2018 IL App (2d) 171016-U
No. 2-17-1016
Order filed May 10, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.B., a Minor.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 16-JA-65
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Michael B.,	)	Mary Linn Green,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly terminated respondent's parental rights. Affirmed.

¶ 2 Respondent, Michael B., appeals the trial court's order, terminating his parental rights as to his daughter, A.B. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Shelter Care and Neglect Adjudication

¶ 5 On February 24, 2016, the State filed a three-count petition, alleging that A.B. was a neglected minor in that: (1) on January 9, 2016, she was born with opiates, morphine, hydrocodone, and hydromorphone or a metabolite of those substances in her urine, blood, and/or

meconium that was not the result of medical treatment; (2) her mother has a substance abuse problem that places A.B. at risk of harm, and her environment is injurious to her welfare; and (3) A.B. and her sibling were born substance exposed, and their mother failed to correct the conditions which led to the sibling's removal, therefore, A.B.'s environment is injurious to her welfare. Accompanying the neglect petition was a lengthy statement of facts prepared by the Department of Children and Family Services (DCFS), concerning mother's extensive history with DCFS and the police. At the end of the report, DCFS noted that, between the years 1995 and 2014, respondent had an extensive criminal history.

¶ 6 Also on February 24, 2016, the court conducted a shelter care hearing. A.B.'s mother and respondent were both present and represented by counsel. Respondent explained that he was not married to A.B.'s mother, but he confirmed paternity. At one point, respondent indicated that he wanted to proceed to a temporary custody hearing. The court recessed. When the hearing resumed, the State represented that both parties agreed to waive their rights to a temporary custody hearing and had further agreed that: (1) the court would find probable cause that A.B. was neglected; (2) DCFS used reasonable efforts in removing A.B.; (3) guardianship and custody would be placed with DCFS, which would have discretion to place A.B. with a responsible relative or in traditional foster care; (4) visitation between A.B. and her parents would take place at DCFS's discretion; (5) both parents would sign releases of information and cooperate with services, including remaining drug and alcohol free; (6) both parents would submit to random drug drops; and (6) custody and unsupervised visits would be contingent on compliance with the foregoing.

¶ 7 Before entering the temporary custody order, the court noted that it had reviewed the statement of facts and, at the request of one of the parties, had participated in a conference with

the parties, all counsel, and social workers. The court commented that it thought that the conference "led to the resolution."

¶ 8 On April 28, 2016, both mother and respondent again appeared with counsel. At this time, the State represented:

> "Judge, we have come to an agreement in this case. Mother will factually stipulate to Count [I] in the neglect petition filed on February 24, 2016; and our factual basis would be supported by the original statement of facts which was tendered to the court earlier in the shelter care hearing. We would agree to dismiss Counts [II] and [III], with the agreement that the parents will complete services on all counts."

¶ 9 The court asked the parties if that represented their agreement, and respondent's counsel answered, "Yes, Judge." As such, the court entered the agreement and adjudicated A.B. neglected "pursuant to mother's factual stipulation to Count [I] of the neglect petition," and dismissing counts [II] and [III] with the agreement that "the parents would receive any services based upon those counts." The court specified that "the factual basis is the original statement of facts which was previously tendered to the court."

¶ 10 On June 23, 2016, the parties appeared for a dispositional hearing. At that time, mother surrendered her parental rights to A.B. In the course of doing so, she commented that respondent had taken custody of her two older daughters, who were living with him, and that it was going "very well." She stated that respondent is "truly a step-up man that he loves his children," and that she hoped that DCFS would recognize that.

¶ 11 Thereafter, the State reported that, "after conferencing, we have an agreement to present." Specifically, "Judge, the parties agree that the parents at this time are unfit or unable" to protect, train, or discipline A.B. and that DCFS would retain custody with discretion to place A.B. in

traditional foster care, with a responsible relative, or with respondent. The State explained that the factual basis for the agreement was the court report that had been prepared for that day's hearing. Respondent's attorney interjected, "That is the agreement, Your Honor." The report noted that, although respondent had attended a family meeting in February 2016, as well as visits with A.B., he had recently failed to appear for a child and family team meeting to sign consents and review necessary services. Therefore, the court entered the order, finding the parents unfit such that custody would remain with DCFS, with all prior orders remaining in place. A.B.'s mother was discharged as a party, and her rights are not at issue on appeal.

¶ 12 B. Permanency Review Hearings

¶ 13 Three permanency-review periods followed. At the first hearing, on December 19, 2016, respondent was present with counsel. The attorneys conferred on the case, and the State, standing on the submitted DCFS report, recommended that the court find that respondent had not made reasonable progress. The guardian *ad litem*, Lori Peacock, recommended that the court find no reasonable efforts, explaining that respondent missed some visits, was late to others, and left from some visits early. Peacock explained that respondent missed doctor's appointments and came late after A.B. had a major surgery to repair a cleft palate. "I think he has not made efforts, he needed to stay involved with this child's care given her medical needs." Further, Peacock stated that respondent's communication issues with the agency had led to a delay in his services, as well as issues with visitation.

¶ 14 Counsel for DCFS, Erin Buh, similarly reported that respondent arrived hours late for a significant surgery, and she was concerned with respect to how that relates to his efforts. Buh stated that, as A.B.'s medical needs are significant, respondent's efforts needed to improve to parent for her benefit. At that time, the following exchange occurred:

"COURT: Thank you.

Sir, I know you may not agree with what people are saying, but [you] need to –

RESPONDENT: I'm being calm. I am.

COURT: That's good, because you're in court and you need to be calm.

RESPONDENT: I'm letting everybody do their thing."

¶ 15 Respondent's counsel next disagreed with the State, Peacock, and Buh, arguing that respondent had made reasonable efforts. Counsel noted that respondent did "really well," did not miss drug drops, and that his drug drops were clean. Further, counsel noted that respondent engaged in visitation with A.B. and that some issues with visitation and attendance at doctor's appointments were simply the result of miscommunication.

¶ 16 The court kept the goal at return home within 12 months, but found that respondent had not made reasonable efforts.

