2018 IL App (3d) 180345-U

Order filed November 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re T.I.-K.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Henry County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0345
	)	Circuit No. 15-JA-22
v.	)	
	)	
Rachel K.,	)	The Honorable
	)	Terence M. Patton,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice O'Brien dissented.

ORDER

¶ 1 *Held*: In an appeal in a termination of parental rights case, the appellate court held that the trial court's parental unfitness and best interest determinations were not against the manifest weight of the evidence. The appellate court, therefore, affirmed the trial court's judgment, terminating the biological mother's parental rights to her minor child.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed an amended motion to involuntarily terminate the parental rights of respondent mother, Rachel K., to her minor child, T.I.-K. After hearings on the matter, the trial court found that respondent was an unfit parent/person and that termination of parental rights was in the minor's best interest and terminated respondent's parental rights to the minor. Respondent appeals, challenging both the determination of parental unfitness and best interest. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Respondent was the biological mother of the minor child, T.I.-K., who was born in February 2013. The minor's father passed away in July 2014. In August 2015, the Department of Children and Family Services (DCFS) took protective custody of the minor after the minor and his four-year-old brother were found wandering outside their home without adult supervision. The brother stated that they were not able to wake up respondent. Shortly thereafter, the State filed a juvenile petition seeking to have the minor found to be a neglected minor and made a ward of the court. The petition alleged that the minor had been subjected to an injurious environment based upon the above incident and based upon a previous incident from a few days earlier when his brother was found wandering outside the home without shoes on. Respondent was given a court-appointed attorney to represent her in the juvenile court proceedings. The minor was placed with his paternal great-aunt, June W.

¶ 5 On February 10, 2016, an adjudicatory hearing was held on the juvenile neglect petition. Respondent stipulated to the factual basis for the petition. Based upon the stipulation, the trial court found that the minor was a neglected minor.

¶ 6 The following month, a dispositional hearing was held. At the conclusion of the dispositional hearing, the trial court entered a dispositional order in which it found that

respondent was unable to care for the minor. The trial court made the minor a ward of the court and named DCFS as the minor's guardian. The permanency goal was set at that time for the minor to be returned home within 12 months. In the dispositional order, respondent was instructed that she was required to comply with the service plan that was implemented and to correct the conditions that led to the adjudication and removal of the minor.

¶ 7 Pursuant to that service plan (the February 2016 service plan), respondent was required to, among other things: (1) attend and participate in individual counseling sessions and follow the recommendations given; (2) obtain and maintain legal employment; (3) obtain and maintain appropriate and safe housing; (4) achieve and maintain a substance free lifestyle and complete random drug tests as required; (5) attend all of her visits with the minor and demonstrate appropriate parenting skills; and (6) sign all necessary releases so that her caseworker could obtain information. Additional service plans were filed in September 2016 (dated August 2016) and in March 2017 (dated February 2017). Along with the above requirements, all of which were retained in the additional service plans, some new requirements were added in April 2016. Respondent was required to complete a domestic violence evaluation, to comply with the recommendations contained therein, to refrain from contact with domestic abusers (Dean S.), to complete parenting education classes, and to implement the skills she had learned in parenting classes.

¶ 8 The first permanency review hearing was held in August 2016. Respondent was present in court for the hearing and was represented by her attorney. A report, which covered the period from March 23, 2016, to August 5, 2016, had been prepared for the hearing by the caseworker, Cynthia Felske. As for the positive aspects of respondent's performance during the period, the report showed that: (1) respondent was participating and making progress in individual

