2018 IL App (2d) 180365-U
Nos. 2-18-0365 & 2-18-0366 cons.
Order filed December 13, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re A.P., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 13-JA-17
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Lynwood P.,	)	Michael A. Wolfe,
Respondent-Appellant).	)	Judge, Presiding.

In re A.P., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 13-JA-18
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Lynwood P.,	)	Michael A. Wolfe,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: We reversed the termination of respondent's parental rights, as the trial court's finding that respondent was an unfit person was against the manifest weight of the evidence.

¶ 2 Respondent, Lynwood P., appeals the termination of his parental rights with respect to A.P. and A.P., the twin minors (one male and one female) that he fathered with Jennifer K. Specifically, respondent challenges the trial court's ruling that he was unfit, which was based on findings that he failed to (1) make reasonable efforts to correct the conditions that were the basis for the removal of the minors and (2) make reasonable progress toward the return of the minors. Respondent does not challenge the court's ruling on the minors' best interests. Because the minors share the same initials, we refer to them herein as the "male minor" and "female minor." Jennifer K. is not a party to this consolidated appeal.[1]

¶ 3 I. BACKGROUND

¶ 4 The record reflects that the minors were born on February 14, 2013. At that time, respondent and Jennifer K. were living together in a motel. The female minor tested positive at birth for opiates, which prompted the Department of Children and Family Services (DCFS) to open an intact family case.

¶ 5 The State filed abuse and neglect petitions on March 28, 2013. Both petitions were based on the same set of allegations. The sole allegations of abuse were that the female minor tested positive at birth for opiates. However, the allegations of neglect were far more extensive. In addition to alleging that the female minor tested positive at birth for opiates, the State alleged as follows: both parents had "long histories" of substance abuse; they failed to cooperate with the intact family case by refusing to provide a drug screen on March 8; Jennifer K. tested positive for opiates on March 12; Jennifer K. admitted that she was still taking a prescription narcotic medicine on March 21, which would have resulted in a positive drug screen for opiates; Jennifer

[1] Because of the similar fact patterns underlying both appeals, we have consolidated them on our own motion.

K. was unsuccessfully discharged from drug treatment on March 25 after she tested positive for marijuana; also on March 25, Jennifer K. claimed that respondent had used cocaine after the minors were born; respondent was arrested a few months prior to the birth of the minors for unlawful possession of drug paraphernalia; and respondent had "a history of domestic violence including unlawful restraint and domestic battery."

¶ 6 On April 12, 2013, the trial court granted temporary custody of the minors to DCFS. Both parents stipulated to the existence of probable cause: that the "minor tested positive at birth; respondent parents have a long history of drug abuse; [and] respondent mother failed drug treatment and continued to test positive for opiates." An urgent and immediate necessity was also found to exist because of "respondent mother's continued drug use and failure at services and respondent father's refusal to engage in services."

¶ 7 The State later withdrew its allegations of abuse and proceeded to an adjudicatory hearing on its allegations of neglect. On June 4, 2013, the minors were adjudicated neglected. Following a dispositional hearing on July 23, 2013, the minors were made wards of the court and placed in the guardianship and custody of DCFS. The court set a permanency goal of "return home within 12 months." DCFS assigned the case to Lutheran Child and Family Services (LCFS), a private service provider.

¶ 8 A permanency hearing order dated October 8, 2013, states that respondent made "some progress" toward the return of the minors. It is unclear whether respondent made reasonable efforts to achieve the permanency goal, as the "has" and "has not" boxes are both checked. It was noted, however, that respondent "continues to make visits and is making an effort to care for his children." It was also ordered that respondent's visits were to be increased, including overnight visits, at the discretion of LCFS.

¶ 9 On March 25, 2014, the Court Appointed Special Administrator (CASA) reported that respondent "continues to attend weekly scheduled supervised visits and has repeatedly requested increased visitation." The report states that respondent claimed to be employed, but he had not yet provided any pay stubs. Respondent also claimed to be living at his sister's home, but the CASA worker had reason to believe that the purported "sister" was not a blood relative. The report states that respondent was making "little to no progress" on the stated goals of his service plans, but it also notes that respondent and the minor's foster parents were frustrated with LCFS over a lack of communication. DCFS had apparently told the foster mother to disregard the LCFS caseworker's unavailability and lack of attention because she was suffering from of an undisclosed illness. The report concludes by stating that "[t]his issue has been going on for nearly a year and appears to be impeding progress on all fronts."

¶ 10 A permanency hearing order dated April 1, 2014, states that respondent was "not rated for progress as there was miscommunication between the agency and the father." However, the order also states that respondent made "some efforts" to achieve the permanency goal, which remained a return home within 12 months. The order includes a directive for DCFS to conduct a clinical staffing to assess the minors' special needs and consider making changes to respondent's current service plan.

