respondent. In December 2012, Hrnyak obtained an order of protection against respondent, alleging he pushed her.

¶ 8 In January 2013, DCFS removed O.D. and Cn. D. from the custody of Hrnyak and respondent. The minors were placed in a foster home after DCFS learned Hrnyak had

dropped the order of protection and allowed respondent to move back in with her, as well as O.D. and Cn. D. Hrnyak had not notified DCFS prior to dropping the order of protection.

¶ 9 On June 26, 2013, Cr. D. was born and placed into protective custody two days later. DCFS placed Cr. D. in the same foster home as O.D. and Cn. D. In July 2013, the State filed a petition for adjudication of neglect of Cr. D. in Macoupin County in case No. 13-JA-97.

¶ 10 In July 2013, DCFS removed the minors from the foster home, after receiving a report of physical and sexual abuse against O.D. DCFS placed Cr. D. in a nonrelative substitute caregiver home and Cn. D. and O.D. were placed in a nearby foster home. DCFS found the sexual abuse allegations “unfounded,” concluding they were the result of “age appropriate exploratory play” involving another child near O.D.’s age.

¶ 11 In September 2013, the trial court adjudicated Cr. D. neglected. In October 2013, the trial court entered a dispositional order making Cr. D. a ward of the court and placing guardianship and custody with DCFS.

¶ 12 In February 2014, the trial court ordered Hrnyak and respondent to take custody of Cn. D. after finding both parents met their permanency goal of returning Cn. D. home within 12 months. In March 2014, Cr. D. was also returned home. O.D. continued to remain in foster care after DCFS found she was too emotionally unstable to return home at the time.

¶ 13 In April 2014, the trial court entered a permanency order returning custody of O.D. to Hrnyak and respondent in June 2014. In April 2014, the court cases of O.D. and Cn. D. were transferred to Sangamon County after Hrnyak and respondent moved to Springfield.

¶ 14 In May 2014, DCFS received a hotline call alleging respondent’s use of excessive corporal punishment on Cn. D., leading DCFS to place Cn. D. in foster care. The State filed a petition alleging abuse and neglect of Cn. D. in Sangamon County case No. 14-JA-81, alleging

Cn. D. was a neglected minor due to (1) his parents' anger-management issues; (2) an environment injurious to the child's welfare, as evident from bruises on Cn. D.'s upper left arm; (3) excessive corporal punishment inflicted by respondent; and (4) physical abuse by respondent. The State additionally filed a petition alleging abuse and neglect of O.D. in Sangamon County case No. 14-JA-84, and it filed a motion to modify the April 2014 permanency order, requesting the trial court grant DCFS the right to place O.D. instead of returning O.D. back to respondent's custody in June 2014. DCFS removed Cr. D. from respondent's custody and returned him to foster care.

¶ 15 In May 2014, the trial court found probable cause to believe Cn. D. was neglected and abused, but did not find a matter of immediate and urgent necessity to remove him from the home. The trial court granted the State's motion to modify the April 2014 permanency order and O.D. was not returned to respondent's custody in June 2014.

¶ 16 In January 2015, O.D. returned home. In April 2015, Hrnyak and respondent informed DCFS they were being immediately evicted due to extensive damage to their trailer in Springfield, Illinois. In May 2015, Hrnyak and respondent moved with Cn. D. and O.D. back to Macoupin County "against agency advice" and proceeded to miss an annual case review. DCFS suspended visitation with Cr. D., who had remained in foster care, from twice per week unsupervised to once per week supervised "based upon the family's sudden relocation from Springfield[,] which did not allow for plans to be made in order to approve" housing and transportation arrangements. DCFS further stated, "Visitation will increase back to unsupervised when the family demonstrates stability in their current home and engagement in required services."

¶ 17 In a May 2015, the trial court entered an adjudication order, finding Cn. D. abused, based upon allegations from the State's petition filed a year prior in case No. 14-JA-81. In September 2015, the trial court entered a dispositional order making Cn. D. a ward of the court but allowed Cn. D. to remain in respondent's custody.