¶ 17 The second permanency-review hearing occurred on June 19, 2017. Respondent was present with counsel. The State represented that, other than the DCFS report and the foster parents' statements, it had no other evidence to present. The State recommended that respondent be found to have not made either reasonable efforts or progress, noting that he had been discharged from individual counseling due to excessive absences. Further, between January 2017 and June 2017, respondent submitted five positive drug drops and had not yet submitted to a drug-abuse assessment. Although respondent participated in visitation, there was concern about his care for A.B. in that, for example, she had very sensitive skin, requiring a specific brand of diapers and wipes. Nevertheless, respondent repeatedly returned A.B. from visitation with a severe diaper rash that lasted three to four days. The State asserted that there had not been

significant movement toward unsupervised visitation and, therefore, that the court should change the goal.

¶ 18 Peacock agreed with the State's recommendations, highlighting respondent's positive drug drops and lack of engagement in individual counseling. Further, Peacock expressed that the foster parents had done a "very good job" documenting concerns, particularly with respect to A.B.'s special needs and doctor's visits. Peacock asserted (apparently based upon the foster parents' notes) that it was completely unacceptable for respondent to not pay attention during doctor's visits, to be on his phone, to actually distract both the doctor and A.B. during the appointments, and to be disruptive and disengaged. Peacock argued that respondent's behavior reflected a lack of reasonable efforts, "especially since this is a child who needs to be monitored on an ongoing basis for any future needs or surgeries to the initial cleft surgery with the E.N.T." Peacock also noted that respondent demonstrated a lack of judgment, in that he took photos of A.B. during visits and posted them on Facebook, apparently in violation of the court's rules. Peacock urged the court to change the goal, noting that the case was one year past adjudication, and that A.B. came into care as a young infant, had been with her foster parents for 16 months, and had bonded with them. In contrast, her biological mother had surrendered her rights, and "at this point we have a father who still needs to do a substance abuse assessment, who still needs to maintain sobriety, who still needs to complete individual counseling, [and] who still needs to show any sort of interest in his child's care and ongoing care and medical needs and developmental needs."

¶ 19 Respondent's counsel disagreed, arguing that respondent had demonstrated both reasonable efforts and progress. She noted that respondent attended and had not missed scheduled visits, attended doctor's appointments, and kept in contact with the caseworker.

Counsel asserted that there might be a misunderstanding concerning the diaper wipes, because respondent had stated that he stopped buying wipes and was instead using what the foster parents were giving him. Further, the caseworker had purportedly stated that, when she was present during visits, he used the correct wipes and diapers. Finally, counsel argued that there was some indication that respondent was approaching 60-day sobriety and could re-start individual counseling.

¶ 20 The court found for the review period that respondent had not made reasonable efforts or progress. However, it maintained the goal at return home within 12 months. The court stated that it took confidentiality of children seriously, and it ordered respondent to remove the pictures from Facebook. Respondent stated that he was never told that he could not post pictures, but that he would take them down.

¶ 21 The third and final permanency-review hearing occurred on August 22, 2017. Respondent was again present with counsel. At that time, the court also entered against respondent a plenary order of protection. Specifically, A.B.'s two foster mothers filed a verified petition (under penalty of perjury) for order of protection and described the basis thereof as having occurred on August 17, 2017, when "[Respondent] had an ACR [Administrative Case Review] with DCFS and made multiple threatening comments to kidnap [A.B.] if DCFS took her away to the reviewer and caseworker. Also[, he] made comments that he knows where the foster family lives." The petition noted that, in March, respondent made a comment that the foster parents will never get his daughter. Further, in December, "post-court," respondent "was angry and aggressive – caseworker and Nikki (foster parent) did not feel safe and stayed behind a locked door until informed he was out of the building." Moreover, on the June 16 court date, the "bailiff warned Nikki and agency workers to stay with him until [respondent] had left the

building due to his visible anger." Finally, copies of respondent's alleged social media posts that depicted "anger toward people taking care" of A.B. were attached to the petition.

¶ 22 The court entered the order, protecting A.B.'s two foster mothers, but the order was consistent with respondent's counsel's representation that, so long as respondent would continue to receive visitation with A.B. at DCFS's discretion, he would not object to entry of the order as to the foster parents. Specifically, counsel stated, "I don't represent my client in that matter [*i.e.*, the order of protection]. He said that he wouldn't argue against the [o]rder of [p]rotection as long as he does get that visitation through DCFS." The court responded, "Yes. And I will put that on the order, sir." The court ordered that respondent take down from Facebook any photos of A.B., as well as any pictures that had been referenced in the order of protection, such as memes with comments: (1) "I don't always carry a knife. Just kidding"; (2) "Mess with me, I will fight back. Mess with my daughter and they will never find your body"; (3) "Warning: Tampering with my daughter may result in an ass whoopin' you'll never forget."

¶ 23 As to the permanency review, the State again stood on the DCFS report, and Peacock did the same, specifically referencing updated notes from the foster parents. Both recommended findings of no reasonable efforts or progress and a goal change, with Peacock noting that, since the last review in June, respondent missed two of three doctor's appointments for A.B., missed a drug drop, tested positive for alcohol, and still had not completed a substance-abuse assessment or progressed in counseling, from which he had been discharged.

¶ 24 Respondent's counsel did not present any additional evidence. She argued, however, that respondent wished to engage in counseling and any necessary services, but did need to achieve 60-days of sobriety. She explained that respondent was out of town for one of the missed drug drops. Counsel argued that, for the most part, respondent had been cooperative with DCFS, had

kept in contact with the agency, and kept appointments. Further, respondent kept his visits and appointments with A.B., which were going well. Although he had missed a visit the prior week, his mother had been in the hospital.

¶ 25 The court found that respondent had not made reasonable efforts or progress, and it changed the goal to substitute care pending the court's determination on termination of parental rights. "We're no closer today to returning the child home to the father than we were when we were here last time. And we're still at supervised visits. So a child cannot wait years and years and years."

¶ 26 C. Unfitness Hearing

¶ 27 On September 11, 2017, the State moved to terminate respondent's parental rights, alleging that he was an unfit parent in that he failed to: (1) make reasonable efforts to correct the conditions that were the basis for removing A.B. from his care during the periods April 20, 2016, through January 29, 2017, and November 22, 2016, through August 22, 2017 (750 ILCS 50/1(D)(m)(i) (West 2016)); (2) make reasonable progress toward the return of A.B. to his care during the same two periods (750 ILCS 50/1(D)(m)(ii) (West 2016)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to A.B.'s welfare (750 ILCS 50/1(D)(b) (West 2016)).

¶ 28 The unfitness hearing commenced on November 21, 2017. The State requested that the court take judicial notice of the neglect petition and the five orders entered thereafter (adjudication, disposition, three permanency reviews). There was no objection, and the court took judicial notice of those orders. The State further requested to admit into evidence an indicated packet (approximately 95-pages long). Again, there was no objection, and the exhibit was admitted.

