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2018 IL App (3d) 170573-U

Order filed January 26, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> A.S., J.S. and Jo.S.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Minors	)	Will County, Illinois.
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-17-0573, 3-17-0574, and
	)	3-17-0575
Petitioner-Appellee,	)	Circuit Nos. 15-JA-64, 15-JA-65, and
	)	15-JA-66
v.)	
)	
TRACY S.,	)	Honorable
	)	Paula Gomora,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's determination of parental unfitness pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)) was not against the manifest weight of the evidence.
- ¶ 2 The State filed a petition to terminate the parental rights of respondent, Tracy S., alleging respondent: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of her children—A.S., J.S., and Jo.S. (the minors) —pursuant to section (1)(b) of the

Adoption Act (750 ILCS 50/1(b) (West 2016)); (2) failed to make reasonable efforts to correct the conditions which were the basis for the removal of the minors during the nine-month time period of February 1 to October 31, 2016, pursuant to section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) failed to make reasonable progress toward the return of the minors within any nine-month period after the initial nine-month period following the adjudication of the minors' neglect, with the nine-month time period being February 1 to October 31, 2016, pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)). The trial court found Tracy to be unfit under all three bases alleged and found that it was in the best interest of the minors to terminate Tracy's parental rights. Tracy appeals, arguing the trial court erred in finding her unfit. We affirm the trial court's finding of unfitness.

¶ 3

FACTS

¶ 4

A. Background

¶ 5

On April 29, 2015, the State filed juvenile neglect petitions regarding A.S. (age 3), J.S. (age 2), and Jo.S. (18 months)—the biological children of Tracy and her husband, James S.—in which the State alleged that the minors' environment was injurious to their welfare. The petitions were filed after V.S. (the 18-month-old twin of Jo.S.) died as the result of a dresser falling on him on April 27, 2015. At the time of V.S.'s death, James and Tracy were receiving intact family services from the Department of Children and Family Services (DCFS) for unresolved issues of domestic violence and suspected substance abuse. Tracy and James had not completed intact family services with DCFS at the time of V.S.'s death on April 27, 2015.

¶ 6

After V.S.'s death, the minors were removed from Tracy and James's home. At the shelter care hearing on April 29, 2015, the parties stipulated to the factual basis for the petition. The trial court found that the minors were neglected on the basis of V.S.'s death while all four of

the minors lived in the same home, DCFS having prior involvement with the family, and unresolved domestic violence and suspected substance abuse issues. CASA (Court Appointed Special Advocates) was appointed as the minors' guardian *ad litem* and temporary custody of the minors was placed with DCFS.

¶ 7 Shortly after the minors were removed from Tracy and James, Tracy's father was hospitalized. Tracy's father died on June 21, 2015.

¶ 8 On June 26, 2015, a service plan was established for Tracy. Under the desired outcome that "Tracy will remain drug-free," she was to participate in a substance abuse evaluation, provide random drug screenings, and sign releases. Under the desired outcome that "Tracy will engage in services to address any deficits in her parenting abilities," Tracy was to participate in parenting classes, regularly visit the minors, maintain contact with the caseworker, and correct unsafe conditions in the home. Under the desired outcome that "Tracy will engage in services to ensure good mental health and address any issues related to trauma," Tracy was to sign releases, "continue to see a psychiatrist on regular basis," take medication regularly and as prescribed, and participate in therapy and in a domestic violence assessment.

¶ 9 On July 2, 2015, Tracy underwent a substance abuse evaluation, which resulted in no treatment recommendation. Tracy reported that the dresser fell on V.S. when she was napping and James had fallen asleep while he was watching the minors, who were thought to have been napping. The evaluator received a medication confirmation from Tracy's primary care physician, Dr. Gerald Lofthouse, indicating that Tracy had been prescribed Lorazepam (a benzodiazepine for anxiety), Hydrocodone/Norco (a narcotic pain medication for migraines), Xanax (a benzodiazepine for anxiety), and Ambien (a sedative sleep aid). Tracy and Tracy's mother both reported that Tracy did not have a problem with drugs or alcohol and that Tracy

only took her medications as prescribed. Tracy acknowledged that she had been taking more Xanax than she had in the past due to the deaths of V.S. and her father, but she was still taking it within the boundaries of her prescription. She reported that prior to those losses she had only been using the Xanax periodically. Also, Tracy's drug screens had been negative. It was determined that "at this time Tracy does not meet the criteria for treatment."

¶ 10 At the adjudicatory hearing on July 20, 2015, James and Tracy stipulated the minors' environment was injurious to their welfare. The trial court found the minors to be neglected.