¶ 18 In April 2016, J.W. Pierceall, a court-appointed guardian *ad litem* for O.D. recommended to the trial court O.D. be removed from respondent's custody. Pierceall alleged O.D. engaged in misbehavior at school, ranging from lying and stealing to defecation and urination problems, all of which "are evidence of the trauma of her abuse during a previous foster placement." Pierceall found O.D.'s "psychological and emotional therapeutic needs are not being met," and "the parents have hindered the involvement of [DCFS]." Dr. Jane Velez, a psychologist, meanwhile reported "a severe and high concern for the safety and well-being for [Cn. D.] and [O.D.]" and recommended the removal of Cn. D. and O.D. from respondent's custody to stop emotional and physical abuse.

¶ 19 In April 2016, the trial court changed the permanency goals for Cn. D. and O.D. to substitute care pending court determination on termination of parental rights. Both Cn. D. and O.D. thereafter remained in foster care. Also in April 2016, DCFS suspended visitation with Cn. D., O.D. and Cr. D. due to an investigation of respondent for sexual molestation and physical abuse.

¶ 20 In May 2016, the State filed motions for termination of parental rights as to all three minors, alleging respondent has failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors; (2) make reasonable efforts to correct the conditions which were the basis for the removal of minors; (3) make reasonable progress towards the return of the minors within nine months after an adjudication of neglect; and (4) make reasonable

progress towards the return of the minors during any nine-month period following an adjudication of neglect.

¶ 21 In August 2016, DCFS indicated respondent on four allegations involving Cn. D. and O.D., including substantial risk of sexual abuse, sexual molestation and two allegations of incidents of violence and intimidation. DCFS continued to suspend respondent's visitation with Cn. D., O.D., and Cr. D. following its investigation.

¶ 22 In January 2017, the State filed a supplemental motion for termination of parental rights in each minor's case, alleging both Hrnyak and respondent "failed to make reasonable progress towards the return of their children within [nine] months after an adjudication of [n]eglect, *** specifically November 24, 2015[,] to August 24, 2016[,] and August 24, 2016[,] to present." In March 2017, Hrnyak surrendered her parental rights to all three minors.

¶ 23 B. Unfitness Hearing

¶ 24 In April 2017, the trial court held an unfitness hearing on the motions and supplemental motions for termination of parental rights. Testimony from the unfitness hearing is summarized as follows.

¶ 25 1. *Kimberly Allen*

¶ 26 The State's first witness was Kimberly Allen, a caseworker at the Illinois Department of Human Services who assists participants in the Temporary Assistance for Needy Families (TANF) program. TANF provides money to unemployed individuals in exchange for volunteering 20 hours per week at a worksite and submitting five weekly job applications. Allen began overseeing respondent's participation in TANF in September 2015.

¶ 27 TANF first placed respondent at We Care Recycling, a recycling site located in Carlinville, Illinois. In September 2015, respondent was terminated at this worksite because of

concerns from the site supervisor regarding respondent's inability to focus on the job, which would make him susceptible to injury. Additional testimony indicates respondent had only showed up for one day and thereafter failed to return to We Care Recycling.

¶ 28 TANF next placed respondent at the Carlinville Catholic Charities Thrift Shop, where respondent worked for 10 days in September 2015. Allen testified the Catholic Charities' work supervisor requested respondent not return after respondent told him he was drinking vanilla extract with 40% alcohol to numb the pain from a toothache. Due to respondent's unsuccessful two placements provided by TANF, Allen informed him TANF policy required him to find his own placements to meet the cash assistance requirements.

¶ 29 In September 2015, respondent found work as a farmhand. However, the worksite supervisor ran out of work for respondent to complete. Thereafter, respondent found work at the Macoupin County Animal Shelter and Adoption Center (Animal Shelter).