counseling sessions, even though she had only attended about half of her appointments; (2) there was no evidence that respondent was using any illegal substances; (3) respondent submitted to a urine test in July 2016 and tested negative for the presence of drugs; (4) respondent had completed parenting classes in April 2016; and (5) respondent had attended all of her visits and had shown improvement in managing the minor's (and her other children's) behavior during visits. As for the negative aspects of respondent's performance, the report showed that: (1) respondent had not been able to maintain stable or consistent employment and had worked at a gas station in March and April 2016, at a fast food restaurant for about two weeks in April 2016, through a temporary employment agency for about four or five weeks in June and July 2016, and was unemployed as of the date of the report; (2) respondent had failed to consistently provide proof of her employment to the caseworker; (3) respondent was unable to maintain stable housing, had been evicted from her apartment in July 2016 for non-payment of rent, and had thereafter told the caseworker that she was living with a friend but did not know the address; (4) although respondent had made improvement, she still struggled to manage her children's behaviors and to assure their safety during visits; (5) respondent had maintained her relationship with Dean S., even though she had been told that the minor (and her other children) could not be returned to her if she and Dean S. remained a couple, unless Dean S. performed his services; and (6) respondent had denied that Dean S. lived with her, but Dean S. had reported his address to the caseworker in June 2016 as being the same as respondent's. The caseworker recommended in her report that the permanency goal for the minor remain the same. After considering the caseworker's report, the trial court found that respondent had made reasonable efforts but had not made reasonable progress toward returning the minor home. In making that finding, the trial court noted that respondent had made some progress but not reasonable progress. The trial court

agreed with the caseworker's recommendation and kept the permanency goal at returning the minor home within 12 months.

¶ 9 A second permanency review hearing was held in March 2017. Respondent was present in court for the hearing and was represented by her attorney. A report, which covered the period from August 5, 2016, to January 24, 2017 (the permanency hearing was initially scheduled for February 2017), had been prepared for the hearing by the caseworker. As for the positive aspects of respondent's performance during the period, the report showed that: (1) respondent was successfully discharged from individual counseling in November 2016; (2) there was no evidence that respondent was using any illegal substances; (3) respondent submitted to a urine test in December 2016 and tested negative for the presence of drugs; (4) respondent had attended almost all of her visits with the minor (and her other children); and (5) respondent had obtained part-time employment at the Kewanee nursing home and had been working at that location since October 2016. As for the negative aspects of respondent's performance, the report showed that: (1) although respondent had found employment, her income was still not enough to support herself and her children; (2) respondent was unable to maintain stable housing, had been staying with friends, had not provided the caseworker with her address since July 2016, and had allowed Dean S. to live with her at times; (3) while respondent had attended most or all of her visits with the minor, she needed repeated prompting not to be texting or otherwise on her cell phone during visits (other than activity with the minor) and not to be talking with the person or persons supervising the visits; (4) respondent still struggled to manage her children's behavior and to assure their safety during visits; (5) respondent had not yet completed a domestic violence evaluation or engaged in domestic violence services; (6) respondent had maintained her relationship with Dean S., even though she had been told repeatedly that the minor (and her other

children) could not be returned to her if she and Dean S. remained a couple, unless Dean S. performed his services; and (7) respondent had provided conflicting information to the caseworker about whether she was in a relationship with Dean S. The caseworker recommended in her report that the permanency goal for the minor remain the same. After considering the caseworker's report, the trial court found that respondent had made reasonable efforts, but just barely. The trial court also found that respondent had not made reasonable progress toward returning the minor home. The trial court kept the permanency goal at returning the minor home within 12 months.

¶ 10 A third permanency review hearing was held in June 2017. Respondent was present in court for the hearing and was represented by her attorney. A report had been prepared for the hearing by the caseworker. Although not quite clear from the record, it appears that the report covered the period from January 24, 2017, to May 24, 2017. As for the positive aspects of respondent's performance during the period, the report showed that: (1) there was no evidence that respondent was using any illegal substances; (2) respondent submitted to a urine test in March 2017 and tested negative for the presence of drugs; (3) respondent had attended almost all of her visits with the minor (and her other children); (4) respondent continued to work part-time at the Kewanee nursing home; and (5) respondent reported in April 2017 that she had started domestic violence counseling. As for the negative aspects of respondent's performance, the report showed that: (1) respondent's income was not enough to support herself and her children; (2) although respondent had consistently stated that she was going to find a different job or a second job, she had failed to do so; (3) while respondent had provided some paycheck stubs to her caseworker, she had failed to do so on a monthly basis; (4) respondent was unable to maintain stable housing, had been staying with a lady in Kewanee, had not provided the