¶ 11 On August 17, 2015, Tracy and James were granted extended visitation with the minors in their home. After five days, on August 23, 2015, DCFS removed the children due to Tracy and James becoming involved in a physical domestic altercation after James returned from an outing with the minors and Tracy discovered that James had been drinking. James was arrested for domestic battery. Tracy was admitted to the emergency room and reported moderate pain from being assaulted by James. The following day, Tracy obtained an emergency order of protection and, two weeks later, a plenary (two-year) order of protection, against James for herself and the three minors.

¶ 12 On September 9, 2015, Tracy kept falling asleep during her visit with the minors, and the minors kept asking her to wake up. Tracy was asked to submit to a random drug drop that day, but she missed the drug drop because she did not remember the caseworker asking her to go.

¶ 13 At a status hearing on September 16, 2015, CASA reported concerns with Tracy's alertness during visitation. The trial court suggested that Tracy speak with her doctor about finding a non-narcotic migraine medication and an alternative to Xanax if her current medications were causing her not to be alert. The trial court indicated that Tracy's medications were an issue "since day one" and she could not be falling asleep when her kids were present.

On September 28, 2015, at the dispositional hearing, the caseworker testified that Tracy had signed releases, maintained consistent communication with the caseworker, and actively engaged in individual counseling with Deborah Meeker. Tracy completed a parenting class, but was being asked to complete an additional, more thorough, parenting class. The caseworker confirmed that Tracy had substance abuse evaluations in July and September 2015, and there was no recommendation for treatment. The caseworker testified that on September 9, 2015, Tracy had attended a visitation with the minors and appeared to be under the influence of something, causing the visit to be terminated early. Tracy had told the caseworker that she had taken a muscle relaxer for her teeth and was experiencing a migraine at the time of the visit. Tracy testified that she had woken up with a migraine that morning and attended the visitation after taking medication. Tracy testified that Xanax does not make it difficult for her to function but “[t]he Norco does.” Tracy testified that she was prescribed Xanax to be taken as needed and was allowed to take more than one if she was having severe anxiety, which she experienced when her father was dying, the minors were removed from her care, and after the domestic altercation with James. Some of Tracy’s drug drops were negative and others were positive for her prescribed medications. The trial court found the cycle of domestic abuse had not been broken, noting a report that Tracy had spoken with James on the phone after she had obtained the order of protection. The trial court also found that the issues of substance abuse and domestic violence had not been corrected and that James and Tracy were dispositionally unfit to care for, protect, train or discipline the minors. The factual basis for the finding pertaining to Tracy was that services were still necessary for domestic violence counseling, individual counseling, and any substance abuse treatment as recommended.

¶ 15 On September 21 and November 30, 2015, Tracy’s drug drops were negative. On November 10, 2015, Tracy’s drug drop was positive for Benzodiazepines (presumably prescribed Xanax). On November 16, 2015, Tracy completed another substance abuse evaluation, which indicated that she was not in need of treatment. On November 23, 2015, Tracy’s drug drop was positive for alcohol at .04%. Tracy’s attorney subsequently argued that Tracy had undergone extensive dental surgery on November 18, 2015, and had been prescribed mouthwash that contained 11.6% alcohol. On December 4, 2015, Tracy cancelled a visit with the minors. On December 9, 2015, Tracy was a “no-call/no-show” for her visit and was asked to perform a drug drop, which was positive for Xanax (prescribed), Aminoclonazepam (not prescribed), Codeine (prescribed) and Morphine (not prescribed). Due to the positive drug drops in November (alcohol) and December (morphine and a benzodiazepine not prescribed), Tracy was required to undergo another substance abuse evaluation.

¶ 16 On January 8, 2016, at a permanency review hearing, the trial court admonished Tracy that she could not be “out of it” if the minors were going to be returned home and questioned Tracy’s diligence in determining the underlying cause of her migraines or in finding alternate treatment so she could adequately parent the minors. The caseworker informed the trial court that Lofthouse was on probation and his license had recently been suspended from September to October of 2015 for overprescribing or misprescribing controlled substances. A requirement for Tracy to consult a different physician was added to Tracy’s service plan. The trial court told Tracy to “get a different doctor.”

¶ 17 B. Nine-month period of February 1, 2016, to October 31, 2016

¶ 18 Tracy received individual therapy from Deborah Meeker for domestic violence, grief, and loss until December of 2015, at which time, Tracy insisted on switching therapists. Tracy met

with her new therapist 12 times, from November 7, 2015, through April 4, 2016. The therapist, Brittany Stevenson, refused to release information regarding Tracy's progress, leaving DCFS unsure whether Tracy was adequately receiving the treatment recommended in her service plan. Stevenson discontinued treatment of Tracy on June 13, 2016, because Stevenson did not feel she was qualified as a trauma therapist or qualified to work with a victim of domestic violence.