¶ 30 In October 2015, the Animal Shelter discharged respondent. According to the worksite supervisor, respondent was late to work several days. Respondent claimed he was late in order to drop Cn. D. and O.D. off at their school bus stop. Allen further testified that the Macoupin County Sheriff's Department had contacted the Animal Shelter to notify them respondent was on a registry for abusing children. Respondent was required to notify the local sheriff's department of where he worked and he failed to inform the Macoupin County Sheriff's Department of his work at the Animal Shelter. Allen also noted the worksite supervisor was not pleased after finding respondent yelling at the dogs.

¶ 31 Allen testified she questioned respondent about being on the registry for abusing children and yelling at the dogs at the Animal Shelter. Respondent told her he was no longer interested in participating in TANF and Allen canceled his enrollment. Allen nonetheless

acknowledged respondent was cooperative in maintaining contact with her, attending office appointments, and making job searches.

¶ 32 *2. Lauren Jurczak*

¶ 33 The State's second witness was Lauren Jurczak, an occupational therapist who conducted therapy sessions with Cr. D. from June 2014 to June 2016. Cr. D. began seeing Jurczak because he was "stiff from head to toe" and was experiencing difficulty walking and reaching out in front of his body.

¶ 34 Jurczak testified she conducted approximately 100 sessions with Cr. D., two of which respondent attended. In October 2015, Jurczak held a session at respondent's home without any issues. In March 2016, respondent attended a session at the Center for Youth and Family Services (CYFS) office in Springfield, Illinois, in which Jurczak testified respondent was uncooperative. She stated respondent brought only "a soda and a cell phone" without any supplies or anything for Cr. D. According to Jurczak, "[t]here were times during the session where [we] would be working on one activity and [C.D. II] would be refusing the activity so [respondent] would offer a different activity that wasn't necessarily working on the same scale as we were working on." Jurczak also noted, "[T]here were times where I would redirect and then [respondent] would go back to what [Cr. D.] liked to do better."

¶ 35 Jurczak acknowledged respondent demonstrated an interest in the well-being of Cr. D. at the session in March 2016, by asking questions and volunteering to change Cr. D.'s diaper when "nobody made any moves to change the diaper at that point." However, she expressed respondent "wasn't getting it," in terms of taking away important information from Cr. D.'s therapy. In a telephonic conference with respondent in March 2016, he was argumentative and doubted Cr. D.'s need for therapy. Jurczak testified her sessions with respondent occurred

during visitation, and visitations would often change or be cancelled. She further testified she would not receive text messages back to confirm appointments scheduled at respondent's home.

¶ 36

3. *Cassandra Davis*

¶ 37

The State's next witness was Cassandra Davis, a speech language pathologist employed at Taylorville Memorial Hospital in Taylorville, Illinois. In 2014, Davis began working with Cr. D. on developmental speech and language delay. She testified respondent attended a therapy session in March 2016, as well as two biannual meetings, to discuss Cr. D.'s progress. Davis stated respondent, though present, did not involve himself in working with Cr. D. Davis did not recall if respondent asked any questions regarding Cr. D.'s therapy at the session he attended. Respondent had arranged to attend three more sessions, but did not show up, causing Cr. D. to "stare at the door the entire time waiting for [respondent] to come."

¶ 38

4. *Katie Jacobs*

¶ 39

Katie Jacobs, an independent developmental therapist who worked with Cr. D. from 2014 to 2016, testified as the State's next witness. Jacobs stated respondent only attended one therapy session, held at the Taylorville DCFS office, in March 2016. Jacobs stated she was trying to work with Cr. D. during the session on "fine motor activities, matching and sorting, and [respondent] was just more interested in showing [Cr. D.] pictures on his phone and videos on his phone. He did try to redirect [Cr. D.] a little bit as needed, but he was more of a distraction in that setting."

¶ 40

Although Jacobs found it ideal to have the therapy sessions at respondent's home, he resided too far away to do so, after having moved from Springfield to Macoupin County in April 2015. According to Jacobs, respondent missed three consecutive sessions scheduled at the

Taylorville DCFS office, and the remaining sessions were held at the home of Cr. D.'s foster parents.