caseworker with her address since July 2016, and was currently living at the same location where Dean S. was living; (5) although respondent had attended almost all of her visits with the minor, she needed repeated prompting not to be texting or otherwise on her cell phone during visits and not to be talking with the person or persons supervising the visits; (6) while respondent had started domestic violence counseling, she had failed to sign a release of information at the counseling center so that her caseworker could verify respondent's attendance and participation; (7) respondent had provided conflicting reports to her caseworker about her attendance at domestic violence counseling; (8) respondent remained in a relationship with Dean S., who was verbally abusive toward her, and respondent failed to recognize that verbal abuse was domestic violence; and (9) respondent had maintained her relationship with Dean S., even though she had been told repeatedly that the minor (and her other children) could not be returned to her if she and Dean S. remained a couple, unless Dean S. performed his services. The caseworker recommended in her report that the permanency goal for the minor remain the same. After considering the caseworker's report, the trial court found that respondent had made reasonable, but not perfect, efforts toward returning the minor home and that respondent had not made reasonable and substantial progress. The trial court changed the permanency goal for the minor to substitute care pending a determination on termination of respondent's parental rights.

¶ 11 In August 2017, the State filed a motion to terminate respondent's parental rights to the minor child. An amended motion was later filed. The amended motion to terminate alleged that respondent was an unfit parent/person as defined in the Adoption Act because she failed to make reasonable progress toward the return home of the minor during any nine-month period following the adjudication of neglect (see 750 ILCS 50/1(D)(m)(ii) (West 2016)). Two nine-

month periods were specified in the motion: April 2016 to December 2016 and January 2017 to September 2017.

¶ 12 In March 2018, an evidentiary hearing was held on the parental fitness portion (the parental fitness hearing) of the termination proceeding. Respondent was present in court for the hearing and was represented by her attorney. Two witnesses were called to testify, the caseworker and respondent. The caseworker, Cynthia Felske, testified that when she took over the case in April 2016 (the start of the first nine-month period), the permanency goal was to return the minor home within 12 months. The services that were recommended for respondent at the time were that respondent needed housing, income, mental health counseling, substance abuse counseling, domestic violence counseling, and parenting training. During her testimony, Felske described in detail respondent's progress on each of the recommended service areas.

¶ 13 As for housing, Felske stated that in April 2016, respondent moved to a three-bedroom apartment in Kewanee. Respondent was evicted from that apartment in July 2016 for not paying rent. From July 2016 until a point after the end of the second nine-month period, Felske did not have an address for respondent.

¶ 14 With regard to employment, Felske reported that respondent was hired at the Kewanee nursing home in October 2016 and remained in that position until at least December 2016. Felske was not sure how long respondent stayed in that position because Felske did not receive any paycheck stubs from respondent as proof of employment after December 2016, even though she asked respondent to provide her with that information. Respondent, however, continued to tell Felske that she was still employed at the nursing home until September 2017, when respondent reported that she had left that position.

¶ 15 In the area of substance abuse, Felske stated that at the outset of the case, it was reported that respondent was staying at a drug house and associating with drug users. During Felske's involvement with the case, she continued to receive reports that respondent was associating with known drug users. Prior to the start of the first nine-month period, respondent obtained a substance abuse evaluation and no services were recommended. During the relevant nine-month periods, Felske had respondent submit to a urine test from time to time, and respondent always tested negative for the presence of drugs, although respondent failed to submit to a certain number of tests for various reasons, such as that she was working, did not get the message, did not have her driver's license with her, or did not have gas. Respondent always reported, however, that she did not use drugs.