¶ 19 On January 7, 2016, Tracy underwent another substance abuse evaluation and was recommended for outpatient treatment, which she began on or about January 27, 2016. While attending outpatient treatment services in February, Tracy called Lofthouse's office and obtained prescriptions for Xanax, hydrocodone, and Ambien. She missed a drug drop on February 4, 2016, and tested positive for benzodiazepines (presumably Xanax) on February 5, 2016. On February 8, 2016, her drug drop was positive for benzodiazepines (presumably Xanax) and opiates (presumably hydrocodone). She missed a drug drop on February 13, 2016. At the end of February, Tracy requested an increased dosage of Xanax from Lofthouse. He did not increase the dosage but, rather, encouraged Tracy to take advantage of counseling and manage her anxiety through lifestyle choices and sparing use of Xanax. Tracy filled her Xanax and Ambien prescriptions at the end of February and her hydrocodone prescription in early March. On March 1, 8, and 25, 2016, Tracy tested positive for benzodiazepines (presumably Xanax).

¶ 20 In February of 2016, Tracy allowed James into their home after he was released from jail. At the time, the order of protection against James was still in place.

¶ 21 On March 25, 2016, Tracy texted incoherent messages to her case manager from 6:00 a.m. until 1:00 p.m. The case manager requested that Tracy perform a random drug drop, which was positive for benzodiazepines.

¶ 22 On March 30, 2016, Tracy called Lofthouse’s office and requested to refill her prescriptions of Xanax and Ambien (but not hydrocodone), which she received and filled the same day. According to the testimony of Tracy’s case manager, at a meeting on April 5, 2016, Tracy indicated that sometimes she takes more than four Xanax “and that’s okay.” Tracy again tested positive for benzodiazepines on April 6, 2016.

¶ 23 On April 21, 2016, Tracy was transferred from outpatient treatment to intensive, inpatient/residential treatment. She was discharged from inpatient treatment on May 12, 2016, at which time Tracy believed that her abuse of medications was situational, occurring due to the deaths of her son and father, James physically abusing her, and James going to jail. She continued to maintain that she did not have an addiction, but agreed that any further use of Norco/hydrocodone or benzodiazepines would be a clear indication that she was, in fact, an addict. Tracy’s discharge orders indicated that she was to see a psychiatrist and a therapist for continued recovery and grief counseling.

¶ 24 The day after her discharge from residential treatment, on May 13, 2016, Tracy called Lofthouse’s office to request a prescription for Clonazepam (a benzodiazepine). Lofthouse prescribed a 30-day supply of Clonazepam, which Tracy had filled on May 13, 2016 (and again on June 7 and July 7, 2015). She also requested and received prescriptions for additional sleep medications, which she had filled monthly, from May 30, 2016, until August 5, 2016.

¶ 25 According to a caseworker, within days of being discharged from residential treatment, Tracy indicated to the caseworker that she did not feel that she had needed treatment and denied the severity of her drug use. Tracy indicated that she would stop taking controlled substances “to make the [a]gency happy” but would continue taking sleeping pills (Ambien). Tracy missed a

drug drop on May 17, 2017. Tracy's drug tests were negative on May 24, June 17 and 21, July 21 and 25, and September 2 and 14, 2016.

¶ 26 On June 7, 2016, Tracy saw Lofthouse to review her care plan for anxiety and headaches. It was noted that Tracy's mindset was to stay clean and seek non-narcotic means of relief for headaches. She received a another prescription for Clonazepam (a benzodiazepine) to be taken on a "true" as needed basis for severe panic attacks.

¶ 27 On July 8, 2016, Tracy fell down the stairs of her home. The case manager testified that morning Tracy had left a difficult to understand voicemail at 8:30 a.m., indicating that she had fallen down the stairs and may be unable to attend the scheduled visit with the minors that day. The case manager indicated that Tracy seemed confused. At 10:00 a.m., Tracy left a message indicating that she was not feeling well, was up all night sick, and was likely going to be unable to attend that day's visitation. When the case manager returned Tracy's call at 11:00 a.m., Tracy seemed confused, did not remember leaving any voicemails, and indicated that she was not feeling well, so they canceled the visit. At 1:30 p.m., Tracy left a voicemail confirming that she was not feeling well and indicating they should cancel the visit. The case manager called police to perform a well-being check on Tracy. Tracy was found in her home with dried blood all over her body and all over the house. Tracy had indicated that she had not taken any pills. She was transported to the emergency room and spent the night in the hospital.

¶ 28 At a follow up appointment three days after the fall, Lofthouse noted that Tracy had blurred vision since the fall, did not recall being in the hospital after the fall, and her short term memory was fragmented. Lofthouse assessed Tracy as having an acute concussion. She did not remember the fall or the timeframe after the fall, which was suggestive of post-concussion amnesia. He also indicated that Tracy's short-term memory was very deficient. At an office

visit on July 18, 2016, Lofthouse noted that Tracy was experiencing confusion, memory lapses, and struggled with word selection, which were symptoms of a resolving concussion.