¶ 11 Following the clinical staffing, a summary was prepared by DCFS regional clinical services coordinator Gloria Navarro. Navarro noted that one purpose of the staffing was to address whether LCFS was providing the appropriate services for respondent. She also noted that there was confusion over whether LCFS had suspended respondent's services pending the results of a DNA paternity test—a test which LCFS had requested even though respondent's

name appeared on the minors' birth certificates and he voluntarily acknowledged paternity. Navarro added:

> "It appears that the communication between the father and the agency has been unproductive and there appears to be confusion as to what the father is required to work on in order to achieve the return home of his children. During the clinical staffing the father vehemently voiced that he just needs to know what are the specific services that he would need to complete in order to have the children return to his care. He further stated being willing to follow the agency's recommendations."

¶ 12 Regarding the minors' health, Navarro explained that both children suffered from asthma and both were born with immature intestines which made it difficult for them to digest protein. Navarro added that the male minor "is extremely sensitive to cigarette smoke, even if the smoke permeates on clothing after use and he has allergies to cats and dogs." With respect to respondent, Navarro noted that he tested negative when asked to complete random drug and alcohol screens and he completed a parenting class through a different organization, Catholic Charities. However, respondent lacked his own means of transportation, and due to the wait lists and limited services near his home, he was ordered to attend services that required him to utilize public transportation.

¶ 13 Navarro recommended that LCFS "make earnest and diligent efforts to ensure that the father receives the recommended services, to achieve reunification with his children." This included a recommendation that LCFS visit respondent's purported sister's home and determine whether it was safe for the minors. If the home was deemed unsafe, LCFS was to "give the father clear specifications in writing, along with a reasonable time frame of at least two weeks, about what needs to be corrected." Navarro also recommended that LCFS provide a "parenting

coach" to work with respondent and that respondent participate in the minors' developmental therapy services, medical appointments, and feeding clinic appointments to understand their specific needs. Finally, Navarro recommended that LCFS provide respondent with bus passes and that respondent "refrain from smoking prior to having any contact with the children."

¶ 14 In an order dated May 20, 2014, the trial court directed LCFS "to assist [respondent] with smoking cessation aids and [the] cost of anti-smoking treatment."

¶ 15 The CASA report dated September 30, 2014, states that respondent was continuing to express an interest in learning more about the minors' challenges and medical needs, but he also continued to smoke, and he had "a difficult time engaging and supervising both children at once." The report concludes by noting that LCFS agreed to inform respondent of the minors' regularly scheduled medical appointments and to work with his therapist to determine an appropriate method for developing his parenting skills.

¶ 16 A permanency order dated October 7, 2014, states that respondent did not make substantial progress toward the return of the minors or reasonable efforts to achieve the permanency goal. The order notes that respondent had not stopped smoking, had not provided proof of employment, and had not obtained appropriate housing. Although the record contains no transcript from the proceeding, it reflects that respondent presented the trial court with a "pay card" and explained that he did not receive pay stubs from his current job.

¶ 17 The CASA report dated March 31, 2015, states that respondent had not made progress toward many of the goals outlined in his service plan and he continued to have difficulties engaging and supervising both minors at once. However, the report also notes that the lack of communication from LCFS continued to be a problem. For example, LCFS had ceased child and family team meetings for a period of four months and had also "failed to secure [the] promised

nutritional counseling for [respondent]." LCFS was cautioned "to be more specific in documenting [the] goals in [respondent's] service plan so that progress or lack thereof can be more specifically evaluated."

¶ 18 In a report dated April 2, 2015, LCFS recommended that the permanency goal be changed to "substitute care pending court determination on termination of parental rights." The report states that respondent continued to test negative on random drug and alcohol screens and he "demonstrated a great deal of affection for his children and often brings them food, clothing, toys, and the like to each visit." He had also "developed a good relationship with the foster parents" and was "willing to participate in educational classes that would teach him to meet his children's dietary needs." However, the report notes that respondent had not demonstrated the ability to care for both minors simultaneously, he had again failed to provide proof of employment or appropriate housing, and he had continued to smoke.

¶ 19 A permanency order dated April 7, 2015, states that respondent did not make substantial progress toward the return of the minors or reasonable efforts to achieve the permanency goal. In accordance with the recommendation from LCFS, the trial court changed the permanency goal to substitute care pending a determination on parental rights.