¶ 29 Dakota Hughes, A.B.'s caseworker, testified that, in June 2016, she tried to schedule two meetings with respondent and that, although he knew about those meetings and their purpose, he failed to appear. This delayed services and obtainment of releases from him for services. Respondent ultimately participated in an integrated assessment for services that recommended participation in visitation and completion of psychotherapy, counseling, and a substance-abuse assessment. In addition, it was recommended that respondent attend A.B.'s medical appointments and demonstrate that he could care for himself (he has his own medical needs, apparently a form of multiple sclerosis, for which he receives disability payments) and for her and her special needs. Respondent participated in counseling, but was unsuccessfully discharged due to excessive absences and limited progress. Respondent had several positive drug drops (including for marijuana, cocaine, synthetic marijuana, and alcohol), missed at least three drug drops between January and August 2017, and was only able to complete the substance abuse assessment after the most recent August 2017 court hearing. In total, of nine drug drops ordered between January and August 2017, seven were either missed or tested positive for an illegal substance or alcohol.

¶ 30 Although respondent participated in visitation, he missed scheduled visits and, despite requests, did not (with one exception) provide documentation for those visits that were allegedly missed due to illness. Further, respondent attended some, but not all, of A.B.'s medical appointments. He arrived several hours late for A.B.'s surgery in December 2016. When he did attend appointments, he would play music on his phone and distract the doctor and A.B. Hughes testified that she attended one appointment and told respondent that he should not be on his phone during medical appointments because it was important that he learn from the doctor how to care for A.B.; to her knowledge, after that conversation, respondent continued to use his phone

at appointments. Further, at A.B.'s speech-therapy appointments, respondent would not listen to the doctor and would distract A.B.'s attention away from the therapist, as she would be enthralled by videos he was showing her on the phone. Respondent's distracting behavior impeded A.B.'s receipt of necessary care.

¶ 31 Hughes explained that respondent's progress on his service plan was reviewed every six months at administrative case reviews; respondent was invited to those reviews and attended. At one review, possibly in August 2017, respondent threatened to kidnap A.B. and said he would refuse to let anybody take his child from him. Hughes testified that, as a caseworker, she creates and rates the service plan and has first-hand knowledge of the services required. The service plans are maintained in the case file, and parents can appeal their plans; respondent did not appeal any of his plans in this case. Hughes testified that she recognized respondent's service plans from March 20, 2016, August 19, 2016, February 6, 2017, and June 5, 2017, and that they accurately reflected the plans as maintained in the file. The State moved to admit the four service plans and, there being no objection, they were admitted into evidence.

¶ 32 Hughes testified that A.B. was not placed back with respondent because he did not complete the necessary services. Indeed, he did not complete *any* of the services that were recommended in the integrated assessment. Hughes testified that a nurse visited respondent to educate him on A.B.'s special needs and dietary restrictions. Specifically, she was born with a cleft lip and palate, requiring surgery and resulting in speech, eating, and sleeping delays. A.B. also suffered from a "horrible" diaper rash for three or four days, if specific brands were not used. Ultimately, although the service plan required him to provide necessary items for the visitation, respondent continued to struggle with these restrictions, and the foster parents provided respondent with the snacks, diapers, and wipes that A.B. needed during visitation.

Visitation remained supervised. Respondent did not provide support for A.B., although he sometimes brought her gifts. Respondent also telephoned the agency to ask how A.B. was doing and to confirm the schedule for her medical appointments.

¶ 33 Respondent's attorney cross-examined Hughes. Specifically, she confirmed with Hughes that respondent: (1) participated with the agency; (2) maintained contact with the agency by e-mail and phone; (3) called the agency to verify the schedule for A.B.'s medical appointments; (4) occasionally called to ask how A.B. was doing; (5) participated in individual counseling for eight months; (6) signed consents for release of his medical records; (7) attended visitation; (8) explained that he missed some visits due to personal or family illness; and (9) recently completed the substance-abuse assessment.

¶ 34 Counsel asked Hughes how many visits respondent had missed, and Hughes could not recall. Counsel asked Hughes when the last visit he missed occurred, and Hughes could not recall or estimate. Upon questioning by respondent's counsel, Hughes explained that, during visits, respondent acts appropriately with A.B. and she responds "pretty well" with him. They sit down, play with one another and with toys, watch Elmo videos, she hugs him good bye, and he sometimes brings her gifts, such as stuffed animals. Counsel confirmed with Hughes that the case aide never discussed whether respondent's medical illness caused problems at visits or impacted his ability to care for A.B.

¶ 35 Further, counsel confirmed that Hughes was aware that respondent had married and, if A.B. were returned to his care, he would have a wife in the home, too. Hughes confirmed that she was present at one doctor's appointment with respondent, and that she saw him on this phone and addressed that issue with him. Thereafter, she was not present at the appointments, but was in contact with the doctor and the foster parents, who informed her that respondent continued to

use his phone at the appointments. Further, counsel confirmed that the issue concerning A.B.'s diaper rash cleared up after respondent used the diapers and wipes that the foster parents provided.

¶ 36 The foster parents, Nikki and Abigail, testified that they had been A.B.'s foster mothers since she was released from the hospital. On account of being born exposed to substances and with a cleft palate and lip, as well as with a hole in her heart, A.B. has required extensive and continuing medical care and early-intervention services. She receives treatment in Rockford and in Chicago. There will be additional treatments and surgeries needed and potential complications therefrom.

¶ 37 Nikki testified that either she or Abigail would supervise the contact between respondent and A.B. during A.B.'s medical appointments. She explained that they had retained an attorney, who had advised them to take notes of the observations they had with respondent whenever a caseworker was not also present. As such, they took notes of their observations of respondent at doctor's appointments. Nikki testified she immediately had concerns with respondent's behavior at those appointments, and those concerns were never resolved. Nikki was shown a group exhibit, and she testified that she recognized the documents as their notes from doctor's visits from December 2016 to July 2017. Nikki testified that she created the documents and that they were true and correct copies of the documents she kept from December 2016 to July 2017. After receiving no objection, the court admitted the group exhibit into evidence. Nikki testified that, around December 2016, the foster parents and respondent exchanged text messages concerning A.B.'s surgery, and respondent asked what time the surgery would take place. Nevertheless, he arrived more than three hours late, and then he left after being in the room with A.B. for about two minutes, even though she stayed there overnight.