¶ 29 In July of 2016, Tracy underwent another substance abuse assessment because DCFS requested her to do so in light of her displaying symptoms of confusion and memory lapses. Treatment was not recommended because Tracy had clean drug drops and had indicated that she was not using drugs. It was noted that Tracy had been prescribed Ambien for insomnia, which could not be detected on drug tests and, if abused, could lead to erratic behavior, memory loss, loss of coordination, and slurred speech, which were behaviors consistent with Tracy's behaviors that were concerning the caseworkers. The substance abuse evaluator indicated that there was no way to determine whether Tracy's behaviors were related to substance abuse.

¶ 30 On August 5, 2016, Tracy called Lofthouse's office to request a change in her sleep medication, which she received and filled the same day, which appears to be the last time Tracy requested medication from Lofthouse. In August of 2016, Tracy began seeing another physician (not psychiatrist), Dr. Maria Barino. Tracy received and filled prescriptions for Ambien on a monthly basis, from August until November of 2016.

¶ 31 On Thursday, September 8, 2016, Tracy was involved in a motor vehicle accident when she was on the way to a 3:00 p.m. visit with the minors. The case manager testified that when Tracy called to say she would be late, Tracy seemed "very disoriented" and the case manager felt Tracy said things that did not make sense, such as "[h]azmat was being involved." Tracy was upset about missing the visit and offered \$100 to have the visit rescheduled for the weekend when visits were not usually scheduled. Due to the motor vehicle accident, Tracy was taken to the hospital, and she was prescribed hydrocodone. There is no indication in the record that Tracy filled that prescription.

¶ 32 On September 9, 2016, Tracy was scheduled for a drug drop but did not attend because she indicated that she had been ordered to be on bed rest. The case manager testified that a bed rest order could not be confirmed by the records from the hospital. On September 23, 2016, Tracy missed another drug drop. On September 26, 2016, Tracy began attending individual counseling through a domestic violence program two to three times per month. In October of 2016, Tracy was referred for another substance abuse evaluation due to the positive drug drop for benzodiazepines on October 6, 2016, and missed a drug drop on October 26, 2016.

¶ 33 D. Termination of Parental Rights Hearing

¶ 34 On December 1, 2016, the State filed a petition to terminate Tracy and James's parental rights. The State's petition alleged that Tracy and James were unfit in that: (1) they failed to maintain a reasonable degree of interest, concern, and responsibility as to the children's welfare, pursuant to section 1(b) of the Adoption Act (750 ILCS 50/1(b) (West 2016)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors, pursuant to section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2016)), in the nine-month period of February 1 to October 31, 2016; and (3) failed to make reasonable progress toward the return of the minors during any nine month period after the end of the initial nine-month period following the adjudication of neglect, pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)), with the said nine-month period being February 1 to October 31, 2016.

¶ 35 On July 12, 2017, the hearing on the State's motion to terminate parental rights commenced. In addition to the above-discussed evidence, the following evidence was presented.

¶ 36 i. Medical Records

¶ 37 The State admitted, by agreement, the records of Dr. Lofthouse, pharmacy records, and the records of Stepping Stones Treatment Center. The records showed that since 2013 Tracy had been filling prescriptions for benzodiazepines for anxiety (Xanax/Lorazepam/Diazepam), narcotic pain medication for migraines (Norco/Hydrocodone), and sedative sleep medication (Ambien/Lunesta).

¶ 38 In the months leading up to V.S.'s death, Tracy regularly sought to refill her prescriptions of Xanax, hydrocodone, and sleep medication. In January of 2015, Tracy made multiple requests for refills of the three medications, even though the prescriptions were not yet due to be refilled. Lofthouse encouraged Tracy to maximize her non-drug interventions. On January 22, 2015, Tracy was seen because she had fallen off a ladder two days earlier. She was prescribed a muscle relaxant and a hydrocodone prescription was released two days before it was eligible to be refilled. In February, March, and April of 2015, Tracy received 30-day prescriptions of the three medications—Xanax (60 tablets, to be taken two times per day as needed); Ambien/Lunesta (30 tablets, to be take taken 1 time at bedtime as needed); and Hydrocodone (150 tablets, to be taken 5 times per day as needed). She was encouraged to comply with coping mechanisms other than self-medication as much as possible. In the months prior to V.S.'s death, James had also been prescribed Xanax for anxiety and hyrdocodone for pain relief for frostbite that he incurred in February of 2015, after he passed out drunk outside.