¶ 41

5. Kathryn Vincent

¶ 42

The State's final witness was Kathryn Vincent, lead foster care caseworker at CYFS, who became a caseworker to O.D., Cn. D., and Cr. D. in February 2015, and testified, "There [have] been several indicated findings of physical abuse, neglect, emotional abuse, pretty much the full throttle." Vincent testified to working with respondent on three service plans, lasting from (1) November 2014 to May 2015, (2) May 2015 to November 2015, and (3) November 2015 to May 2016.

¶ 43

During the first service plan with Vincent, she stated respondent was rated unsatisfactory for parenting, housing, and therapy. Respondent's visitation with Cr. D. "was incredibly chaotic, and his two children that were in the home, [Cn. D. and O.D.], were doing very poorly at school." Respondent was not coparenting effectively with Hrnyak, and he was not displaying parenting skills they learned from parenting classes. Vincent testified respondent was rated unsatisfactory for housing because he decided to move O.D. and Cn. D. a month before finishing the school year in April 2015, without considering other options. She stated Hrnyak declined to move into public housing in Springfield because she did not want to be separated from respondent, who was ineligible due to a felony conviction. Respondent was rated unsatisfactory in therapy because "he was always coming in with an initial crisis," which distracted from achieving his goals in counseling. Respondent was rated satisfactory in cooperation, and he received a satisfactory for employment due to his reliance on Hrnyak's social security income.

¶ 44 During the second service plan with Vincent from May to November 2015, respondent was rated unsatisfactory for parenting and counseling. Vincent referred to respondent as a “non-active participant” during visitation with Cr. D., noting he often ignored Cr. D. because of tantrums from Cn. D. and O.D. In June 2015, Vincent saw respondent fall asleep on the floor three times during visitation with Cr. D. During a visitation in October 2015, Vincent heard respondent say, “I can parent appropriately; [Cn. D.], tell him who gives the worst punishments here.” Vincent also found respondent had cancelled too many visitations with Cr. D. Although respondent “had good intentions during [Cr. D.’s] therapy session,” she never witnessed respondent providing “any type of therapeutic feedback.”

¶ 45 On a home visit in June 2015, Vincent noted chickens and a turkey in metal crates placed in the living room. During a home visit in September 2015, Vincent found respondent’s home had a “strong, pungent smell.” On the next home visit in October 2015, Vincent stated respondent “went from zero to 60” after O.D. was caught stealing a piece of bread and yelled, “Dammit, [O.D.], I’m sick and tired of this shit. If you don’t stop stealing now, you’re going to end up in jail.” Respondent received an unsatisfactory rating in counseling for failing to schedule an appointment.

¶ 46 In May 2016, respondent was rated unsatisfactory for parenting in his third service plan with Vincent due to losing custody of Cn. D. and O.D. and the opening of the DCFS investigation alleging sexual molestation and physical abuse. In December 2015, while driving respondent and his family to the family evaluation with Dr. Velez, Vincent overheard respondent remark in front of O.D. and Cn. D. his paramour was “just giddy because she got laid last night.” At the parenting evaluation, respondent brought no snacks or drinks for the minors and Vincent testified he “often went in and outside to take smoke breaks, and after a couple smoke breaks, I

informed him that I was not here to babysit his children.” Moments later, respondent attempted to discipline O.D., saying “I’m not going to hit you; you haven’t been bad enough yet.” Instead, respondent made O.D. pray and say, “I’m so sorry, I’m such a bad girl, I will change my behavior, I’m not going to jail when I get older.” Vincent found respondent’s discipline of O.D. ineffective, as well as “incredibly shaming” and “demeaning.”

¶ 47 According to Vincent, O.D. needed counseling for “smearing feces and blood in the home bathroom” and for trauma stemming from her foster home removal in July 2013, in which the foster parents were investigated for physical and sexual abuse. Vincent stated, “the investigation was unfounded,” but acknowledged there was evidence supporting the allegations and O.D. needed therapy. Respondent told Vincent he saw “no signs of sexually reactive behavior,” contradicting reports of O.D. sexually acting out by Hrnyak. Respondent did enroll O.D. in therapy in January 2016, but he did so without notifying DCFS.

