

NOTICE
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2017 IL App (5th) 160449-U

NO. 5-16-0449

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> B.C., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-JA-165
)	
Kelly C.,)	Honorable
)	Janet Heflin,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order terminating the respondent mother's parental rights to her minor child was affirmed where the court's findings that she failed to make reasonable progress toward the minor's return during any nine-month period following the adjudication of neglect and that termination of her parental rights was in the best interests of the minor were not against the manifest weight of the evidence.

¶ 2 The respondent mother, Kelly C., appeals the judgment of the circuit court of Madison County terminating her parental rights to her minor child, B.C. On appeal, Kelly C. argues that the court's findings that she had failed to make reasonable efforts to correct the conditions that were the basis for B.C.'s removal during any nine-month

period following the adjudication of neglect under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2012)) and that she had failed to make reasonable progress toward B.C.'s return during any nine-month period following the adjudication of neglect under section 2-3 of the Juvenile Court Act were against the manifest weight of the evidence. She further argues that the court's finding that termination of her parental rights was in the best interests of B.C. was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 B.C. was born on March 31, 2008, to Kelly C. and Roberto C. Although Roberto C.'s parental rights were also terminated, this appeal only involves the termination of Kelly C.'s parental rights. Thus, we will only discuss those facts pertinent to the termination proceedings involving Kelly C.

¶ 5 On November 14, 2012, the State filed a juvenile petition, asserting that B.C. was a neglected minor and requesting that he be adjudicated a ward of the court. The petition alleged as follows: that B.C. was neglected in that his parents had substance abuse addiction issues that impaired their ability to provide the proper or necessary support, education, medical, or other remedial care necessary for his well-being in violation of section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2012)); and that B.C. was neglected in that his environment was injurious to his welfare in violation of section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) where the Granite City police department had discovered uncapped syringes and empty heroin capsules inside the parents' residence; the residence was unkempt, and rotten food

was discovered in the refrigerator; and both parents had a criminal history of drug-related offenses.

¶ 6 On November 16, 2012, the trial court entered a default temporary custody order, placing temporary custody of B.C. with the Illinois Department of Children and Family Services (DCFS). On March 20, 2013, the court entered a default adjudicatory order, finding that B.C. was a neglected minor in that he suffered from a lack of support, education, and remedial care, and that he was in an environment that was injurious to his welfare. That same day, the court entered a dispositional order, finding that Kelly C. and Roberto C. were unfit and leaving custody and guardianship of B.C. with DCFS.

¶ 7 On April 19, 2013, a service plan was prepared, requiring Kelly C. to complete the following tasks: (1) participate in substance abuse assessment and TASC assessment; (2) allow workers to count prescribed medication to ensure the right amount was taken daily; (3) attend all doctor appointments concerning her health and diagnosis; (4) participate in individual counseling once she had shown some progress in substance abuse treatment; and (5) ensure that her home was clean and that trash was disposed of properly. A service plan evaluation completed on September 10, 2013, revealed that Kelly C. had received unsatisfactory ratings for every task except keeping her house clean.

¶ 8 On September 18, 2013, the trial court entered a permanency order, finding that Kelly C. had not made reasonable progress and efforts toward B.C. returning home. The permanency goal was to return B.C. home within 12 months. A second service plan evaluation filed February 25, 2014, indicated that Kelly C. had received unsatisfactory

ratings for every task. That same day, the court entered a permanency order, changing the permanency goal to substitute care pending determination of termination of parental rights. Service plan evaluations filed August 5, 2014, and February 9, 2015, again rated Kelly C. unsatisfactory for every task.

¶ 9 On February 20, 2015, the State filed a motion for termination of parental rights and for appointment of guardian with the power to consent to adoption, asserting, *inter alia*, that Kelly C. was unfit to have B.C. under section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)) in that she had failed to make reasonable efforts to correct the conditions that were the basis for B.C.'s removal during any nine-month period after the adjudication of neglect, and under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)) in that she had failed to make reasonable progress toward B.C.'s return during any nine-month period after the adjudication of neglect.