¶ 39 After V.S.'s death Tracy consistently requested monthly refills from Lofthouse of the three types of medications. On May 7, 2015, Lofthouse noted that Tracy was “at some risk for overdose” and she was urged to go to grief counseling. On July 8, 2015, Tracy requested an increase in her Xanax prescription from two to four tablets per day as needed, which she received. After the minors were adjudicated neglected, Tracy continued to request and receive

monthly prescriptions of her medications (Xanax, hydrocodone, and sleep medications), but Lofthouse urged lifestyle management of stress, exercise, and counseling over grief and losses. At an office visit with Lofthouse on December 3, 2015, it was noted that Tracy had a really tough year and she was requesting that her Xanax prescription be filled early. She was given a prescription for an antidepressant, Ambien, hydrocodone (to be filled in one week), and Xanax (to be filled in two days). The pharmacy called Lofthouse's office indicating that Tracy was attempting to have the Xanax prescription filled that day, but Lofthouse declined the request. On December 28, 2015, Tracy called Lofthouse's office to request refills of sleep medication, Xanax, and hydrocodone, which she was given to be filled in early January.

¶ 40 After Tracy started outpatient treatment services in February of 2016, she continued to request and receive prescriptions for the medications from Lofthouse in February and March, despite the trial court's oral instruction in January (at a permanency review hearing) for Tracy to find a different doctor. After Tracy began inpatient treatment on April 21, 2016, she no longer requested opiates/narcotic pain medication (hydrocodone) from Lofthouse, but continued to request benzodiazepines (Clonazepam instead of Xanax) until July of 2016, even though upon discharge from inpatient treatment she had indicated that she would not take benzodiazepines.

¶ 41 ii. Individual Counseling

¶ 42 The parties entered a stipulation regarding the testimony of licensed clinical social worker, Deborah Meeker. The parties agreed that Meeker would testify that she completed a mental health assessment of Tracy on July 27, 2015, and Tracy was in denial about the seriousness of her "presenting issues" and was resistant to explore the issues that brought her to therapy. It was recommended that Tracy have a psychiatric evaluation due to the fact that she may be misusing her prescription medications. Meeker would testify that in her quarterly case

review of Tracy on December 18, 2015, Tracy's progress was noted to be minimal because Tracy was not open to learning to manage her stress and anxiety in a holistic or natural way and, instead, stated that she will always need to take Xanax. Tracy terminated therapy services with Meeker in December of 2015, against Meeker's recommendation, and saw a different therapist (Stevenson) through April of 2016. Thereafter, Tracy attended counseling and actively participated in services through a domestic violence program from September 26, 2016, through April 3, 2017.

¶ 43

iii. Psychological Evaluation

¶ 44

Dr. Nicholas O'Riordan testified that he performed a psychological evaluation on Tracy on October 25 and 31, 2016. Tracy indicated that she was not currently taking any anxiety or pain medication but was still taking Ambien for sleep. Tracy indicated that she had been diagnosed with anxiety by her primary care physician, Lofthouse, but she had not been evaluated by a mental health professional. O'Riordan recommended that Tracy cooperate with all services, get a physical examination, definitely resolve the substance abuse issue, work on her issue of enabling and attitudes that created a dangerous atmosphere, and, if necessary, return to inpatient treatment. He recommended Tracy be given 6 to 12 months to comply with services and try to turn her life around. The "main thrust" of O'Riordan's report was a recommendation for "one more strong effort and hopefully Tracy would cooperate with that." He recommended a neuropsychological evaluation to "clear up the picture" regarding Tracy's memory lapses and her falling down, and he recommended cognitive reality-based therapy. O'Riordan testified that Tracy was in denial as to both substance abuse and domestic violence issues, with her indicating there was not a problem, she was not afraid of James, and the problem with the drugs was due to the false positives on her drug tests. After meeting with Tracy, O'Riordan did not believe that

she could safely parent the minors if they were in her full custody. He opined that if Tracy's condition remained the same after 6 to 12 months of services, there would be a risk of Tracy allowing James back into the family or continuing her substance abuse, leading to another incident of neglect or domestic violence.