¶ 16 With regard to visitation, Felske testified that respondent was scheduled for two hours of supervised visitation with the minor per week until June 2017 when the permanency goal was changed to substitute care and respondent's visitation was reduced to once per month. Respondent had attended the majority of her visitation sessions and was rated satisfactory in her visitation attendance. Respondent, however, did not always provide the required 24-hour notice if she was going to miss a visitation session, so that the session could be rescheduled. During visitation sessions, respondent interacted fairly well with the minor, although respondent got distracted at times by her cell phone. In addition, respondent did not always properly supervise or discipline the minor and had to be prompted or directed to do so. Initially, respondent's visitation sessions with the minor included the minor's two siblings, but that was changed prior to the start of the first nine-month period.

¶ 17 With regard to parenting training, Felske indicated that respondent completed 10 hours of parenting education in April 2016. Felske or the agency, however, had concerns that respondent

was not using or applying what she had been taught in the parenting class as to safety and appropriate supervision of a child.

¶ 18 As for domestic violence counseling, Felske testified that respondent reported that she started domestic violence counseling in April 2017. The counseling center had its own release form that respondent had to sign in-person at the counseling center (it would not honor the caseworker's release form). Felske called the center in April 2017 and August 2017 and was told that respondent had not signed the release form. In October 2017, respondent provided Felske with a certificate of completion for domestic violence education classes and told Felske that she had signed the center's release form. Felske called the counseling center to verify that respondent had completed counseling and was told that a release form had not yet been signed and that no information could be provided. In addition to the lack of verification, Felske deemed respondent's progress on domestic violence counseling to be unsuccessful because respondent maintained her relationship with Dean S.

¶ 19 On the issue of other counseling, Felske testified that respondent had a mental health evaluation and that no psychiatric services were recommended. Respondent was, however, recommended for individual counseling for such things as panic attacks, moving beyond past trauma, stress, and symptoms of anxiety and depression. Respondent had participated in individual counseling from prior to the start of the first nine-month period until November 2016, although she had only attended about half of the scheduled sessions. In November 2016, respondent told the counselor that she was no longer experiencing the symptoms and was discharged from counseling.

¶ 20 As for respondent's relationship with Dean S., Felske stated that Dean S. had been respondent's boyfriend for the entire time that Felske was involved with the case. Services had

been recommended for Dean S. but he did not participate in any of them. Prior to or during June 2016, respondent had told Felske that she and Dean S. were not living together. However, when Dean S. called Felske that month and asked that certain paperwork be sent to him, he gave Felske the same address as respondent.

¶ 21 Respondent testified at the parental fitness hearing and acknowledged that since about the start of the first nine-month period up to the time of her testimony (past the end of the second nine-month period), she had lived at several different places. Respondent stated that she moved one or more times for financial reasons and another time to get a bigger apartment.

¶ 22 As for her relationship with Dean S., respondent indicated that she was no longer seeing Dean S. because he had recently (after the relevant nine-month periods had ended) threatened her and because she wanted to get her children (the minor and his siblings) back. Respondent commented that Dean S. had always threatened to beat her up and to cut her throat, but she had never seen Dean S. engage in any physical or verbal domestic violence toward the minor.

¶ 23 On the issue of employment, respondent testified about some of the various jobs that she had and the reasons why she quit them. Most of that testimony, however, pertained to times outside of the two nine-month periods. As for the relevant time periods, respondent stated that she did not have a job at the start of the first nine-month period in April 2016 until June 2016. From June 2016 to July 2016, respondent worked at a place that made gun parts, and from October 2016 to August 2017, respondent worked at the nursing home. As for proof of employment, respondent stated that she did not provide proof at times because she was not getting paid by check and did not have paycheck stubs to show. Respondent's testimony in that regard, though, appeared to be referring to the jobs that she worked outside of the two nine-month periods. When questioned further about the matter, respondent indicated that she received

paychecks when she worked at the nursing home and thought she had given those paycheck stubs to her caseworker.