¶ 48 In April 2016, Vincent found roaches crawling out of Cn. D.’s and O.D.’s book bags when she picked them up from school. Respondent was rated unsatisfactory in counseling for not attending counseling appointments. Vincent rated respondent as unsatisfactory for cooperation because he stopped all communication with Vincent and “it truly was like the parents just fell off the map” once Cn. D. and O.D. were removed from his home.

¶ 49 Vincent noted she set up fourth and fifth service plans for respondent from May to November 2016, and November 2016 to May 2017, but respondent was no longer cooperating with services or completing any tasks. She never witnessed gifts, cards or letters sent by respondent to O.D., Cn. D. or Cr. D. Vincent stated she was never close to recommending the return of Cr. D. to respondent’s care due to his specialized need, stating “[It has] been incredibly

hard to maintain one child in the home, let alone two and then let alone a third with incredible needs.”

¶ 50 Vincent testified respondent had been involved in a total of 30 service plans with DCFS from 2007 to 2017. After respondent terminated enrollment in TANF, he would occasionally show Vincent paystubs from jobs in Springfield. While living in Macoupin County, he would often tell Vincent “he had a job lined up, but he never actually had the job.”

¶ 51 C. Unfitness Finding

¶ 52 In April 2017, the trial court ruled respondent unfit to parent O.D., Cn. D., and Cr. D. In doing so, much of the testimony proffered during the unfitness hearing was recounted. The trial court mentioned respondent missing therapy appointments with Cr. D. in stating he failed to demonstrate a reasonable degree of responsibility as to their welfare. However, respondent was found to have demonstrated a reasonable degree of interest and concern. The trial court stated he failed to make reasonable efforts to correct conditions leading to an adjudication of neglect, citing in particular his failure to take seriously the counseling needs of himself and O.D. by putting off appointments. Respondent was found to have failed to make reasonable progress toward having the minors returned home, noting DCFS was never close to returning custody of Cr. D. and the parents have been uncooperative with DCFS since April 2016.

¶ 53 D. Best Interest Hearing

¶ 54 In May 2017, the trial court held a best interest hearing, in which Sister Sarah Roy, Kathryn Vincent, and Jason Darnell testified. Their testimony is summarized as follows.

¶ 55 1. *Sister Sarah Roy*

¶ 56 The State’s first witness was Sister Sarah Roy, a counselor at ABC Counseling and Family Services, who performed a sexual abuse evaluation on O.D. in November 2016 and continued to provide her weekly individual counseling. In sessions, Sister Roy noticed O.D. was “pretty open,” stating “[t]he first time she came in, she put hands on her hips and said, [‘] my dad has sex with me [’], which surprised me.” According to Sister Roy, “[m]ost kids, it takes a while before they disclose information like that.” O.D. also used “crude names” to refer to body parts, which Roy found indicative of exposure to sexual abuse, and stated respondent “has sex with me in the car, in the basement, the bathroom, the bedroom.” O.D. also said respondent had sex with her in a car in the presence of Hrnyak and “that she was supposed to watch pornography with her dad.” According to Sister Roy, O.D. stated she has had oral, vaginal, and anal sex with respondent. In an exercise in which O.D. was supposed to draw a picture of “what happened” to her, she drew respondent holding a knife and “threatening her because she didn’t want to have sex with him.”

¶ 57 In treating O.D., Sister Roy found she “really struggles with boundaries,” which required more individual work. O.D. was removed from group therapy because of sexualized behavior, including asking another participant to have sex with her. O.D. had issues with bed-wetting and was “very on edge.” Sister Roy found O.D. had attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder (ODD), and post-traumatic stress disorder (PTSD). She acknowledged O.D. made sexual abuse allegations against a previous foster home, but she testified Cn. D. had alleged respondent touched his genitals. Unlike O.D., Cn. D. has not been referred to Sister Roy for counseling.