¶ 45 O'Riordan's report was entered into evidence. In his report, O'Riordan had indicated that Tracy's cognitive abilities should have been an asset and should have allowed to her complete services, but "[t]his has not been the case." He noted that Tracy had a very high level of verbal intelligence and a relative weakness in short term memory. Testing did not explain Tracy's repeated memory lapses. Tracy's pervasive forgetfulness and inattention raised concerns about safe parenting, "particularly because neglect and inadequate supervision have exposed her children to risk in the past." Tracy demonstrated "an extreme level of denial that to an outside observer might appear delusional," but there was no evidence of psychosis or thought disorder. Tracy was "not learning from experience." Tracy was taking on the role of enabler and denier "to an extreme degree" and had an "irrational stance" of having no fear of James. Tracy was "dismissive of any services or any effort to impose change in her life or improve her ability to safely parent because she unreasonably assume[d] there never was a problem." In discussing V.S.'s death, Tracy shifted blame to James with no implication that he should not have been trusted to watch the children. O'Riordan indicated, "[w]here a pattern is evident to an outside observer, [Tracy] only sees a series of disconnected coincidences and unfortunate events." O'Riordan indicated that "radical denial" was the main issue preventing Tracy from being able to safely parent, which included her "radical denial or minimization of any failings on her part" such as the negative consequences of her use of prescription substances. Events in the past few months, such as Tracy falling down the stairs, getting into a car accident, missing appointments,

and experiencing memory lapses could have been due to an overuse of prescription medication, including Ambien, but Tracy did not “acknowledge the reality or possibility of such a connection.” O’Riordan also indicated there was a risk that Tracy would introduce James back into the family as soon as she would be able to do so. O’Riordan indicated that if Tracy did not alter her current beliefs and behavior patterns then an alternate long term placement for the minors would be necessary. O’Riordan indicated that one more strong effort to help Tracy make the necessary changes would be reasonable, but if she was still entrenched in her current position in 6 to 12 months then termination of her parental rights would have to be considered.

¶ 46 iv. Tracy’s Testimony

¶ 47 In testifying, Tracy initially could not readily remember the dates of the minors’ births. She indicated that she had problems remembering things and that she had three concussions the past year, “so it makes [her] memory a little weird sometimes.” Tracy eventually answered questions as to the dates of the minors’ births.

¶ 48 Tracy testified that there had not been any domestic violence in her marriage with James until August 23, 2015, when he brought the kids home and he had been drinking. Tracy testified that prior to that incident James had been “clean” for three months and had been released from jail two weeks prior. During that incident James picked her up and threw her on the ground and then slammed her head against the cement sidewalk. She indicated that the minors’ had not witnessed the incident because they were in their rooms upstairs. Tracy obtained the order of protection “on the advice of DCFS.” She did not want to get the order of protection just because James “had done one thing wrong.” She explained that DCFS asked her to get the order of protection, but she knew that “[James] would never do this to [her] again or any other woman for that matter.” Tracy called police on August 23, 2015, because James would drink and become

angry and she did not want the kids present “in case he ever did do something.” Tracy acknowledged that she had told many people that when James drank alcohol he became violent and August 23, 2015, was not the first occasion he had become drunk and violent. Tracy confirmed that she went to the hospital after the incident and was diagnosed with a concussion.

¶ 49 The State introduced as an exhibit the petition for the order of protection that Tracy had executed. In the verified petition for the order of protection, Tracy had indicated that on August 23, 2015, James drove home drunk from the park with the kids, and she had found two empty cans of beer and two empty pints of vodka on the floor of the truck. She indicated that she put the kids to bed and then she and James started to argue. She described the physical assault of James kicking her, punching her, and slamming her on the ground. She indicated in the petition, “my 3 year old saw all of this.” (Tracy testified, “[h]e heard it, he didn’t see it though”). Tracy also had indicated in the petition that in January or February of 2015 James was drunk and became argumentative and verbally abusive, ripped out the closet door, put holes in the drywall, and picked her up and tried to throw her out of the house. She indicated in the petition that police had been called to their house approximately once per month and that she was afraid because James had relapsed and she feared for her and the minors’ safety. Tracy had also indicated, “James has depression and has panic attacks and PTSD (post traumatic stress disorder). The alcohol turns him into a different person.”

¶ 50 Tracy acknowledged that after she obtained the order of protection in August of 2015, she continued to have regular phone contact with James when he called her from jail. She acknowledged that some calls were “quite lengthy” and she knew the phone calls violated the order of protection. Tracy was asked if James had made 200 calls to her, and Tracy responded, “I will have to go with your knowledge of that count.” She testified that she had allowed James

back into the house in February of 2016, after James walked to their Bolingbrook home from the jail in Joliet and he had no other place to go.

¶ 51 Tracy further testified that Lofthouse diagnosed her with anxiety in her early 20's, and she had been taking Xanax for the past six or seven years. Tracy testified that she could suffer headaches three times a week or there could be months that she did not get any headaches, depending on how things were going in her day-to-day life. When she first started taking Xanax, Tracy took one pill per day. During the pendency of this case, she took Xanax up to two or three times per day, but never five or six times a day. Tracy testified that she does not remember the period of time after the death of V.S. in April of 2015 and the time around the death of her father in June of 2015. She acknowledged that she had a problem with her medication in the months following V.S.'s death, the removal of the minors from her care, and the death of her father, but after that timeframe, she "just didn't do it anymore." Tracy testified that she saw her general doctor, Lofthouse, every month. She did not have a psychiatrist.