¶ 20 In October 2015, respondent and Jennifer K. executed consent forms for the minors to be adopted by the couple that was originally fostering them. However, for reasons unclear from the record, the original foster couple did not go through with the adoptions and the minors were instead moved to a new foster home. In April 2016, the trial court entered an order stating that, because respondent and Jennifer K. had relinquished their parental rights, the permanency goal was changed to adoption. In August 2016, respondent filed a *pro se* motion objecting to an adoption of the minors by anyone other than the original foster parents. On March 7, 2017, after

reappointing a public defender to represent respondent, the trial court ruled that the consent forms signed by respondent and Jennifer K. were void, and that their parental rights were therefore restored. The resulting order states that the permanency goal was changed back to substitute care pending a determination on parental rights.

¶ 21 On March 14, 2017, the State filed a petition to terminate respondent's parental rights. The State alleged that, during the nine-month intervals between July 23, 2013, and March 23, 2015, respondent and Jennifer K. each failed to (1) make reasonable efforts to correct the conditions that were the basis for the children's removal or (2) make substantial progress toward the return of the children. Jennifer K. later signed a consent form for the minors to be adopted by the new foster parents. However, respondent contested the State's allegations and the matter proceeded to a trial.

¶ 22 The unfitness portion of the trial was conducted over the course of several days in October 2017. There were just two witnesses: Sister Veronica Michalski, a child welfare worker with LCFS, and Maria Lopez-Iftikhar, a counselor with Pathways Psychology Services (Pathways). Before announcing its ruling, the trial court commented that these two witnesses had combined to testify for nearly ten hours. In addition, 57 exhibits were admitted into evidence and nearly six hours were dedicated to closing arguments. The court acknowledged that the case had gone "sideways" and agreed with respondent's counsel that there was a lack of communication between Michalski and respondent. However, the court ultimately ruled that the State had proved its allegations of unfitness for the three nine-month periods between April 23, 2014, and March 23, 2015. We will therefore focus our summary of the testimony on the events that transpired during the 11-month period that respondent was found to be unfit.

¶ 23 Michalski testified that she prepared and evaluated respondent's service plans. Two of those plans corresponded with the nine-month periods that respondent was found to be unfit. In both of the relevant service plans, respondent's desired outcomes were to: (1) demonstrate living a substance free lifestyle; (2) cooperate with agency requirements; and (3) prove that he could provide an adequate living arrangement for the minors.

¶ 24 Michalski evaluated the first relevant service plan on August 15, 2014. She rated respondent as making satisfactory progress for the first and second desired outcomes, as he successfully completed tasks such as submitting to random drug and alcohol screens, attending counseling, and completing an evaluation for anger management. However, Michalski rated respondent as making unsatisfactory progress for the third desired outcome, as he failed to complete his tasks of providing documentation of lawful employment and maintaining suitable housing for six continuous months.

¶ 25 Michalski evaluated the second relevant service plan on March 31, 2015. This time, although respondent continued to successfully complete random drug and alcohol screens, he received unsatisfactory ratings for the second and third desired outcomes. Michalski noted that respondent stopped attending counseling and he failed to complete the reinstated task of undergoing an anger management evaluation. He also failed to provide documentation of lawful employment or maintain suitable housing for six continuous months.

¶ 26 Michalski testified that the minors first came into agency care because respondent left them alone with Jennifer K. in violation of the safety plan for the intact family case. Thereafter, respondent submitted to every random drug and alcohol screen and tested negative every time. However, Michalski noticed that respondent was a heavy smoker and she typically smelled cigarette smoke on his clothing. She noted that both minors had been diagnosed with asthma and

the male minor was especially sensitive to cigarette smoke. She approached respondent with her concerns and he agreed to attempt to quit smoking, but LCFS did not provide him with any smoking cessation assistance because Michalski's supervisor refused to approve it.

¶ 27 Michalski testified that, after a while, respondent began using an angry tone to express his frustration with the process. He became especially upset when Michalski requested a paternity test. Michalski testified that she requested the test because "knowing the birth mother's history, it seemed wise *** to make sure that [respondent] really was the birth father." Respondent cooperated with the paternity test which confirmed that he was the father. Thereafter, in October 2014, respondent became angry at Michalski over the unsatisfactory ratings in his service plans, shouting and complaining that she had lied about him in court.

¶ 28 With respect to respondent's employment, Michalski testified that he claimed to have started a new job in April 2014, and he later said that he was away during the month of August 2014 for training as a truck driver. Although he gave her documentation from his training, he never provided her with pay stubs or anything else to establish his income.

¶ 29 As to respondent's housing, Michalski testified that he initially reported living between homes with his mother in Chicago and his purported sister in Wheaton. When she evaluated his service plan on August 15, 2014, he had not been living in any one place for six continuous months, so she have him an unsatisfactory rating without visiting either address. When she evaluated his service plan on March 31, 2015, he reported that he was living exclusively with his sister. However, Michalski once again gave him an unsatisfactory rating without visiting the home. She explained that "it was difficult to know when [respondent] was going to be home, what his work schedule was." In addition, the home "seemed to be unsafe" because respondent reported that his sister had cats, which was problematic for the male minor.