¶ 38 Nikki testified that she also kept some notes regarding visitations, other concerns, and how A.B. was progressing in their care. Specifically, she identified notes that she created, and that they had submitted to the court throughout the proceedings, on September 29, 2017, August 10, 2017, August 10, 2017, June 6, 2017, and December 19, 2016. Nikki confirmed that the exhibits reflected true and accurate copies of the documents that she created. After receiving no objection, the court admitted the notes into evidence.

¶ 39 Nikki testified that, between the summer of 2016 and August 2017, there were continued concerns after visits, where A.B. would have a diaper rash that would leave her "raw" and would take several days to heal. The issue resolved "recently," when visits were reduced to one per month, when they sent diapers and wipes to visitation, and when they informed Hughes and their day care to change A.B. right before and after the visit. There were also concerns that respondent might be feeding A.B. foods that were not compatible with her medical needs and restrictions. Nikki testified that respondent missed visits in August and September. She was not present at the administrative case review in August 2017, but Abigail was there. After that review, Abigail obtained an order of protection against respondent.

¶ 40 Abigail testified that she is married to Nikki and they have been A.B.'s foster parents since she was released from the hospital's intensive care unit. Abigail attended the administrative case review on August 17, 2017. She testified that she was *not* present to hear any comments that respondent allegedly made that were threatening in nature. However, she was informed that, after she had left the review, respondent made threatening comments regarding kidnapping A.B. and that he knew where the foster parents lived. She was further informed that he had made comments in March 2017 about the foster parents never being able to have his daughter. Given those comments, on August 18, 2017, they filed for an order of

protection. Abigail identified the petition she filed, along with the verified affidavit attached thereto, and testified that the contents and copy were true and accurate. After receiving no objection, the court admitted the petition into evidence. Abigail confirmed that the court had previously granted the plenary order. Respondent's counsel did not cross-examine either foster parent or present any evidence.

¶ 41 On December 7, 2017, the court heard closing arguments. The court then found that the State had met its burden by clear and convincing evidence and that respondent was unfit under all three counts of the petition. In sum, the court found that respondent did not complete any necessary services, had multiple positive drug drops and missed others, did not attend all doctor's appointments and was distracting to A.B. when present, and threatened to kidnap A.B. and threatened the foster parents that he knew where they lived, resulting in an order of protection. "That certainly isn't reasonable progress, efforts[,] or responsibility." The court further noted that respondent's visits with A.B. remained supervised and that respondent never seemed to learn at the doctor's appointments. The court emphasized that A.B. is not a healthy child and that she has significant ongoing medical needs that will require careful monitoring and that respondent's positive drug tests for substances such as marijuana and cocaine "are not substances that lends one able to learn some complicated medical care."

¶ 42 As to count I, failure to make reasonable efforts to correct the conditions that were the basis for A.B.'s removal, the court noted that, during the two specified time frames, respondent was found at permanency review hearings (December 19, 2016, June 19, 2017, and August 22, 2017) to have not made reasonable efforts.

¶ 43 As to count II, failure to make reasonable progress toward the return of A.B. to his care, the court referenced its prior findings about failure to progress and no unsupervised visits. It

further noted that, during that time, respondent was found at two permanency reviews to not have made reasonable progress (June 19, 2017, and August 22, 2017).

¶ 44 As to count III, failure to maintain a reasonable degree of interest, concern, or responsibility as to A.B.'s welfare, the court found that respondent *did* show a reasonable degree of interest and concern. However, it found that responsibility was lacking, as reflected by inconsistencies in A.B.'s medical care, visitation, being distracting at visits and medical appointments, failing to complete any required services, and positive drug drops.

¶ 45 D. Best Interests Hearing

¶ 46 The best interest hearing commenced immediately following the court's unfitness ruling. Without objection, the court took judicial notice of: (1) all evidence and findings from the unfitness hearing; and (2) the November 21, 2017, court report.

¶ 47 Hughes testified that she has visited A.B. in the foster home three times monthly. A.B.'s relationship with Nikki and Abigail is loving. They have cared for her, providing for all of her daily and special medical needs, including taking her to numerous medical appointments. A.B. has bonded with them and runs to them and screams "Mommy" when she gets home. The home is clean and appropriate, and there are no safety concerns there. A.B. is integrated with the extended family as well, attending holidays and vacations with them. A.B. turns to Nikki and Abigail for comfort, love, and affection. They wish to provide her permanency. In Hughes's opinion, it is in A.B.'s best interest that respondent's parental rights terminate because A.B. is doing "extremely well" in her placement and removing her from their home would be "detrimental to her health and well being."

¶ 48 On cross-examination, respondent's counsel confirmed that Hughes had observed around 8 to 10 visits between A.B. and respondent. Hughes testified that, during those visits, A.B. and

respondent have "a great relationship. They play together, and it's a loving relationship." She agreed that there is a bond between father and daughter. Respondent is appropriate during the visit and interacts with A.B.

¶ 49 Hughes confirmed that A.B. was released into the foster parents' care when she was approximately one month old and has lived with them since. Her relationship with them is a different type than the one she has with respondent. Specifically:

> "[A.B.]'s relationship with the foster parents is she's only known them as her caretakers her whole life. So when she gets hurt, when she is sick, when she is in surgery, she looks to them first for comfort, such as any parent would give their child. During visitation with [respondent], she is happy to see him, happy to play with him. There is not the same bond because in certain situations if [A.B.] is hurt during a visit, there is [*sic*] times where she would run to the case aide to seek comfort rather than immediately seeking comfort from [respondent]."

¶ 50 The attorney for the foster parents submitted a letter, as well as photographs of their life with A.B. Nikki also testified that she is a teacher. She and Abigail both received training and learned how to care for A.B. as medically necessary, and they attend her appointments and therapies. She identified several letters and photographs being submitted to the court, including letters from her mother, whom A.B. calls "grandma" and with whom she has a "very loving, bonded relationship" and sees frequently. Nikki also identified a letter from her sister, whom A.B. calls "Aunt Becky," and her three children. A.B. sees the family often, and is particularly close to Aunt Becky's four-year-old daughter, and the two have an "adorable" bond and "the minute those two see each other [they] giv[e] each other hugs and kisses. They light up when they see each other. It is really one of the sweetest relationships I have witnessed." Nikki

explained that A.B. has relationships with all grandparents, aunts, uncles, and cousins on both sides of the family. Nikki testified that she is "absolutely" committed to ensuring that all of A.B.'s needs are met as she grows. Nikki testified that they have always been open to sharing photos and updates with respondent, and they did so until that privilege was abused and they were advised to stop. However, they would continue to provide updated photos to the case worker to pass on to respondent. "We don't want to keep anything from [A.B.]. We want her to know her life, her history and her future. We just want to be - - have that honor to be her forever home." Nikki identified the letter that she and Abigail wrote to the court, and stated:

> "My wife and I love this little girl more than I can express in court. We would move mountains to keep her healthy and happy. We have an extended family that is truly touched and smitten by this little girl. She just lights up any room that she is in. She is one [of] the most social sweethearts you will ever meet, and it has been an honor to help her these past two years and watch her grow into this sweet little girl that she is."