¶ 52 Tracy additionally testified that she fell down the stairs on July 8, 2016, but she had no memory of the week before or after the fall. She explained, "it just wiped my brain out." She was also in a car accident in August of 2016, wherein she was the last car in a three-car accident. She testified she had been ticketed for the accident because she said it was her fault since she was the last car.

¶ 53 Tracy testified that in September of 2016, she moved in with her mother after her home was foreclosed on and she believed that she fell down the stairs when moving into the home. Despite suffering multiple concussions, a neurologist did not find any evidence of any brain disorder or injury as a result of the concussions.

¶ 54 V. Testimony of the Case Manager and GAL

¶ 55 The case manager for DCFS testified that she had not been able to recommend unsupervised visits between Tracy and the minors during the pendency of this case. She acknowledged that the head injuries incurred by Tracy from falling down the stairs and being in the motor vehicle accident in July and August 2016, could have possibly caused Tracy's displays of confusion. The case manager also testified that despite recommendations that Tracy see a psychiatrist for medication monitoring, Tracy did not do so until February of 2017.

¶ 56 The case manager testified at the termination hearing that she was not an expert regarding drug testing levels but her agency had "refer[red] back to our testing facility who did state that those were high levels." She indicated that Stepping Stones Treatment Center had expressed concerns about the levels of Tracy's positive drug results and spoke with Tracy about her levels being indicative of drug abuse.

¶ 57 Melanie Buhle testified that she was employed with CASA (the GAL) and had worked on this case since September of 2015. In April 2016, Tracy made comments during meetings that were "concerning" to Buhle. A child and family team meeting had been scheduled at Tracy's request and then when the meeting took place, Tracy stated that she did not understand why they were there. At the meeting, they were discussing concerns with Tracy's medication levels and Tracy indicated that she did not have a problem with substance abuse or medications because she had a prescription for her medication to be taken as needed. Tracy also denied having any phone contact with James while he was incarcerated until she was confronted with phone records of over 100 conversations that lasted up to 24 minutes. Tracy indicated that James was the only source of support she had, so she had decided to talk with him. Tracy also was upset that caseworkers were concerned about a mattress that was leaning up against the wall in Tracy's home, and Tracy did not seem to appreciate the danger that mattress would pose to the minors.

Tracy had also indicated that she did not need domestic violence counseling and commented that James had been the one who left in stitches after their domestic altercation.

¶ 58 On August 28, 2017, the trial court found by clear and convincing evidence that Tracy and James were unfit on three bases alleged in the termination petition and that it was in the best interest of the minors to terminate their parental rights. Tracy appealed.

¶ 59 ANALYSIS

¶ 60 I. Finding of Unfitness

¶ 61 On appeal, Tracy challenges the trial court's finding that she was unfit. The State, in response, argues the trial court's determination was proper.

¶ 62 The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship and, as such, the State must prove parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(4) (West 2016); *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court's decision should not be reversed on appeal unless its finding was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208. Only if it is clearly apparent from the record that the trial court should have reached the opposite conclusion will the trial court's decision be against the manifest weight of the evidence. *Id.*; *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2003).

¶ 63 In this case, the trial court found Tracy unfit, *inter alia*, pursuant to section 1(D)(m)(ii) of the Adoption Act because she failed to make reasonable progress toward the return home of the minors during the nine-month period of February 1 to October 31, 2016. Reasonable progress means a demonstrable movement toward the goal of reunification. *C.N.*, 196 Ill. 2d at 211. The benchmark for measuring a parent's reasonable progress under section 1(D)(m)(ii) of the Adoption Act includes compliance with service plans and court directives in light of the

condition that gave rise to the removal of the child and other conditions which later become known that would prevent the court from returning custody of the child to the parent. *Id.* at 216-17. Reasonable progress exists when the trial court can conclude that the progress being made by a parent to comply with directives given for the return of the minor is sufficiently demonstrable and of such a quality that the trial court will be able to order the minor returned to parental custody in the near future. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22; *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). Failure to make reasonable progress toward the return of the minor includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care. 750 ILCS 50/1(D)(m) (West 2014); *C.N.*, 196 Ill. 2d at 217. The trial court is to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward the return of the minor. *In re J.L.*, 236 Ill. 2d 329, 341 (2010).