¶ 30 Regarding respondent's counseling, Michalski testified that she referred him to Pathways in March 2014. Respondent successfully completed his anger management evaluation and consistently attended weekly sessions with Lopez-Iftikhar for several months. However, he became upset and stopped going in January 2015, so Michalski reinstated his task of undergoing an evaluation for anger management and gave him an unsatisfactory rating.

¶ 31 Turning to Navarro's recommendations from the clinical staffing, Michalski testified that LCFS had indeed provided respondent with bus passes and a parenting coach, but arranging for him to attend the minors' medical appointments had proved difficult. The developmental therapy sessions were held at the foster home and the foster parents refused to disclose their address to respondent. According to Michalski, the therapists "were not willing" to hold the sessions anywhere other than the foster home. Respondent did attend one monthly feeding clinic appointment, but by that point the minors had outgrown the need for the feeding appointments and they were instead going to the clinic for quarterly checkups. Michalski did not believe that respondent had attended any other medical appointments.

¶ 32 Michalski also testified at length that she did not believe respondent possessed adequate parenting abilities. For instance, when respondent celebrated the minors' first birthday in a room at the local library, she observed that he did not take the initiative to change the minors' diapers, instead looking to the foster parents for assistance. Respondent eventually changed the male minor's diaper while the foster father tended to the female minor. During a different visit, respondent was picking up toys and books while the minors wandered unattended to different corners of the room. Michalski also testified that respondent consistently paid more attention to the female minor than the male minor. Although respondent frequently talked to the male minor, he seldom held the male minor and he did not kiss the male minor as much as he kissed the

female minor. Respondent once picked a flower and stuck it in the female minor's hair while at the same time he spoke sharply to the male minor because he was wandering around trying to open cupboards. There was another occasion when the minors were playing with some scarves and respondent commented that the male minor would rather play with cars than scarves.

¶ 33 On cross-examination, Michalski acknowledged that respondent appeared to be employed and she knew that he had eventually provided pay stubs to the CASA worker, but she never contacted the CASA worker to verify respondent's employment. She admitted that she was supposed to visit the addresses that respondent provided for his mother and sister and that she could have made the visits even though respondent was not there.

¶ 34 Michalski admitted that she did not take an active role in advising respondent of the minors' medical appointments, as she relied on the foster mother to relay that information. Michalski also acknowledged that respondent had consistently expressed a desire to care for the minors; he regularly brought them toys, food, and clothing, including appropriate snacks once he learned of their dietary needs. On occasion, respondent also gave the foster parents money to help pay for the minors' formula. Respondent was willing to attend educational classes to help with the minors' special needs, but Michalski explained that the classes assigned by LCFS did not start until March 2015, around the same time that she recommended changing the permanency goal to substitute care pending a determination of parental rights.

¶ 35 Finally, Michalski testified that respondent's therapist, Lopez-Iftikhar, "was also supposed to be his parenting coach." She agreed that respondent never had any significant parenting time alone with the minors. There were always other people in the room, including herself and the foster mother, and the minors typically gravitated toward the foster mother.

Michalski also admitted that respondent's ability to parent both children simultaneously was never made a specific task outlined by any of the service plans.

¶ 36 Lopez-Iftikhar testified that respondent consistently attended weekly counseling sessions at Pathways for several months beginning in March 2014. She assigned four objectives for his therapy. He needed to: (1) explore his ambivalence toward therapy; (2) learn to use appropriate parenting techniques during his visits with the minors; (3) increase his knowledge of the children's medical needs; and (4) learn to regulate his emotions.

¶ 37 In her report dated August 2, 2014, Lopez-Iftikhar rated respondent as "in progress" for the first, third, and fourth objectives. She rated him as making "minimal progress" for the second objective, explaining that she only had an opportunity to observe him during one visit at the local library. Lopez-Iftikhar testified that the male minor kept running to the foster mother, so respondent ended up spending more time with the female minor. As a result, Lopez-Iftikhar spoke with respondent about the importance of taking the initiative to care for both minors simultaneously. At the end of her report, Lopez-Iftikhar recommended that respondent participate in training sessions with a parenting coach and both minors at Pathways every other week. To the best of her knowledge, respondent never met with a parenting coach.

¶ 38 In her report dated November 24, 2014, Lopez-Iftikhar rated respondent as "in progress" for each of the four objectives. She testified that these ratings were based on a "snapshot" of the five sessions that he attended. Respondent had several absences that were excused because he was attending out-of-state work training for a truck driving job. However, he later began accumulating unexcused absences for which he provided no explanation.