¶ 10 At the May 19, 2015, fitness hearing, Officer Mark McKinney, a patrolman with the Highland police department, testified that on September 23, 2014, he arrested Kelly C. for driving under the influence (DUI). He testified that he pulled her over after observing her commit a few traffic offenses following a report of an erratic driver. He approached the vehicle and noticed that she was hysterically crying. He asked for identification, and she responded that she had a suspended driver's license. He believed that "something was *** off" and asked her to perform field sobriety tests. Although the preliminary breath test did not reveal any alcohol in her system, she was unable to keep her balance on the one-legged stand, failed the walk and turn test, and her pupils were

very constricted, indicating drug use. Based on the results of the field sobriety tests, McKinney concluded that she "was definitely intoxicated on something."

¶ 11 McKinney testified that Kelly C. admitted that she had prescriptions for the following medications: zolpidem; alprazolam, a generic for Xanax; oxycodone; and zarisoprodol. A search of the vehicle revealed four pill bottles. The alprazolam had been prescribed the previous day, and 27 pills out of the 90-count prescription were missing. The zarisoprodol was also filled the previous day, and 19 pills from the 90-count prescription were missing. There was also a pill bottle for zolpidem that contained a rolled-up \$20 bill with a suspicious white substance. A "pill capsule" also found in the pill bottle tested positive for heroin. Kelly C. pled guilty to DUI and was placed on probation.

¶ 12 Tomyra Gordon, a foster care case manager at Caritas Family Solutions, testified that B.C. was initially placed with his maternal grandfather, who lived in the same duplex as Kelly C. and Roberto C. While B.C. lived with his grandfather, Kelly C. was consistent with visitation. However, in December 2013, B.C.'s placement was changed because there had been a fight between Roberto C. and the grandfather. B.C. was placed with his aunt and uncle in Highland, and Kelly C.'s visitation was reduced. The February 2015 service plan evaluation indicated that Kelly C.'s visitation with B.C. had been inconsistent as of October 2014 and that she had been taken off the visitation schedule for missing several months of visits and failing to confirm on time.

¶ 13 Gordon testified that Kelly C.'s service plan required her to complete a substance abuse assessment and a TASC assessment. Kelly C. never attended any appointments to

complete a TASC assessment. However, she eventually completed a substance abuse assessment in July 2014 at Chestnut Health Systems. Although she tested positive for oxycodone and benzodiazepine, Chestnut did not recommend any treatment because she had presented prescriptions for the medications. Chestnut did offer her a six-step program on understanding how to appropriately take prescription medication, but she declined. Gordon testified that she was never able to count Kelly C.'s prescription pills because Kelly C. always claimed that the medication was at the pharmacy. As for housing, Gordon testified that she was unable to fully evaluate any of Kelly C.'s residences for safety and cleanliness because Kelly C. never allowed her full access to any of her houses. At the beginning of the case, Kelly C. lived with her husband in a duplex. They subsequently moved to his mother's home in Caseyville. In November 2014, she moved in with her father in Highland. She had told Gordon that she was on a waiting list for housing through Chestnut Health Services and that she was "getting close to getting her own place."

¶ 14 Amanda Dillard, a former counselor at Caritas Family Solutions, was assigned to Kelly C. on December 19, 2013. Kelly C. had an appointment with Dillard for the completion of a mental health assessment on January 29, 2014. Kelly C. missed the appointment, claiming that she had forgotten about it, and it was rescheduled to February 14, 2014. After the February appointment, there were several missed, cancelled, and rescheduled appointments.

¶ 15 Dillard explained that Kelly C. was, at times, distracted, forgetful, and uncooperative at their sessions. Dillard completed the assessment after three meetings.

Dillard explained that there were no goals established for Kelly C.'s treatment at that time because Kelly C. had not met with her to develop a plan. Dillard had appointments scheduled with Kelly C. for April 9 and May 20, but the appointments were cancelled. On May 28, 2014, Kelly C. requested a transfer to a Belleville therapist. The transfer was completed in June 2014. After Kelly C. moved in with her father, she requested a transfer back to Dillard. Dillard reviewed the appointment logs from the Belleville counselor and noted that Kelly C. had not attended any meetings with that counselor.

¶ 16 In March 2015, Dillard and Kelly C. made several back and forth attempts to contact each other to schedule an appointment, but they were unsuccessful. Dillard ultimately sent Kelly C. a registered letter to notify her that the case would be closed if an appointment was not scheduled by May 15, 2015. In response, Kelly C. contacted Dillard and made an appointment. Given the amount of time that had elapsed, Kelly C. was required to complete a new mental health assessment, which was completed after two sessions. Dillard observed that Kelly C. was distracted, inattentive, irritable, and uncooperative during the meetings. After the assessment was completed, Dillard met with Kelly C. in July to develop a treatment plan. As part of the plan, Kelly C. was required to attend weekly counseling. Dillard had no contact with Kelly C. after the development of the plan.