¶ 64 During the applicable nine-month period in this case, Tracy's service plan indicated that she was required to receive individual counseling regarding domestic violence. Tracy had stopped meeting with Meeker in December of 2015, against Meeker's recommendation, and started therapy with Stevenson until April of 2016. Although Tracy was consistent in meeting with Stevenson, there was no indication as to Tracy's progress with Stevenson because Stevenson refused to release information and eventually stopped treating Tracy because Stevenson felt she was not qualified to do so. While Tracy was in therapy with Stevenson, in February of 2016, Tracy had allowed James into her home, in violation of the order of protection. After Tracy stopped attending individual therapy with Stevenson in April of 2016, she did not attend individual counseling again until she began a domestic violence program in late September 2016. At the end of the nine-month period, in October of 2016, O'Riordan had

evaluated Tracy and determined that Tracy was in denial regarding domestic violence issues and she did not believe domestic violence had been an issue in her life. Thus, there is no indication that Tracy made any progress regarding domestic violence issues during the nine-month period.

¶ 65 In February through May of 2016, Tracy had attended both inpatient and outpatient treatment regarding her suspected prescription substance abuse. She continued to use Xanax, hydrocodone, and Ambien in February, March and April of 2016. At the time of her discharge from inpatient treatment on May 12, 2016, Tracy continued to maintain that she did not have an addiction or substance abuse problem but agreed to refrain from using opiates and benzodiazepines. However, within days of being discharged, Tracy requested and received a prescription for a benzodiazepine, Clonazepam, from Lofthouse to be used as needed for panic attacks. Tracy initially filled the 30-tablet prescription in mid-May and obtained additional prescriptions on June 7 and July 7, 2016. Therefore, Tracy was either consistently experiencing extreme panic attacks and exhausted her medication each month, or she was not taking the medication on a true as-needed basis. To aid in determining Tracy's required level of medication, as part of her service plan Tracy was required to be evaluated by a psychiatrist and see a psychiatrist on monthly basis for medication monitoring, but Tracy never saw a psychiatrist during the relevant nine-month period. Instead, she continued to deny any substance abuse problems and continued to request medications from Lofthouse through July of 2016, even despite the trial court's instruction months earlier for Tracy to find another doctor. Additionally, during the nine-month period Tracy missed multiple drug drops.

¶ 66 Therefore, throughout the nine-month period, Tracy continued to have unresolved issues surrounding domestic violence and suspected substance abuse issue, which were the conditions that gave rise to the removal of the minors. Furthermore, at no point did Tracy progress from

having supervised visits with the minors to unsupervised visits. Thus, the trial court’s finding that Tracy failed to make reasonable progress toward the return of the minors was not against the manifest weight of the evidence where Tracy failed to substantially fulfill her obligations under the service plan and failed to correct the conditions that brought the minors into care. We, therefore, affirm the trial court’s finding that Tracy was unfit pursuant to section 1(D)(m)(ii) of the Adoption Act. See 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 67

II. Drug Test Levels

¶ 68

Tracy also contends that it was plain error for the trial court to consider the case manager’s testimony indicating that Tracy’s positive drug tests were at high levels or above limits because the case manager was not a drug expert. However, Tracy provided no further support or authority for this argument so we need not consider it on appeal. See *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 (the appellate court is not a repository into which an appellant may foist the burden of argument and research); Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (“[p]oints not argued are waived” on appeal).

¶ 69

Additionally, Tracy did not object to the testimony at trial and, therefore, the issue is forfeited for appellate review. See *In re Detention of Traynoff*, 358 Ill. App. 3d 430, 441 (2005) (generally in civil cases, the failure to specifically and timely object waives the objection for purposes of review). Presumably acknowledging her procedural default, Tracy argues that this court should consider her allegation of error under the plain error rule. See Ill. S. Ct. Rule 615(a) (plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court). The first step in a plain error review is to determine whether there was error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 70 Here, the case manager described Tracy’s positive drops as being at high levels but acknowledged she was not an expert and it was the Stepping Stones Treatment Center that had indicated the levels were high. There was no evidence of a range within which Tracy should have been testing if she were taking her medications as prescribed or if she had been taking the medications conservatively. There was also no evidence that the specified “cutoff” level was indicative of anything other than the level needed to yield a positive test result. The reference to the drug levels was the case manager testimony that Stepping Stones Treatment Center had indicated that Tracy’s positive test results were high and spoke with Tracy about the levels being indicative of possible substance abuse, which was hearsay. Hearsay evidence that is admitted without objection is given its natural probative effect. *Ramsey*, 205 Ill. 2d 287 at 293 (the failure to object to hearsay not only waives the issue on appeal, but also allows the evidence to be considered by the trier of fact and be given its natural probative effect). Therefore, we find no error.¹

¶ 71 CONCLUSION

¶ 72 The judgment of the circuit court of Will County is affirmed.

¶ 73 Affirmed.

¹ We also note that the application of the plain error doctrine in civil cases is rare and should be applied only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process, which did not occur in this case. See *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶ 37.