¶ 51 Respondent's counsel presented photographs of respondent with A.B. from November 2017. Further, counsel called Kelly Nylund, a case aide with Children's Home and Aid (a DCFS contractor). Nylund testified that she knows A.B., who is one of her clients, and she transported and supervised visits between A.B. and respondent around 85% of the time (for several months, but less than one year). She stated that the visits went "really well" and that A.B. and respondent have a "very, very good connection[.]" Nylund did not have any major concerns during the visits and stated that respondent "does well" and is appropriate. A.B.'s reaction when respondent visits is to get "very excited, very happy, smiley, great personality." When visits end, [A.B.] "would be visibly upset when leaving and sometimes cry. [Respondent] would always just reassure her that they would see each other again." They have a definite bond.

¶ 52 Nylund conceded that, once in awhile, respondent was a little ill and unsteady on his feet during visits. Once or twice, the visitation ended early because of respondent's condition. One time, he suggested spanking A.B. when she was not listening, but with redirection he was "fine." Nylund had no concern that respondent was going to use corporal punishment. She agreed that there were times when she would pick up A.B. to bring her to a visit and then respondent would not be there. A.B. appeared bonded to the foster parents.

¶ 53 The court, after considering the statutory best interest factors as they related to A.B.'s age, developmental stage, and medical conditions, as well as all of the evidence, found that the State met its burden and proved by at least a preponderance of the evidence that it is in A.B.'s best interest to terminate respondent's parental rights. The court found that it was put best by the grandmother's letter that "[A.B.] is inextricably intertwined in the tapestry of this family." The court found that to remove A.B. from the place where she had found much love and safety would not be in her best interest or in keeping with statutory best interest factors. Respondent appeals.

¶ 54 II. ANALYSIS

¶ 55 On appeal, respondent argues that the trial court erred in both its unfitness and best-interest findings. Moreover, he argues that the order terminating his rights should be reversed because his trial counsel provided ineffective assistance. For the following reasons, we disagree.

¶ 56 A. Evidentiary Issues

¶ 57 We address first an argument that pervades respondent's other arguments; namely, that the trial court relied on improper and inadmissible evidence and, therefore, the remaining, admissible evidence was insufficient to sustain the State's burden. Specifically, respondent asserts that the State relied almost exclusively on multiple levels of hearsay present in the four admitted DCFS reports, as well as the indicated finding, to meet its burdens. He notes that the

indicated finding concerned A.B.'s mother and alleged no misconduct by respondent. Respondent concedes that the DCFS service plans are admissible at fitness hearings as a type of business-records exception to the hearsay rule. See 705 ILCS 405/2-18(4)(a) (West 2014); *In re Brandon A.*, 395 Ill. App. 3d 224, 235 (2009). Moreover, respondent acknowledges that the observations of DCFS employees, as well as any of his own admissions, contained in the documents constitute proper evidence for consideration. "But the enormous amount of third[-]party hearsay, including uncorroborated statements and reports by third[-]party providers, were not." For the following reasons, we disagree.

¶ 58 We note first that the service plans were admitted into evidence without objection by respondent, resulting in forfeiture of any objection to their admission on appeal. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41 ("Generally, an issue that was not objected to during trial and raised in a posttrial motion is forfeited on appeal."); *In re Jaber W.*, 344 Ill. App. 3d 250, 256 (2003) (noting that the failure to object to the admissibility of evidence on hearsay grounds at trial resulted in waiver of argument on appeal); *In re April C.*, 326 Ill. App. 3d 225, 242 (2001) (noting that where a party fails to make an appropriate objection in the court below, he fails to preserve the issue for review). Respondent argues that the State's business records were voluminous, and it did not identify which of the hundreds of statements therein it was relying upon to prove its case, making it impossible for him to object to any specific item of multi-level hearsay, let alone to rebut those claims. We disagree. Indeed, not only did respondent not identify the basis for an objection, he made *no* objection to the evidence. Further, respondent could have objected to any information within the plans that allegedly constituted multi-level hearsay. We also note that Hughes, the caseworker who authored the relevant plans and on

whose direct knowledge much of the information was based, testified during the fitness hearing. Therefore, the State did not rely solely on hearsay evidence.

¶ 59 Third, to the extent that the plans and Hughes's testimony contained information learned from others, we note that sections 2-18(4)(a) and (b) of the Juvenile Court Act of 1987 (Juvenile Court Act) provide:

> (a) Any writing, record, photograph or x-ray of any hospital *or public* or private *agency*, whether in the form of an entry in a book or otherwise, *made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence* as proof of that condition, act, transaction, occurrence or event, *if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the regular course of such business to make it*, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. A certification by the head or responsible employee of the hospital *or agency* that the writing, record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of this paragraph shall be *prima facie* evidence of the facts contained in such certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. *All other circumstances of the making of the memorandum, record,* photograph or x-ray, *including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility*.

(b) *Any indicated report* filed pursuant to the Abused and Neglected Child Reporting Act *shall be admissible in evidence*." (Emphases added.) 705 ILCS 405/2-18(4)(a), (b) (West 2014).

¶ 60 Respondent acknowledges, generally, the previous sections (or at least parts of them). He focuses, however, on Illinois Rule of Evidence 803(6) (eff. Jan. 1, 2011),[1] Illinois Rule of Evidence 805 (eff. Jan. 1, 2011),[2] and criminal (*People v. McCullough*, 2015 IL App (2d) 121364, ¶ 110) and out-of-state, non-child-neglect cases, to argue that, generally, multi-level hearsay is not admissible, unless each layer of hearsay is excused by its own exception. Specifically, respondent asserts that the admitted DCFS reports contained blood-test results, as

[1] Rule 803(6) provides: "Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases medical records. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit." Ill. R. Evid. 803(6).