¶ 39 Respondent's last session at Pathways was on January 6, 2015. Lopez-Iftikhar testified that he became upset and walked out of a team meeting with Michalski after stating that he no

longer wanted to participate in therapy. He also stated that he did not think he needed a parenting coach. Lopez-Iftikhar prepared a termination summary which reflects that respondent called her the next week and expressed an "increased frustration" about the scheduling of his visits and the lack of communication with Michalski. Lopez-Iftikhar testified that respondent had shown her pay stubs from his job, but he said that he would not provide them to Michalski because he did not trust her. Respondent attempted to reengage in services in April 2015, but the permanency goal had already been changed to substitute care pending court determination on termination of parental rights.

¶ 40 On cross-examination, Lopez-Iftikhar testified that, to the best of her knowledge, LCFS never actually provided a parenting coach. She explained that, although she had experience working as a parenting coach, she was hired to work with respondent as his therapist; she was not hired to be his parenting coach. Lopez-Iftikhar also acknowledged that respondent never actually refused to work with a parenting coach; he just said that he "did [not] want one." He told her that he had three other adult children, none of whom required DCFS involvement, and he claimed that he was not aware of Jennifer K.'s drug use during her pregnancy.

¶ 41 Lopez-Iftikhar agreed that respondent repeatedly expressed his frustration with Michalski over a lack of communication regarding his obligations. He was especially upset that his visits with the minors were limited to once per week for two hours. Lopez-Iftikhar agreed that this made it difficult for respondent to improve his parenting skills. In addition, respondent was frustrated that the foster mother "seemed to compete for the children's attention during visits." Lopez-Iftikhar noticed this problem especially with the male minor, as she opined that the he had separation anxiety whenever he was away from the foster mother and he would seek her out during respondent's visits. Lopez-Iftikhar shared these concerns with Michalski and

recommended that the foster mother not attend the visits, but to the best of her knowledge, this recommendation was never implemented. Lopez-Iftikhar also acknowledged that her own communications with LCFS and Michalski were "not the best," as her questions and concerns about respondent's service plans went largely unanswered.

¶ 42 In announcing its ruling, the trial court agreed with respondent's counsel that LCFS and Michalski had made mistakes communicating with respondent and evaluating him. However, the court disagreed with counsel that the agency "fell down on the job." The court noted that, in the permanency hearing orders, DCFS was consistently found to have made reasonable efforts to achieve the permanency goal. The court also found that Michalski was "extremely credible." On the other hand, although respondent did not testify, the court noted its disbelief of his claim that he was unaware of Jennifer K.'s drug use during her pregnancy. There were also instances where respondent was quoted as blaming Jennifer K. for the removal of the minors, but the court emphasized that the minors were removed because respondent left them alone with Jennifer K.

¶ 43 The trial court noted that "part of [respondent's] task is to work diligently in cooperation with the agency." However, there were several instances in the exhibits where respondent expressed his frustrations with the process and accused Michalski of lying about him in court. Respondent also repeatedly claimed that he did not need counseling or parenting classes. Although he consistently attended sessions with Lopez-Iftikhar beginning in March 2014, he began accumulating unexcused absences in September 2014, and he withdrew from counseling altogether in January 2015. The court also found respondent's failure to provide Michalski with pay stubs to be especially damaging, commenting that "the whole issue would have come to a screeching halt" if he had simply given her documentation such as his tax returns to verify his income. With respect to respondent's housing, the court acknowledged that Michalski "did [not]

really have a good answer" for why she never visited his purported sister's home, but it agreed with Michalski that the presence of cats was a problem for the male minor. The court also agreed with Michalski that respondent needed to attend more medical appointments and improve his parenting skills. Finally, the court stressed that respondent's cigarette smoking was problematic for the minors, stating that "a grown man should be able to stop." For all of these reasons, the court found that the State had proved the allegations of unfitness in its petition by clear and convincing evidence for the nine-month periods between April 2014 and March 2015.

¶ 44 The best interests portion of the trial was conducted in November 2017. The current foster mother testified that she and her husband had been caring for the minors for approximately one year. They intended to adopt the minors if the option became available. The foster mother testified that the minors no longer tested positive for pet or food allergies. After the State introduced pictures depicting a nurturing home environment, the foster mother testified that the minors were thriving and had developed bonds with her extended family members. The minors were also doing well in preschool and were expected to progress to kindergarten the next year.

¶ 45 Respondent testified that he was no longer in contact with Jennifer K. He was currently 55 years old and living with his 78-year-old mother in Chicago. He has good relationships with his three adult children, each of whom live nearby. Respondent testified that he was employed at the time as a truck driver. He had health and dental insurance through his employer, and in the past year he had earned $42,000. He had also recently registered with a state-sponsored program that distributed nicotine patches to assist him with smoking cessation.