¶ 58 Sister Roy found O.D.’s allegations against respondent credible, explaining “most of the children who are exaggerating or who are making up sexual abuse, their story is not very

consistent. *** [O.D.'s] story has stayed consistent.” Sister Roy referred to O.D. as “sexualized,” and found respondent would call her “pussy,” “slut,” and “bitch.”

¶ 59 In therapy, O.D. touched on domestic violence between respondent and Hrnyak, telling Sister Roy “she had told her mom that her dad had had sex with her, and her mom was confronting him, and they got in a fight, and they were hitting each other, and the police were called.” O.D. indicated to Sister Roy a television fell on her on another occasion.

¶ 60 *2. Kathryn Vincent*

¶ 61 The State’s next witness was Kathryn Vincent, lead foster care caseworker at CYFS, who had previously testified extensively at the unfitness hearing. Vincent testified about the foster placements of Cr. D., Cn. D., and O.D. According to Vincent, DCFS placed all three minors with specialized foster families.

¶ 62 DCFS placed Cr. D. with a specialized foster family in Pawnee, Illinois, in May 2014 due to diagnoses, including sensory processing disorder, autism, hyperkinesia, and ADHD. DCFS placed Cn. D. at a specialized foster home in Raymond, Illinois, in October 2016, because of diagnoses of PTSD, ADHD, and ODD. Cn. D. had also been diagnosed with depression, anxiety, and a possible expressive language disorder. O.D. has lived in a specialized foster home in Waggoner, Illinois, since September 2016 due to “severe above average behavioral needs” and trauma from sexual abuse.

¶ 63 Vincent found Cr. D.’s foster placement attends to his medical, social, and religious needs. She cited his foster parents’ extensive training and 15 years of experience, as well as their attentiveness to Cr. D.’s therapy. Respondent’s foster parents work with Cr. D. “on behavioral issues, boundaries, coping, different areas that he was socially delayed in.” Cr. D. has his own bedroom at his foster placement and lives with three other adopted children and his

foster family's 21-year-old daughter. Cr. D.'s foster parents agreed to provide Cr. D. the religious preference of his parents. Vincent testified Cr. D.'s foster parents are an adoptive resource and have signed a permanency commitment form. An attachment has formed between Cr. D. and his foster parents and he is "very comfortable in his setting."

¶ 64 Vincent next testified about Cn. D.'s new foster home, where he is "thriving" and "he's just a totally different kid. He runs up to you and gives you hugs. He's very talkative." She stated Cn. D.'s placement attends to his educational, medical, social and religious needs. He is "meeting and exceeding all academic benchmarks at school," and is involved in Cub Scouts and T-ball. He is up to date on his physical examination, immunizations, and vision, hearing, and dental care. Cn. D.'s foster parents "agreed to provide [Cn. D.] with any type of religious preferences that the biological parents may have identified." Vincent testified respondent "has really become an intertwined [*sic*] member of the family" and his foster parents are willing to provide permanency for Cn. D. if needed. Respondent has only visited with Cn. D. once since his children were removed from his custody in April 2016 and has not sent Cn. D. any gifts, cards or letters.

¶ 65 Vincent further testified about O.D.'s progress in her foster care placement, noting she has not had a single instance of defecation since her removal in April 2016. Vincent found O.D.'s educational, social, and medical needs were being met, stating she is academically "right on target" and "up to date on her physical, dental, vision, hearing, [and] all immunizations." O.D. participated in Girl Scouts, in-line skating lessons, indoor soccer, swimming lessons under the care of her foster mother, whom O.D. feels an attachment and calls "mom." Vincent described O.D.'s foster mother as willing to provide O.D. long-term care but unwilling at the time to commit to adoption.

¶ 66 Respondent has not visited Cr. D., Cn. D. or O.D. since April 2016, and has not sent them gifts, cards, or letters. After DCFS ended visitation in April 2016, respondent only contacted Vincent on two occasions in October 2016, and April 2017, without inquiring about any of his children. On these occasions, Vincent told respondent he had the option to give the three minors gifts, cards, or letters by submitting them to DCFS.