[2] Rule 805 provides: "Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." Ill. R. Evid. 805.

well as information concerning attendance and conversations at counseling sessions and visitations that Hughes did not personally attend, all without foundation establishing exceptions to the third-party assertions of fact. However, respondent appears to ignore the end of section 18(4)(a), which provides that lack of personal knowledge of the information contained in the memorandum or record may affect the weight, but not the admissibility, of the record. Further, as noted above, the general assembly deemed it proper, in these cases, to allow admission of indicated reports, DCFS records, and the information contained therein, *as long as* the information was made of record in the regular course of the hospital or agency's business. Indeed, as determining whether a parent has made reasonable progress includes assessing his or her compliance with service plans (*In re C.N.*, 196 Ill. 2d 181, 216-17 (2001)), it is only logical that they are admissible and able to be considered.

¶ 61 With respect to respondent's contention that multiple layers of hearsay are excused by Rule 803(6) only if both the source and recorder of the information and the participants in the chain producing the record *are acting in the regular course of business*, we note that section 18(4)(a) similarly provides that the court must find that the records were made in the regular course of business, and it requires certification by the hospital *or agency* that the records are complete. Here, the record contains DCFS's certification, in compliance with the statute, that the attached documents were true, correct, full, and complete copies of the records made in its regular course of business regarding A.B.'s case. In addition, Hughes testified that she creates the service plans in her position as caseworker, she identified the plans, and she testified that they accurately reflected the plans maintained in the case file. There were no foundation (or other) objections to their admission, and the trial court inherently found that the service plans were made in the regular course of business. Finally, although respondent notes that the

indicated finding concerned A.B.'s mother, not him, section 18(4)(b) provides, without qualification, that *any* indicated report filed under the Abused and Neglected Child Reporting Act shall be admissible into evidence.

¶ 62 Respondent also cites caselaw reflecting that wholesale judicial notice of all documents or events that occurred prior to the unfitness hearing is inappropriate. However, as he concedes, the court here did not take *judicial notice* of the DCFS reports; rather, it admitted the reports into *evidence*, after the opportunity to object was presented, but not utilized.

¶ 63 Finally, respondent argues that the notes submitted by the foster parents about their observations of respondent during the medical appointments were improperly admitted, as they contained hearsay and were not submitted to refresh Nikki's recollection, nor for any other basis falling under a hearsay exception. While we might be inclined to agree on this point, this argument, too, is forfeited, for failure to object at trial. See *Jaber W.*, 344 Ill. App. 3d at 256. Further, and as explained below, even setting aside those notes, the evidence, including Nikki's testimony about her personal observations, was sufficient to uphold the court's unfitness findings.

¶ 64 Thus, respondent's arguments are forfeited, as there was no objection to the admissibility of this evidence below. Nevertheless, even if not forfeited, the DCFS reports, indicated finding, and drug results of which respondent complains here, even if containing hearsay therein, nevertheless comport with the Act's requirements for admission of these types of records. We, therefore, reject respondent's arguments and conclude that the trial court's findings here were based on competent, admissible evidence.

¶ 65 B. Unfitness

¶ 66 Respondent contends that the State failed to satisfy its burden to prove unfitness on any of the three grounds alleged. He argues that evidence was improperly received and, therefore, the State did not meet its burden to prove unfitness with the only evidence that was properly admitted. We rejected respondent's evidentiary argument above. Further, although we agree with respondent with respect to count I, and vacate that finding, we conclude that the State met its burden on count II.

¶ 67 The termination of parental rights is a two-step process governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq*. (West 2014)) and the Adoption Act (750 ILCS 50/1 *et seq*. (West 2014)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *Id*. If the court finds the parent is unfit, the focus shifts, in the second stage of the process, to the child's best interest. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008). A trial court's unfitness finding will not be disturbed on review, unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A finding of unfitness is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Here, although the trial court found respondent unfit on all three grounds alleged in the State's petition, we need not consider all of those grounds, as any one of them, if not contrary to the manifest weight of the evidence, is sufficient to affirm the court's finding. *Gwynne P.*, 215 Ill. 2d at 350.

¶ 68 As previously noted, the court's finding on count I, that respondent failed to make reasonable efforts to *correct the conditions* that led to A.B.'s removal, is contrary to the manifest weight of the evidence. The conditions causing A.B.'s initial removal concerned her substance-exposed birth resulting from her mother's misuse of drugs. Our supreme court in *In re Haley D.*,

2011 IL 110886, ¶¶ 85-87, found a meritorious defense to grounds for unfitness wherein the basis for the initial removal of the child from her father was his failure to take measures that would have prevented her from being exposed to cocaine *in utero*, when he knew that the mother suffered from a cocaine addiction. The court noted that "this particular problem no longer existed once [the child] was born and removed from [the mother's] custody and care." *Id.* at ¶ 87. Thus, here, although A.B. was automatically considered under the Act to be neglected when born substance exposed (see 705 ILCS 405/2-3(1)(c) (West 2014)), the conditions leading to her neglect were corrected by her removal from her mother's care. We, therefore, vacate the court's unfitness finding against respondent on count I.

¶ 69 Nevertheless, we affirm the court's unfitness finding on count II, respondent's failure to make reasonable progress toward the return of A.B. to his care, particularly in the period November 22, 2016, through August 22, 2017. The question of reasonable progress is an objective one, which requires the court to consider whether the parent's actions reflect that the court will be able to return the child home in the near future. See *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7. In order for there to be reasonable progress, there must be some "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). Progress towards the child's return is measured by the parent's compliance with the service plans and the court's directives, in light of both the condition which caused the child's removal *and* conditions that became known later and which would prevent the court from returning custody of the child to the parent. *Id*. at 216-17.

¶ 70 Even if we set aside the condition that led to A.B.'s removal, the evidence concerning conditions that became known later were sufficient for the court to find that no reasonable progress had been made to returning A.B. to respondent's care. See, *id*. Indeed, respondent's

service plan required, in part, that he participate in visitation, attend A.B.'s medical appointments, complete individual counseling, and complete a substance-abuse assessment. The court received evidence that, as of December 19, 2016, respondent had missed some visits with A.B., while he arrived late or left early from others. Setting aside the notes she took, Nikki testified that, despite knowledge of the appointment, respondent arrived several hours late for A.B.'s major surgery in December 2016, and left after only a few minutes of seeing her, when she was required to spend the night in the hospital. In the relevant period, respondent was discharged from individual counseling due to excessive absences and limited progress. Critically, although his child was born substance-exposed, respondent had not submitted to a drug-abuse assessment and, of nine drug drops ordered between January and August 2017, seven were either missed or tested positive for an illegal substance or alcohol.