¶ 17 Kelly C. testified that she had made numerous attempts to contact her Belleville counselor but was unsuccessful. She testified that it took "well over a year" for the Belleville office to transfer her documents back to Dillard's office. She stated that her father had planned to take her to the counseling appointments, but her grandmother, who

also lived with them, got sick, and Kelly C. had to take care of her. Kelly C. testified that she discussed her transportation problems with Gordon, but Gordon never offered her any solution.

¶ 18 Kelly C. testified that she had requested Gordon's assistance with obtaining suitable housing, but Gordon told her that they "don't do that." She stated that Gordon never told her that there were concerns about her housing. She testified that Gordon asked to count her medication on three occasions, but the medication was at the pharmacy. She stated that she offered to get the medication from the pharmacy to allow Gordon to count it, but Gordon declined.

¶ 19 After the fitness hearing, the trial court entered an order finding, by clear and convincing evidence, that Kelly C. was unfit to have B.C. under section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)) in that she had failed to make reasonable efforts to correct the conditions that were the basis for B.C.'s removal during any nine-month period following the adjudication of neglect under section 2-3 of the Juvenile Court Act (705 ILCS 405/2-3 (West 2012)), and under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)) in that she had failed to make reasonable progress toward B.C.'s return during any nine-month period following the adjudication of neglect under section 2-3 of the Juvenile Court Act.

¶ 20 At the July 5, 2016, best interests hearing, Brittany Weller, a foster care case worker at Caritas Family Solutions, testified that B.C. has lived with his maternal aunt and uncle for three years. His aunt and uncle have a 12-year-old son who also lives in the house along with Kelly C.'s 19-year-old son and daughter. Kelly C.'s daughter had just

moved into the house because she no longer felt comfortable living with her mother. A best interests report prepared by Weller, which was admitted into evidence, indicated that B.C.'s behavior had greatly improved while living with his aunt and uncle. In the beginning, he lied about trivial matters and struggled with balancing his emotions. However, he currently had very little behavioral issues. Weller testified that she had several conversations with Kelly C. about her lack of progress with her service plans and opined that Kelly C. was unwilling to acknowledge and take responsibility for that lack of progress.

¶ 21 Weller testified that she had observed B.C. in his current home and believed that he felt comfortable there. She explained that he had bonded with his foster parents and called them "mom" and "dad." He also had a sibling relationship with their son. She stated that the foster parents' home exceeded the minimum standards set by DCFS and that both parents had expressed a desire to adopt B.C. They have been attentive foster parents, contacting Weller as needed, and are very protective of B.C. They are committed to B.C.'s care, ensuring that all of his needs are met.

¶ 22 At the time of the hearing, a plan to facilitate one hour monthly supervised visits between Kelly C. and B.C. was in place, but no visits had occurred since July 2015. When Kelly C. contacted Weller to schedule a visit in March 2016, she was told that B.C. had refused future visits. B.C. indicated that he did not want to continue visitation after an unsupervised telephone call with Kelly C. that occurred when he was visiting his grandfather. Weller noted that when B.C. had expressed a willingness to visit with her,

Kelly C. failed to confirm for a visit, and no visit was scheduled. Weller believed that B.C. should stay in his current placement where there is stability and consistency.

¶ 23 On cross-examination, Weller acknowledged that B.C.'s foster parents believed that it was not in his best interests to return home. She admitted that she was aware that the foster parents have had conversations with Kelly C.'s father about allowing B.C. to be around Kelly C. unsupervised. They have also expressed their unwillingness to be supportive of a relationship between B.C. and his extended family where the family members continue to allow Kelly C. to have unsupervised contact with B.C.

¶ 24 Megan Harley, B.C.'s counselor at Caritas Family Solutions, testified that B.C. has expressed a desire to remain in his current home with his aunt and uncle where he feels safe. He has also expressed anger and frustration with his mother's lack of efforts to get him back. Harley explained that, at one point, she was also Kelly C.'s counselor, but she only had one meeting with Kelly C. After their session in October 2015, Kelly C. missed three appointments and did not return any phone calls. Consequently, Harley closed Kelly C.'s case file and discharged her unsuccessfully from counseling services.