¶ 24 With regard to her parenting skills and the issue of visitation, respondent confirmed that she had completed a parenting course and denied that she would get distracted by her cell phone during visitation. Respondent stated that she used her phone during visitation to take pictures of the minor and to look up videos or music for the minor. According to respondent, she only really used her cell phone one time on a visit and that was to call her mother and father because the minor wanted to talk to them. Respondent commented that most of the times during the visits, the caseworker was on her own cell phone. Respondent denied that she did not appropriately supervise or discipline the minor during visitation. Respondent acknowledged, however, that there were some times that she had forgotten to call ahead of time to confirm her visits with the minor.

¶ 25 As for the remaining service areas, respondent testified that she was telling the truth when she provided reasons to the caseworker for why she could not take a particular drug test. Respondent did not provide verification that she had to be at work when one of the drug tests was requested because she did not have a work schedule at the time. Respondent confirmed during her testimony that she did not use drugs. With regard to the release of information from the domestic violence counseling center, respondent indicated that she had signed some papers and had thought she had signed a release and that she was willing to sign another release if another release was required.

¶ 26 At the conclusion of the parental fitness hearing, after listening to the arguments of the parties' attorneys and of the guardian *ad litem* (GAL), the trial court found that the State had proven by clear and convincing evidence that respondent had failed to make reasonable progress

toward the return home of the minor during both of the nine-month periods alleged and that respondent was an unfit parent/person. In making those findings, the trial court noted that respondent had made some progress but had not made reasonable and substantial progress such that the minor could be returned to respondent within the near future.

¶ 27 A best interest hearing was held the following month. Respondent was present in court for the hearing and was represented by her attorney. A best interest report had been prepared by the caseworker in preparation for the hearing and had been filed with the court. In the report, the caseworker noted that the minor was five years old and had resided in the same foster home with the current foster parent, his paternal great-aunt, June W., for the past 32 months. The foster parent, June W., consistently provided for the minor's basic needs of health, safety, education, and well-being. June W. lived in a four-bedroom home with her mother, her niece, her nephew, and numerous pets. She served as the guardian for her niece and nephew and had provided care for them since 2009. She worked full-time as an in-home licensed daycare provider. June W. loved the minor, was willing and able to adopt the minor, and was willing to allow the minor to maintain a relationship with his half-siblings. The minor was very attached to June W. and displayed love for her. The minor referred to June W. as "Aunt Bug" and occasionally as "Mommy." The minor would seek out June W. for support and comfort and was happy, content, and well adjusted in the home. The minor was an accepted member of June W.'s family and her community and felt loved, safe, and secure in his current location. The minor's attachments and sense of security and familiarity were with June W. and the foster family. It was the caseworker's belief that it was in the minor's best interest to remain with June W. and to terminate respondent's parental rights.

¶ 28 At the hearing, the State called its only witness, the caseworker, Cynthia Felske, who testified consistently with her report. In addition, Felske stated that the minor was doing very well in June W.'s home, was going to preschool, and was receiving speech services. June W.'s home was appropriately clean and had enough space for everyone who lived there. All of the children at the home went to school at the correct times. The minor was very bonded with June W. and was very comfortable in the household.

¶ 29 As for the status of respondent, on cross-examination by respondent's attorney, Felske stated that although it was recommended that respondent obtain an order of protection against Dean S. because of past domestic violence, respondent had not done so. In addition, Felske had received a report from a reliable source that respondent was still in a relationship with Dean S. Furthermore, respondent had just tendered to Felske on the day of the best interest hearing her paycheck stubs as proof of employment and, as far as Felske was aware, had still not signed the release so that Felske could verify and inquire about respondent's domestic violence counseling. As for housing, respondent had contacted Felske the week before the best interest hearing and had told her that she had moved in with her parents because the person she was staying with had started using drugs. Respondent was currently working full-time on the second shift at Tyson's and was making sufficient money to be able to take care of herself and the minor, if she managed her money properly. In February and March 2018, respondent's urine tests came back positive for the presence of synthetic marijuana. Prior to that time, all of respondent's drug tests were negative. Respondent's most recently scheduled visitation session with the minor did not occur because respondent had failed to properly confirm the session ahead of time as required. Respondent had claimed that she did not know she had a visit scheduled for that day, even