¶ 71 In addition, the court received evidence reflecting that A.B. possesses significant medical issues, yet respondent did not progress in learning to care for her, as he missed doctor's and therapists' appointments or was distracting and inattentive at the appointments he attended (as reported by the foster parents in their notes, but those reports were consistent with Hughes's personal observation at an appointment she attended). Moreover, respondent's comments during or immediately following an administrative case review about knowing where the foster parents lived and threatening to kidnap A.B., coupled with his social media posts, reflecting violent imagery or content, resulted in a two-year order of protection being granted to the foster parents. Abigail testified to her process of filing for that order and identified her verified affidavit and exhibits attached thereto. Even viewed in the best possible light, the comments and postings, at a minimum, reflect respondent's lack of judgment and, therefore, lack of progress toward having A.B. returned to his care. Finally, respondent had not yet received any unsupervised visits, as he

struggled to incorporate skills to care for A.B., whether medically or with respect to food or her diaper rash, and he had not completed *any* of the services in his plan. In sum, the court's finding that, during the relevant period, respondent had not made any demonstrable progress toward the return of A.B. was not contrary to the manifest weight of the evidence.

¶ 72 C. Best Interest

¶ 73 Respondent next argues that the trial court erred in finding that it is in A.B.'s best interest to terminate his parental rights. He argues that the only admissible evidence received on best interests was the testimony from the foster parents that was based on their limited knowledge and that the evidence was insufficient to meet the State's burden.

¶ 74 We disagree and conclude that it was not against the manifest weight of the evidence for the trial court to find that termination of parental rights is in A.B.'s best interests. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). In making a best-interests determination, the trial court must consider the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-103(4.05) (West 2010)), including the child's physical safety and welfare; need for permanence, stability, and continuity; sense of attachments, love, security, and familiarity; and the uniqueness of every child. *Id.*

¶ 75 The court reasonably found that the evidence here was sufficient to terminate respondent's parental rights. The court heard testimony from Hughes that she has personally witnessed A.B.'s loving relationship with Nikki and Abigail, who have cared for her since she was around one month old, have provided for all of her daily and special medical needs, and have taken her to numerous medical appointments. A.B. is bonded with them, turns to them for comfort, love, and affection, and is intimately integrated within the extended family. The home is clean and appropriate, and there are no safety concerns there. Nikki testified that she and

Abigail love A.B. and wish to provide her permanency. In Hughes's opinion, it is in A.B.'s best interest that respondent's parental rights terminate because A.B. is doing "extremely well" in her placement and removing her from the home would be "detrimental to her health and well being." Hughes agreed that respondent is appropriate with A.B. and that they have a "great" and "loving" relationship, and Nylund testified that respondent and A.B. were "very connected" and had a definite bond. Nevertheless, Hughes testified that the relationship between A.B. and respondent is simply different from that between A.B. and her foster parents, from whom she seeks comfort and has known as her only caretakers her whole life.

¶ 76 The trial court considered the statutory factors and found that A.B. was "inextricably intertwined in the tapestry of this family." The court found that to remove A.B. from the place where she had found much love and safety would not be in her best interest or in keeping with statutory best interest factors. Given A.B.'s unique medical needs, her sense of familiarity, security, and attachment to the foster parents, and her need for permanence, the court's best-interest finding is not contrary to the manifest weight of the evidence.

¶ 77 Respondent argues again that the evidence presented at the best-interest hearing was inadmissible third-party hearsay. Again, this argument is forfeited for failure to object to the evidence at trial. See *Jaber W.*, 344 Ill. App. 3d at 256. Further, we rejected his evidentiary arguments above. Setting aside forfeiture, we simply disagree. The evidence presented at the best-interest hearing, as summarized above, was based principally on the personal observations of the caseworker, testimony from the foster mother, as well as the letters and photographic exhibits submitted to the court. Moreover, the formal rules of evidence do not apply at the best-interest stage of proceedings to terminate parental rights. *In re Jay H.*, 395 Ill. App. 3d 1063, 1070 (2009). Rather, at the best-interest stage, the trial court may rely on "all evidence helpful

(in the trial court's judgment) in determining the questions before the court" to the extent of its probative value. *Id.* Hence, to the extent that the trial court considered the evidence and testimony presented at the unfitness hearing, as well as the foster parents' notes, such consideration was proper as evidence probative of the best-interest factors. See *id.*

¶ 78 D. Ineffective Assistance

¶ 79 Respondent's final argument on appeal is that he received ineffective assistance of counsel throughout the proceedings. He argues that effective counsel would have moved to return A.B. to his care after his paternity was established and when there were no allegations of abuse or neglect made against him. Further, respondent argues effective counsel would not have stipulated that he was unfit and to entry of the dispositional order awarding guardianship and custody of A.B. to DCFS, where there was no evidence of abuse or neglect of A.B. by respondent, nor of his unfitness or inability to care for her, and, further, that effective counsel would have appealed the entry of that order. Respondent asserts that counsel failed to object to the hearing of and entry of the order of protection consonant with the permanency review and failed to object to entry of the order where it was based "solely" on the hearsay affidavit of the foster parents. Finally, respondent argues that counsel failed to object to the admission of the DCFS report, caseworker's testimony, and foster parents' notes on the bases of lack of foundation and hearsay. Respondent argues that his counsel treated the proceedings as a *fait accompli*, without mounting a vigorous defense or objecting to *any* inadmissible evidence. For the following reasons, we reject respondent's ineffective-assistance claims.

¶ 80 Although proceedings under the Act are not intended to be adversarial, a parent is nevertheless entitled to effective assistance of counsel throughout all termination proceedings. 705 ILCS 405/1-5(1) (West 2016). We apply the criteria in *Strickland v. Washington*, 466 U.S.