¶ 67 *3. Jason Darnell*

¶ 68 The final witness at the best interest hearing was respondent, who stated he loved his children “very much.” Respondent denied any sexual abuse against O.D., claiming O.D.’s trauma was caused by sexual abuse in foster care. He stated he had called DCFS to report physical and sexual abuse against O.D. in her foster home and noticed she started being preoccupied with sex and watching pornography. Respondent has been questioned by police about O.D.’s allegations against him but has not been charged with a crime.

¶ 69 Respondent testified he could support Cn. D., O.D., Cr. D. as a certified forklift driver, but he is not employed outside of “a little mechanic business.” He testified to having spent time with his children golfing and fishing. Respondent told the trial court he was willing to facilitate the education, social, and medical needs of his children and it was not in their best interests for his parental rights to be terminated. He explained his failure to send his children gifts, cards or letters was due to advice from his attorney during the investigation from DCFS beginning in April 2016.

¶ 70 *E. Best Interest Finding*

¶ 71 In May 2017, the trial court found it was in the best interest of O.D., Cn. D., and Cr. D. to terminate respondent’s parental rights. The trial court noted respondent had not made sufficient progress in counseling and his children “are stable right now” in foster care. The trial

court found, regardless of whether respondent sexually abused O.D., she had “obviously been through something,” and “needs a tremendous amount of help.” The trial court noted O.D. and Cn. D. have spent a lot of time in and out of foster care and Cr. D. has only been returned home once and was removed again, whereas the minors now have stability in their foster homes. Even though O.D. was not guaranteed permanency at her foster home, the trial court stated, “I do not find it would ever be in her best interest to return to the home of [respondent].”

¶ 72 In explaining its decision, the trial court noted respondent had not sent any cards, letters, or gifts to his children, even though the “[c]aseworker said she specifically told him he could.” The trial court further noted respondent never called his caseworker after his visitation was suspended to see how his children were doing. The trial court concluded the minors were making progress in foster care but “doing horrible in the home” and stated, “I believe the case has gone on so long, that the children have the right to try to obtain permanence by some other means, rather than ever return home.”

¶ 73 This appeal followed.

¶ 74 II. ANALYSIS

¶ 75 Termination of parental rights involve the trial court making “two separate and distinct findings.” *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107. The trial court must find (1) the parents are proved ‘unfit persons’ under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)), and (2) it is in the best interest of the minor child to terminate parental rights under section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2016)).

¶ 76 The State has the burden to prove unfitness by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). The burden is on the State to

prove termination is in the minor's best interest by a preponderance of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 617, 912 N.E.2d 337, 345 (2009).

¶ 77 A. The Finding of Parental Unfitness

¶ 78 On appeal, respondent argues the unfitness determination was against the manifest weight of the evidence, contending the trial court focused on his lack of success without adequately considering evidence of his attempts to comply with his service plans. The State counters the evidence overwhelmingly supports a finding of unfitness. We agree with the State.

¶ 79 "A trial court's determination that a parent's unfitness has been established by clear and convincing evidence will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 516-17. An unfitness determination is against the manifest weight of the evidence "only where the opposite conclusion is clearly apparent." *Id.*, 830 N.E.2d at 517. "[E]very matter concerning parental fitness is *sui generis*," and "[e]ach case must therefore be decided on the particular facts and circumstances presented." *Id.*

¶ 80 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) states an "unfit person" is "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." The Adoption Act then lists several grounds supporting a finding of unfitness, including:

“(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare.

* * *

(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during

any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the [Juvenile Court Act] ***, or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the [Juvenile Court Act] ***.” 750 ILCS 50/1(D)(b),(m) (West 2016).

¶ 81 “A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.” (Internal quotation marks omitted.) *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 43, 77 N.E.3d 69. Because subsection (b) of the Adoption Act “is phrased in the disjunctive, any of the three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child’s welfare.” (Internal quotation marks omitted.) *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51, 19 N.E.3d 1273.