though the visits had been scheduled to occur on the first Tuesday of every month since the permanency goal was changed in June 2017.

¶ 30 Kimberly Shoen testified for respondent that she lived in Kewanee and that she had known respondent since about August 2014 (about a year before DCFS took protective custody of the minor). At that time, the minor and respondent's two other children lived with respondent. Shoen would see respondent every day because they were friends. They would meet up at Shoen's house and would then go to the park with the children or somewhere else. Shoen had three or four young children of her own at the time. Respondent and Dean S. were in a relationship, but Shoen did not think that the relationship was strong. According to Shoen, respondent and the minor had a very close relationship at the time and the minor was always by respondent's side. Respondent lived in an apartment, was employed, and was able to provide for the minor financially. Respondent would struggle at times in dealing with the minor, but Shoen did not believe that respondent struggled more than any other mother. Shoen did not have any indication at the time that respondent was involved in drugs. The last time that Shoen had seen respondent and the minor together was right before the minor had been taken into protective custody.

¶ 31 Respondent testified at the best interest hearing that she was currently living at her parent's home in Kewanee with her parents, her brother, and her two other children. She had been living at that location for a couple of weeks. Respondent had moved to her parents' home after the parental fitness hearing because she found out that the person she was staying with was using drugs and she did not want to be around drugs. If the minor was returned to respondent, respondent would continue to live with her parents and would work on getting her own place. Respondent had a good job now and could afford to do so. Respondent worked the second shift

at Tyson's, Monday through Friday, with some occasional overtime. Respondent had been employed at Tyson's for the past three months, was making over $14 per hour, and was going to be getting a raise soon to over $15 per hour. Respondent believed that her current income would be enough to provide for her own needs and the minor's needs if he was returned to her. Respondent had health insurance through her job that would cover the minor. With regard to the release for domestic violence counseling, respondent stated that she called the person three times but was not able to reach her and did not leave a message. As for the drug tests, respondent again testified that she did not use drugs and stated that she did not understand how her urine tests came back positive. When asked if she was around anyone who was using synthetic cannabis, respondent indicated that the person that respondent used to live with was doing so in her house so respondent moved out. On the issue of her failure to confirm her most recent visit with the minor, respondent commented that she could not explain it and that she had a lot on her mind right now. Respondent denied that she was still in a relationship with Dean S. and stated that she had filled out the paperwork for an order of protection the day before the best interest hearing but the individual at the courthouse that respondent needed to talk to was not there at the time so respondent planned to return to finish the paperwork that day after the best interest hearing had concluded. Upon further inquiry, respondent indicated that she did not take care of the proof of employment and the order of protection paperwork until the day before and the day of the best interest hearing because she would sleep in and did not have time to do so. Respondent noted that at times, she had to work as late as 3 a.m. According to respondent, she had made a lot of mistakes as a parent but had never been a bad mother and had always provided her children with anything they needed.

¶ 32 Following the presentation of the evidence, the trial court heard the arguments of the parties' attorneys and of the GAL. The State argued for termination of respondent's parental rights. Respondent's attorney argued against termination, stating that he believed that respondent had finally gotten herself into a position where she could take care of and provide for the minor. The GAL indicated that he felt that it was in the best interest of the minor to terminate respondent's parental rights and commented upon the stability of the minor's current living situation with June W.