¶ 25 Josh O'Toole, B.C.'s foster father, gave a statement to the court, indicating that B.C. was always in "fight or flight mode" and was very scared when he first came to live with them. He indicated that B.C. has adjusted very well in the last three years and is doing well in school. O'Toole stated that he and his wife treat B.C. like their son, and he expressed a desire to adopt B.C.

¶ 26 On September 13, 2016, the trial court entered an order terminating Kelly C.'s parental rights and appointing a guardian with the power to consent to adoption. Kelly C. appeals.

¶ 27 Termination of parental rights proceedings are governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)). *In re D.T.*, 212 Ill. 2d 347, 352 (2004). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process in seeking to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2014). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). 705 ILCS 405/2-29(2), (4) (West 2014); *In re Veronica J.*, 371 Ill. App. 3d 822, 828 (2007). If the court finds that the parent is unfit, the matter proceeds to a second hearing, at which the State must prove that termination of parental rights is in the best interests of the child. 705 ILCS 405/2-29(2) (West 2014); *In re D.T.*, 212 Ill. 2d at 352. Because each of the statutory grounds of unfitness is independent, the trial court's finding may be affirmed where the evidence supports a finding of unfitness as to any one of the alleged grounds. *In re Veronica J.*, 371 Ill. App. 3d at 828.

¶ 28 Our courts have recognized that parental rights and responsibilities are of deep importance and should not be terminated lightly. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000). Thus, parental rights may be terminated only after a finding of unfitness that is supported by clear and convincing evidence. *Id.* A finding of parental unfitness will not

be disturbed unless it is against the manifest weight of the evidence. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002). A trial court's finding of unfitness is given great deference because it has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A reviewing court, therefore, does not reweigh the evidence or reassess the credibility of the witnesses. *In re K.B.*, 314 Ill. App. 3d at 748.

¶ 29 In this case, the State asserted the following two grounds for unfitness against Kelly C.: (1) that under section 1(D)(m)(i) of the Adoption Act, Kelly C. had failed to make reasonable efforts to correct the conditions that were the basis for B.C.'s removal during any nine-month period after the adjudication of neglect; and (2) that under section 1(D)(m)(ii) of the Adoption Act, Kelly C. had failed to make reasonable progress toward B.C.'s return during any nine-month period after the adjudication of neglect.

¶ 30 As a threshold matter, we note that the State failed to file, in the trial court, a pleading specifying the nine-month period or periods relied upon in its petition to terminate parental rights as required by section 1(D)(m) of the Adoption Act. 750 ILCS 50/1(D)(m) (West 2014). Kelly C. did not object to the lack of notice in the trial court and did not raise this issue in her original brief. The State acknowledges the pleading defect, but argues, based on *In re S.L.*, 2014 IL 115424, ¶¶ 21-27, that this is not in and of itself, grounds for the reversal of the trial court's order. In *In re S.L.*, our supreme court concluded that, although the State had failed to provide notice of the relevant nine-month

time period, the mother had not been prejudiced by the pleading defect where it was apparent from the record that the parties proceeded as though all four nine-month periods were relevant. *Id.* ¶¶ 24-26. Here, B.C. was adjudicated neglected on March 20, 2013, and the State's petition to terminate parental rights was filed on February 20, 2015. Thus, the relevant periods are as follows: March 2013 through December 2013; December 2013 through September 2014; and September 2014 through February 2015. Like the State in *In re S.L.*, the State in the present case proceeded through all three time periods as though all were relevant, and Kelly C. was given an opportunity to defend against each period. Thus, we conclude that the State's failure to specify the relevant nine-month time period does not warrant automatic reversal.

¶ 31 We now turn to the trial court's finding of unfitness. Kelly C. argues that the trial court's finding that she was unfit is against the manifest weight of the evidence. The court concluded that Kelly C. had failed to make reasonable efforts to correct the conditions that were the basis for B.C.'s removal, had failed to make reasonable progress toward B.C.'s return home within nine months of the adjudication of neglect, and had failed to make reasonable progress toward B.C.'s return home during any nine-month period following the adjudication of neglect.