¶ 46 On December 19, 2017, the trial court found that it was in the best interests of the minors that respondent's parental rights be terminated and that DCFS be appointed with the power to consent to the minors' adoptions.

¶ 47 On January 10, 2018, respondent filed a motion to reconsider the termination of his parental rights. On March 30, 2018, respondent requested leave to file an amended post-trial motion with an extended page limitation based on the length of the proceedings and the numerous issues that were raised at trial. The trial court granted respondent's request and respondent filed an amended post-trial motion on April 3, 2018. The trial court denied the amended post-trial motion on April 24, 2018, and respondent timely appealed.[2]

¶ 48 II. ANALYSIS

¶ 49 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2016)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, the State must prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2-29(2) (West 2016). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 352, (2004). A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008). "A decision is against the

[2] Because this is an accelerated appeal pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2017), our disposition was due within 150 days after the filing of the notice of appeal, or by October 21, 2018. However, briefing was repeatedly delayed due to respondent's motions for continuances to supplement the record with several missing transcripts. Good cause is therefore shown for the delay in filing the disposition.

manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 50 As we have discussed, respondent appeals only the trial court's ruling that he was unfit during the three nine-month periods between April 2014 and March 2015. This ruling was based on findings that he failed to (1) make reasonable efforts to correct to correct the conditions that were the basis for the removal of the minors (750 ILCS 50/1(D)(m)(i) (West 2016)), and (2) make reasonable progress toward the return of the minors during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2016)). We will discuss these findings in turn.

¶ 51 A. Reasonable Efforts

¶ 52 Whether a parent has made reasonable efforts to correct the conditions that were the basis for the child's removal is judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 21; see also *In re H.S.*, 2016 IL App (1st) 161589, ¶ 28 (stating that a determination of reasonable efforts requires a subjective review of the parent's achievements). "The court must assess whether the parent has made 'earnest and conscientious strides' toward correcting the conditions which led to the child's removal." *Id.* (quoting *In re B.S.*, 317 Ill. App. 3d 650, 658 (2000)). "Parental deficiencies collateral to the conditions that were the basis for the child's removal, even if serious enough to prevent the return of the child, are outside the scope of this inquiry and are therefore not relevant." *In re L.J.S.*, 2018 IL App (3d) 180218, ¶ 24 (quoting *In re C.M.*, 305 Ill. App. 3d 154, 164 (1999).

¶ 53 Here, the trial court found that the minors were brought into agency care because respondent had left them alone with Jennifer K., in violation of the safety plan for the intact

family case. This was a rather simplistic view of the conditions that were the basis for the minors' removal. We agree with respondent that *substance abuse* was the "progenitor of this case and the original sin that brought it into the court system." The State's allegations of neglect were based largely on both parents' "long histories" of substance abuse, the female minor's positive test at birth for opiates, and Jennifer K.'s continued drug use. Thereafter, at the temporary shelter care hearing, both parents stipulated to the existence of probable cause based on those same drug-related circumstances. And while an urgent and immediate necessity was found to exist based partly on respondent's "refusal to engage in services," that finding was also based on Jennifer K.'s "continued drug use and failure at services."

¶ 54 Thus, while respondent's failure to cooperate with services contributed to the removal of the minors, it was not the sole condition that he was responsible for correcting. He was also responsible for eliminating the minors' continued exposure to drugs by correcting his own pattern of substance abuse. It is undisputed that he cooperated with every random drug and alcohol test and he tested negative every time. We are mindful that a determination of whether respondent made reasonable efforts must be based on a subjective standard, as "the court must consider the kind of effort that would be reasonable for the particular parent from that parent's point of view." *In re F.S.*, 322 Ill. App. 3d 486, 491 (2001). From respondent's point of view, his prolonged abstention from drug and alcohol use is particularly significant.

¶ 55 The question that remains is whether respondent's successful efforts to avoid drug and alcohol use are outweighed by his lack of cooperation with services. While the trial court did not make any specific findings in that regard, it discussed statements that were attributed to respondent showing his frustrations with the process, his distrust of Michalski, and his belief that he did not need counseling. The State argues that these statements are indicative of respondent's

declining interest in his services and his decision to discontinue counseling in January 2015, approximately three months before the end of the relevant time period. The State also makes much of respondent's refusal to provide Michalski with pay stubs—a task that was first assigned after the dispositional hearing in July 2013. Finally, the State argues that respondent never made any effort, much less a reasonable effort, to obtain suitable housing. According to the State, taking these failures into consideration, the trial court's finding that respondent failed to make reasonable efforts was not against the manifest weight of the evidence.