¶ 82 The trial court’s unfitness determination is supported by the manifest weight of the evidence. The record supports the trial court’s finding of respondent failing to demonstrate a reasonable degree of responsibility after delaying O.D.’s enrollment in counseling without DCFS notification until January 2016, and for not attending counseling appointments, which led to an unsatisfactory rating in counseling on respondent’s service plan in May 2016. We find respondent should have sought to act sooner in enrolling O.D. in therapy for trauma from sexual abuse, given her issues with defecating at home and school. Nonetheless, he insisted to his caseworker O.D. had “no signs of sexually reactive behavior.” Respondent also did not take seriously Cr. D.’s various therapies by cancelling appointments or distracting Cr. D. during sessions he did attend.

¶ 83 Respondent's failure to attend scheduled therapy sessions for Cr. D. demonstrates a failure to make reasonable efforts to correct the conditions leading to the removal of his children. Respondent additionally showed a failure to engage in reasonable efforts when he stopped communicating with DCFS and his children in April 2016, in which his caseworker testified, "[I]t truly was like the parents just fell off the map." His behavior was often uncooperative, such as being a "non-active participant" during visitations with Cr. D. and falling asleep on the floor during visitation in June 2015. Respondent failed to even filter himself around his caseworker, who witnessed him say, "I can parent appropriately; [Cn. D.], tell him who gives the worst punishments here," and took issue with him going outside for cigarette breaks while she watched O.D., Cn. D. and Cr. D. during a parenting evaluation.

¶ 84 The manifest weight of the evidence supports the trial court's determination respondent failed to make reasonable progress toward having O.D., Cn. D., and Cr. D. returned home. "Reasonable progress toward the return of the child is judged on an objective standard that focuses on the steps the parent has taken toward reunification." *In re H.S.*, 2016 IL App (1st) 161589, ¶ 27, 67 N.E.3d 412. Here, respondent failed to provide "any type of therapeutic feedback" from what he learned regarding Cr. D.'s therapy. Respondent was often rated unsatisfactory in parenting and engaged in bizarre methods of discipline, such as "shaming" O.D. by making her pray and say, "I'm so sorry, I'm such a bad girl, I will change my behavior, I'm not going to jail when I get older." Therefore, we find the trial court's unfitness determination was not against the manifest weight of the evidence.

¶ 85 B. The Best Interest Finding

¶ 86 On appeal, respondent argues the best interest finding was against the manifest weight of the evidence, stating "testimony given during the best interest hearing suggested it was

not in the children’s best interest to terminate the parental rights of [respondent] because a bond had been established and [respondent] was willing to continue making progress toward achieving reunification.” The State counters respondent stopped contacting the minors in April 2016, and each minor developed attachments to his or her respective foster parents, who have helped them meet their needs. We agree with the State.

¶ 87 The trial court’s best interest determination will only be reversed if it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.” *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 88 Section 1-3(4.05) of the Juvenile Court Act provides various factors the trial court must consider in rendering a best interest determination. Factors must be “considered in the context of the child’s age and developmental needs,” and include the following:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child’s identity;

(c) the child’s background and ties, including familial, cultural, and religious;

(d) the child’s sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child’s sense of security;

(iii) the child’s sense of familiarity;

- (iv) continuity of affection for the child;
- (v) the least disruptive placement alternative for the child;
- (e) the child's wishes and long-term goals;
- (f) the child's community ties, including church, school, and friends;
- (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute care; and
- (j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2016).

In considering these factors, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill.2d 347, 364, 818 N.E.2d 1214, 1227 (2004).

¶ 89 The trial court’s best interest determination is supported by the manifest weight of the evidence. Regardless of whether respondent had sexually abused O.D., the record shows O.D. stopped having defecation issues when she was removed from his custody in April 2016. O.D. suffers trauma and we agree with the trial court in finding respondent has failed to help O.D., who her counselor described as “very on edge” and in need of individualized care. Although O.D.’s foster mother has not committed to adopting her, based on the aforementioned facts, we agree with the trial court O.D. is more stable in foster care than under respondent’s care.