¶ 32 Reasonable efforts and reasonable progress are two distinct grounds of unfitness under section 1(D)(m). *In re Daphnie E.*, 368 Ill. App. 3d at 1066. Reasonable efforts relate to the goal of correcting the conditions that caused the removal of the child and are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *Id.* at 1066-67. In contrast, reasonable progress is judged using an

objective standard that focuses on the steps the parent has taken toward the goal of reunification. *In re D.F.*, 332 Ill. App. 3d 112, 125 (2002). The standard by which progress is measured is the parent's compliance with the court's directives and the service plans in light of the conditions that gave rise to removal and other conditions that later become known and would prevent the court from returning custody of the child to the parent. *In re Daphnie E.*, 368 Ill. App. 3d at 1067. "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.*

¶ 33 B.C. was placed into care when it was discovered that his home was littered with uncapped syringes and empty heroin capsules; the home was unkempt; there was rotten food in the refrigerator; and both parents had a history of drug-related offenses. Kelly C.'s initial service plan contained the following requirements: (1) participate in substance abuse assessment and TASC assessment; (2) allow workers to count prescribed medication to ensure the right amount was taken daily; (3) attend all doctor appointments; (4) participate in individual counseling; and (5) ensure that her home was clean and that trash was disposed of properly. During the initial nine-month period, from March 2013 through December 2013, the evidence indicated that Kelly C. did not obtain a TASC assessment or complete a substance abuse assessment. As for the later nine-month periods, Kelly C. never completed a TASC assessment and did not complete a substance abuse assessment until July 2014. Although the treatment facility recommended no treatment following the assessment, Kelly C. was arrested a few months

later for a drug-related DUI, and numerous pill bottles were discovered in her vehicle with pills missing in a manner inconsistent with the medication being used properly.

¶ 34 With regard to housing, Kelly C.'s residences were never fully evaluated with regard to safety and cleanliness because she did not allow the caseworkers full access to any of her homes. She initially lived in a duplex with her husband, and she denied the caseworker access to part of the home because it had been damaged by a flood. She later moved to her husband's mother's home and denied the caseworker access to the entire home. In November 2014, she moved to her father's residence and would not allow the caseworker full access to that home, claiming that her room was a "mess."

¶ 35 Additionally, Kelly C. failed to complete the service plan task of allowing the case workers to count her prescription medications in any of the relevant nine-month time periods. According to Gordon, whenever Kelly C. was asked to present her medication for counting, she maintained that the prescriptions were at the pharmacy and unavailable. She also failed to complete individual counseling. Although she obtained two mental health assessments, her counselors were unable to create a treatment plan for her before July 2015 because of missed and cancelled appointments. Based on the record evidence, we conclude that the trial court's finding that Kelly C. was unfit for lack of reasonable progress toward the goal of reunification was not against the manifest weight of the evidence.

¶ 36 Kelly C. also challenges the trial court's best interests finding. Once the parent has been found unfit, her rights must yield to the best interests of the child. *In re I.B.*, 397 Ill. App. 3d 335, 340 (2009). The State has the burden of proving, by a preponderance of the

evidence, that termination of parental rights is in the best interests of the child. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883 (2010). The trial court's best interests finding will not be disturbed unless it is against the manifest weight of the evidence. *Id.*

¶ 37 In determining the best interests of the child, the court must consider the following statutory factors in the context of the child's age and developmental needs: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 38 Here, Kelly C. argues that the trial court's best interests determination was against the manifest weight of the evidence because B.C.'s foster parents were not supportive of a reunification goal and did everything in their power to isolate B.C. and destroy any relationship he had with her and her father. She also argues that the foster parents made damaging statements about her directly to B.C., his siblings, the caseworker, and the attorneys in the case.

¶ 39 Although there was some evidence presented at the best interests hearing concerning the foster parents' less than amicable relationship with Kelly C., we conclude that the trial court's best interests finding was not against the manifest weight of the evidence. At the time of the best interests hearing, B.C. was eight years old and had spent nearly half of his life in foster care. He had been living with his aunt and uncle for

approximately three years. The testimony at the best interests hearing indicated that B.C. was living in an environment that provided stability and permanency. His physical safety and welfare were secure with his foster parents, and he had developed a strong bond with them. He called them "mom" and "dad." He also maintained a strong bond with his biological siblings, who also lived in the home, and he had bonded with his foster parents' 12-year-old son. Moreover, B.C. expressed a desire to remain with his foster parents permanently, and they expressed a willingness to adopt him. Thus, after considering all of the statutory factors, we conclude that the trial court's best interests finding was not against the manifest weight of the evidence.

¶ 40

CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 42 Affirmed.