¶ 56 Respondent does not deny that his frustration with LCFS and Michalski led him to make some poor decisions. As Lopez-Iftikhar explained in her termination summary, respondent decided to withdraw from counseling after expressing doubts as to whether his continued cooperation would ever lead to the return of the minors. Respondent also refused to provide Michalski with his pay stubs even though he gave her proof of his out-of-state training and he gave his pay stubs to Lopez-Iftikhar and the CASA worker. Although respondent acknowledges that these factors must be weighed against him, he maintains that he made reasonable efforts considering his circumstances when the minors were born and the problems that were documented with LCFS and Michalski. Furthermore, with respect to his housing, respondent argues that Michalski's unsatisfactory ratings should not be factored against him given her failure to make any home visits.

¶ 57 We agree with respondent. While the record contains several accounts of him expressing his frustrations with the process of regaining custody, there are also several statements which reflect positively on his efforts to cooperate with his services despite the problems that were documented with LCFS and Michalski. In her clinical staffing summary dated June 2, 2014, Navarro noted that the communication between respondent and LCFS had been "unproductive"

during his first year of his services, and that there was "confusion as to what [respondent] is required to work on in order to achieve the return home of his children." Nonetheless, respondent "vehemently voiced that he just needs to know what are the specific services that he would need to complete in order to have the children return to his care," and he said that he was "willing to follow the agency's recommendations." In her report dated August 2, 2014, Lopez-Iftikhar noted that respondent continued to be concerned about whether he was being treated fairly by the agency and whether he would ever be given an opportunity to regain custody of the minors. These concerns notwithstanding, Lopez-Iftikhar noted that respondent "attends therapy often, engages in treatment, and appears to benefit from the counseling process." In her report dated November 24, 2014, Lopez-Iftikhar noted that respondent had shown an increased knowledge of the minors' medical conditions and he was "open about his thoughts and feelings regarding participating in therapy, and its barriers and benefits." Finally, in Michalski's permanency hearing report dated April 2, 2015, although she recommended changing the goal to substitute care pending a determination of parental rights, she commented that respondent had continued to attend his weekly visits with the minors and he was "willing to participate in educational classes that would teach him to meet his children's dietary needs." Unfortunately, the classes that LCFS assigned had not yet begun.

¶ 58 As we will discuss in more detail *supra*, we have serious concerns about the way that LCFS and Michalski handled this case. Respondent's refusal to produce pay stubs and his withdrawal from counseling were significant failures for which there are no excuses. However, the remaining factors that were cited to support the termination of his parental rights, including his housing, were the byproducts of agency obstruction and inaction. We must therefore consider whether respondent's achievements, viewed subjectively, are outweighed by his refusal

to produce pay stubs and his eventual withdrawal from counseling. Because substance abuse played such a significant role in the removal of the minors, respondent's efforts to abstain from drugs and alcohol deserve substantial weight. Applying a subjective standard, considering respondent's lack of resources and his well-founded frustrations with Michalski and LCFS, we hold that he made "earnest and conscientious strides" toward correcting the conditions that were the basis for the minors' removal between April 23, 2014 and March 23, 2015. See *H.S.*, 2016 IL App (1st) 161589, ¶ 28. The trial court's finding that respondent failed to make reasonable efforts was therefore against the manifest weight of the evidence.

¶ 59 B. Reasonable Progress

¶ 60 Unlike reasonable efforts, "[r]easonable progress is examined under an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent." *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17. In determining whether a parent has made "reasonable progress for the return of the child" under section 1(D)(m) of the Adoption Act, courts must consider "the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). "Reasonable progress requires measurable movement toward reunification and occurs when a trial court can expect to order the minor returned to the custody of her parents in the near future." *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22.

¶ 61 Here, in finding that respondent failed to make reasonable progress, the trial court focused on respondent's withdrawal from counseling, his failure to provide Michalski with his pay stubs, and his failure to establish adequate housing. The court also agreed with Michalski

that respondent did not attend enough medical appointments to educate himself on the minors' special needs and he did not develop adequate parenting skills to care for both minors simultaneously. Finally, the court commented that respondent's inability to quit smoking reflected poorly on his desire to regain custody of the minors.

¶ 62 Respondent argues that LCFS and Michalski undermined his progress in several instances by failing to comply with court directives and agency recommendations. He argues that, considering the progress he initially made in his counseling and Michalski's admission that he appeared to be employed, the trial court's ruling was against the manifest weight of the evidence. The State counters by pointing to the issues surrounding respondent's counseling, employment, and housing, arguing that the trial court's ruling must be affirmed because "there is no possibility that the minor[s] could be safely returned to respondent in the near future." See *J.H.*, 2014 IL App (3d) 140185, ¶ 22.