668 (1984) to respondent's ineffective-assistance claim; namely: (1) whether counsel's performance fell below an objective standard of reasonableness (performance prong); and (2) whether there exists a reasonable probability that, but for the objectively unreasonable representation, the result of the proceeding would have been different (prejudice prong). *Strickland*, 466 U.S. at 687-88, 694; see also, *In re Kr. K.*, 258 Ill. App. 3d 270, 280 (1994). "Counsel's conduct is presumed to be the product of sound trial strategy, and respondent bears the burden of overcoming this presumption." *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32; *see also, In re D.M.*, 258 Ill. App. 3d 669, 674 (1994) (counsel's trial strategy is generally unassailable under *Strickland*). Generally, the use of stipulations, alone, is insufficient to establish ineffective assistance. *In re D.M.*, 258 Ill. App. 3d at 674. The failure to satisfy either *Strickland* prong is sufficient to defeat an ineffective-assistance claim. See *People v. Caballero*, 146 Ill. 2d 248, 260 (1989).

¶ 81 We reject first respondent's arguments of ineffective assistance concerning the order of protection. Respondent cites no authority to support his arguments, nor any reflecting that the trial court's decision to hear the petition for the order of protection alongside the permanency review was improper, such that an objection thereto was warranted or would have been successful. Further, although respondent argues that counsel should have objected to entry of the order where it was based "solely" on the hearsay affidavit of the foster parents, Abigail's petition was verified, under penalty of perjury, that the allegations were true and correct. In addition, counsel stated, "I don't represent my client in that matter [*i.e.*, the order of protection]. He said that he wouldn't argue against the [o]rder of [p]rotection as long as he does get that visitation through DCFS." The court responded, "Yes. And I will put that on the order, sir." As such, even if counsel, despite her statement, can be viewed as having represented respondent's position

with respect to the order of protection, it is clear that respondent chose not to object in exchange for continued visitation. Therefore, the decision was strategic, not objectively unreasonable, and respondent was not prejudiced thereby.

¶ 82 Next, we reject respondent's arguments concerning counsel's failures to object to the admission of the DCFS reports, caseworker's testimony, and foster parents' notes on the bases of lack of foundation and hearsay. As previously discussed, although the failure to object did contribute to forfeiture of those arguments on appeal, the reports and testimony here were, in any event, properly admitted under the Act. As such, the failure to object was not objectively unreasonable, as any objection would not have been successful. With respect to admission of the foster parents' notes, the propriety of their admission is a closer call because, again, they were not part of the DCFS reports, they were not produced to refresh recollections or, apparently, under any other hearsay objection, nor did Nikki or Abigail personally testify to all observations therein. However, as previously noted, there was sufficient evidence through the remainder of the foster parents' testimony and other evidence to affirm the court's findings and, therefore, there is no reasonable probability that, absent counsel's failure to object, the result of the proceeding would have differed.

¶ 83 We turn next to respondent's arguments that, when there were no allegations of abuse or neglect made against him, nor of his unfitness or inability to care for her, effective counsel would have moved to return A.B. to his care and would not have stipulated that he was unfit and to entry of the dispositional order awarding guardianship and custody of A.B. to DCFS. He contends that, if objection had been made early in the case, A.B. would have been returned to his care and the remaining hearings and orders would have been unnecessary. These arguments must also be rejected.

¶ 84 It is true that the neglect petition and accompanying statement of facts concerned A.B.'s mother, with only a relatively brief mention, at the end of the facts, of respondent's criminal history. However, at the shelter care hearing, the court conferenced with the parties before they agreed to DCFS's receipt of guardianship and custody, which it stated it believed had helped the parties come to a "resolution." Similarly, at the April 2016 hearing, respondent's counsel agreed that mother would factually stipulate to neglect under count I of the petition, in exchange for dismissal of counts II and III. Finally, at the June 2016 dispositional hearing, respondent's counsel agreed that respondent was unfit "after conferencing."

¶ 85 As previously noted, A.B.'s removal was occasioned on the basis that, by virtue of being born substance exposed, she was a neglected minor under the Act. 705 ILCS 405/2-3(1)(c) (West 2014). In other words, there was no apparent basis to dispute the existence of neglect itself, which led to removal. Respondent's counsel's decision to stipulate to certain findings, after conferencing and in exchange for dismissal of the remaining counts, reflects strategy, and it is respondent's burden to overcome the presumption that the strategy was sound.

¶ 86 Respondent's reliance on *In re M.M.*, 2016 IL 119932 is misplaced. There, the court found improper the trial court's decision finding the mother *fit*, but nevertheless granting DCFS guardianship and custody. The court found that the Act does not permit the placement of a child with a third party absent a finding of parental unfitness, inability, unwillingness to care for the child. *Id.*, 2016 IL 119932, ¶ 31. Here, respondent stipulated to the finding of unfitness. Nevertheless, he argues that counsel did not stipulate to any underlying *facts* to support unfitness, nor did the trial court make written findings to support unfitness in accordance with the requirements of section 2-27 of the Act (705 ILCS 405/2-27 (West 2016)). We will not rule on the propriety or lack thereof of the trial court's findings under section 2-27, as the

dispositional order is not before us on appeal. We note, however, that the State explained that the factual basis for the agreement was the court report prepared for that day's hearing, and respondent's counsel interjected, "That is the agreement, Your Honor." The report noted that, although respondent had attended a family meeting in February 2016, as well as visits with A.B., he had recently failed to appear for a child and family team meeting to sign consents and review necessary services. Thus, the question is whether counsel was ineffective for stipulating to unfitness, based upon the condition into which A.B. was born, as well as the fact that the court report reflected that he had recently failed to appear to a meeting to sign consents and review services. Respondent has not met his burden of rebutting the presumption that counsel's decision to stipulate, after conferencing, was sound strategy, and we must reject his claim. Finally, we reject respondent's claim that counsel was ineffective for failing to immediately appeal the dispositional order. Again, as that order was entered by agreement and after conferencing, a strategic decision, the soundness of which has not been rebutted, any such appeal would have been fruitless.

¶ 87 Finally, respondent's overarching argument that he essentially received *no* assistance of counsel, which permeated the proceedings and deprived him of a fair trial, must fail. As noted throughout this decision's statement of facts, counsel sometimes chose not to cross-examine certain witnesses, present evidence, or object. However, counsel also often *did* cross-examine witnesses (notably, an effective cross-examination of Hughes), present evidence (notably, Nylund, who testified to respondent's strong relationship with A.B. and his effective parenting during visitation), argued against the recommendations of the State and guardian at permanency-review hearings, and otherwise advocated respondent's position.

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we vacate the court's finding of unfitness on count I. The judgment of the circuit court of Winnebago County is otherwise affirmed.

¶ 90 Affirmed in part and vacated in part.