¶ 33 After considering the evidence presented and the arguments, the trial court made its ruling. The trial court found by a preponderance of the evidence that termination of respondent's parental rights was in the minor's best interest. The trial court terminated respondent's parental rights to the minor, set the minor's permanency goal to adoption, and named DCFS as the guardian of the minor with the right to consent to adoption. Respondent appealed.

¶ 34 ANALYSIS

¶ 35 I. Parental Unfitness

¶ 36 As her first point of contention on appeal, respondent argues that the trial court erred in finding her to be an unfit parent/person. More specifically, respondent asserts that the trial court's underlying finding—that respondent had failed to make reasonable progress toward the return of the minor during the relevant nine-month periods—was against the manifest weight of the evidence. In support of that assertion, respondent claims that during the applicable nine-month periods, although she struggled as a result of her circumstances, she: (1) remained drug free, which was the primary concern that brought the minor into the State's care; (2) maintained employment; (3) attended visitation regularly and related well to the minor; (4) kept herself from becoming homeless, although her inadequate income made obtaining stable housing impossible;

and (5) completed domestic violence counseling, even though she may not have kept adequate records or tendered those records to the caseworker. Respondent acknowledges that her relationship with Dean S. and her failure to get an order of protection against him may have been problematic, but states that those matters had nothing to do with the reason for which the minor was removed from her care and points out that Dean S. did not have a parental role as to the minor. Respondent claims further that the trial court's ruling was cued by the caseworker's repeated and excessive focus on respondent's failures and shortcomings and downplaying of respondent's positive areas of progress. For all of the reasons stated, respondent asks that we reverse the trial court's finding of parental unfitness and that we remand this case with directions for the trial court to deny the amended termination petition or, in the alternative, to hold a new best interest hearing without considering the reasonable progress factors (as discussed more thoroughly in the second issue raised in this appeal).

¶ 37 The State argues that the trial court's determination of parental unfitness was proper and should be upheld. The State asserts that the evidence before the trial court at the parental fitness hearing showed that during the relevant time periods, respondent had failed to maintain stable housing; had failed to maintain stable employment or to provide proof thereof to her caseworker; had failed to sign the necessary release so that her caseworker could verify that respondent had completed domestic violence counseling; had maintained a relationship with her abusive boyfriend, Dean S.; and had difficulty during visits with the minor, including supervising the minor and being distracted by her cell phone. The State disagrees that the trial court placed too much focus upon respondent's shortcomings and claims instead that the trial court considered both the positive and negative aspects of respondent's performance but found that the services that respondent failed to perform far outweighed her successes. Finally, as to Dean S., the State

contends that the fact that respondent maintained a relationship with Dean S. undermined the progress respondent had made as to domestic violence counseling and her ability to provide a safe environment for the minor. For all the reasons set forth, the State asks that we affirm the trial court's finding of parental unfitness.

¶ 38 The involuntary termination of parental rights is governed by the provisions of both the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq*. (West 2016)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2016)). See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the first stage of termination proceedings in the trial court, the State has the burden to prove the alleged ground of parental unfitness by clear and convincing evidence. See 705 ILCS 405/2-29(2) (West 2016); *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The proof of any single statutory ground will suffice. 750 ILCS 50/1(D) (West 2016); *C.W.*, 199 Ill. 2d at 210. A trial court's finding of parental unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion or that the conclusion itself is unreasonable, arbitrary, or not based on the evidence presented. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005); *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004).