¶ 63 We agree with respondent. The termination of parental rights is a "drastic measure" which deprives a person of a fundamental liberty interest. *In re E.B.*, 231 Ill. 2d 459, 463 (2008). Accordingly, the termination of parental rights will not be upheld where the record demonstrates a lack of services that is consistent with a predetermination of unfitness. See *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 32. Moreover, when official action frustrates parental efforts, the parent's fitness will be judged by actions that show their intent, rather than by their ultimate success. *In re S.B.*, 348 Ill. App. 3d 61, 67 (2004).

¶ 64 Here, apart from the issues surrounding respondent's counseling and his pay stubs, LCFS and Michalski impeded his progress toward accomplishing each of the tasks that the trial court discussed in ruling that he was unfit. LCFS was repeatedly warned about Michalski's lack of communication and the lack of specificity in respondent's service plans, and yet the problems

continued. As late as March 2015, the CASA worker cautioned Michalski to "be more specific in documenting [the] goals in [respondent's] service plan so that progress or lack thereof can be more specifically evaluated." Time and again these warnings fell on deaf ears.

¶ 65 LCFS blatantly disregarded a court order to "assist [respondent] with smoking cessation aids and [the] cost of anti-smoking treatment." The trial court also ordered that respondent's visits were to be increased at the agency's discretion, but his visits were kept at two hours per week. While we cannot fault LCFS for this apparent exercise of discretion, it is troubling that the agency would then cite respondent's lack of progress toward improving his parenting skills as a basis for terminating his parental rights. Lopez-Iftikhar noticed that respondent's limited visiting time made it difficult for him to improve his parenting skills, especially with the minors' attention being constantly drawn to the foster mother. She shared her concerns with Michalski and recommended holding extended visits without the presence of the foster mother. Although Michalski agreed with Lopez-Iftikhar's assessment, she never implemented either of her recommendations. Further problematic was LCFS's failure to provide a parenting coach in accordance with Navarro's recommendation following the clinical staffing. Michalski testified that, in addition to being respondent's therapist, Lopez-Iftikhar "was also supposed to be his parenting coach." This explanation defies reason given Lopez-Iftikhar's testimony that she was hired only to be respondent's therapist and her recommendation that respondent be provided with a parenting coach. LCFS also agreed to inform respondent of the minors' regularly scheduled medical appointments, but Michalski testified that she relied on the foster mother to relay this information—the same foster mother who refused to provide her address to respondent, thus preventing him from attending any in-home therapy sessions.

¶ 66 We are also deeply troubled by Michalski's failure to visit respondent's purported sister's home. In her clinical staffing summary, Navarro recommended that Michalski visit the home and determine whether it was safe for the minors. If the home was deemed unsafe, Michalski was to give respondent "clear specifications in writing, along with a reasonable time frame of at least two weeks, about what needs to be corrected." Michalski disregarded this recommendation based on her assumption that the home was unsafe for the male minor due to the presence of cats. Accordingly, she gave respondent unsatisfactory ratings for his task of maintaining suitable housing for the minors for six continuous months. This was a wholly inappropriate method of evaluating one of respondent's most critical tasks. Respondent was living in a motel when the minors were removed in 2013. Michalski noted in several exhibits that he was "homeless." To flippantly assume that respondent's new residence was unsuitable without conducting a single home visit is inconsistent with the fundamental liberty interest at stake. We note that the foster mother later revealed during the best interests portion of the trial that the minors no longer tested positive for any pet or food allergies. We bring this up not because we are considering it in our review of the issue at hand, but rather to highlight the danger of relying on mere assumptions to terminate a parent's rights.

¶ 67 Given the failures of LCFS and Michalski, it is fundamentally unfair that respondent's smoking habit, his attendance at the minors' medical appointments, his inadequate parenting skills, and his pet-inhabited residence were used as bases to terminate his parental rights. As was the case with respect to his reasonable efforts, we must consider whether his refusal to provide pay stubs and his withdrawal from counseling support the trial court's finding that he failed to make reasonable progress toward the return of the minors. We find no such support. We agree with respondent that a "ministerial task" such as providing pay stubs is "hardly the fulcrum on

which the loss of parental rights should be leveraged." Furthermore, respondent made significant progress in his counseling before his frustrations with Michalski drove him to walk away in exasperation. We disagree with the State that respondent did anything to foreclose the possibility of the minors being safely returned in the near future. Under these circumstances, fairness dictates that he be given another opportunity to prove his ability to provide and care for his children.

¶ 68 In closing, we note that the dispositional order from July 23, 2013, remains in place. That order states that DCFS's guardianship and custody of the minors shall continue until they reach the age of 19 years unless otherwise ordered by the court. Nothing in our ruling should be taken to suggest that respondent's actions thus far warrant a return of the minors.

¶ 69 III. CONCLUSION

¶ 70 For the reasons stated, we reverse the termination of respondent's parental rights.

¶ 71 Reversed.