¶ 39 Pursuant to section 1(D)(m)(ii) of the Adoption Act as was in effect at the time the termination petition in the instant case was filed, a parent may be found to be an unfit parent/person if he or she fails to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2016). To determine if reasonable progress has been made, a court will apply an objective standard and will generally consider the parent's compliance with the service

plan and the court's directives, in light of the condition that gave rise to the removal of the child and in light of any other conditions that later became known which would prevent the court from returning custody of the child to the parent. *C.N.*, 196 Ill. 2d at 216-17; *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of the return of the child. *J.A.*, 316 Ill. App. 3d at 565. Reasonable progress exists when based upon the evidence before it, the trial court can conclude that the progress being made by a parent to comply with the directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the near future, will be able to order the child to be returned to the custody of the parent. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). The court will be able to do so because, at that point, the parent will have fully complied with the directives that the parent was previously given to regain custody of the child. *Id.* In determining whether reasonable progress has been made, the trial court may only consider the parent's conduct that occurred during the statutorily prescribed nine-month period and may not consider conduct that occurred outside the nine-month period. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *In re A.S.*, 2014 IL App (3d) 140060, ¶ 35.

¶ 40 After having reviewed the record in the present case, we find that the trial court's determination—that respondent was an unfit parent/person because she had failed to make reasonable progress toward the return home of the minor during the relevant nine-month periods—was well supported by the evidence. The evidence presented at the parental fitness hearing showed that during the nine-month periods in question, respondent had not obtained stable housing or adequate employment; that respondent had failed to provide proof of employment to her caseworker; that respondent had failed to sign the necessary release so that her caseworker could verify that respondent had completed domestic violence counseling; that

respondent had maintained a relationship with her abusive boyfriend, Dean S.; and that respondent had struggled at times during visitation in supervising the minor and in being distracted by her cell phone. Although respondent made some positive progress during the relevant time periods as to certain aspects of her service plan, there was no indication that her progress would reach the point in the near future that the trial court would be able to order that the minor be returned to respondent's custody. See *L.L.S.*, 218 Ill. App. 3d at 461. Thus, the evidence presented at the parental fitness hearing amply supported the trial court's finding that respondent failed to make reasonable progress toward the return home of the minor during the relevant nine-month periods. See *C.N.*, 196 Ill. 2d at 216-17; *J.A.*, 316 Ill. App. 3d at 564-65. We cannot conclude, therefore, that the trial court's determination of parental unfitness was against the manifest weight of the evidence. See *C.N.*, 196 Ill. 2d at 208; *A.M.*, 358 Ill. App. 3d at 252-53.

¶ 41 II. Best Interest

¶ 42 As her second point of contention on appeal, respondent argues that the trial court erred in finding that termination of her parental rights was in the minor's best interest. Respondent asserts that the trial court's finding in that regard was against the manifest weight of the evidence. In making that assertion, respondent contends that the trial court: (1) incorrectly focused upon whether respondent had made reasonable progress after the parental fitness hearing rather than upon the statutory best-interest factors; (2) failed to give any credit to the testimony of respondent and her witness, Kimberly Shoen; (3) failed to consider how termination of respondent's parental rights might traumatize and confuse the minor; (4) failed to consider that it did not have to terminate respondent's parental rights to guarantee the closeness and security that the minor felt toward June W., especially since June W. was the minor's paternal great-aunt and

respondent and June W. lived in the same community; and (5) failed to consider the positive aspects of respondent's relationship with the minor because the trial court had lost patience with respondent's slow progress toward addressing the reasons for the removal of the minor. For all of the reasons stated, respondent asks that we reverse the trial court's best interest determination and that we remand this case with directions for the trial court to deny the State's amended motion to terminate parental rights or, alternatively, with directions for the trial court to hold a new best interest hearing without inappropriately considering the reasonable progress factors.

¶ 43 The State argues that the trial court's best interest determination was proper and should be upheld. In support of that argument, the State asserts that many or all of the statutory best interest factors weighed in favor of terminating respondent's parental rights in this case, except for the preference of the child, which was inapplicable due to the minor's young age. The State points out that the physical safety and welfare of the minor, including food, shelter, clothing, and health, were met by the foster parent, June W.; the minor was happy, content, and well-adjusted with the foster family; the minor's background and ties were being met by the foster parent who had arranged for visitation with the minor's half-siblings and who involved the minor in her religion and in her community; the minor was strongly bonded with the foster parent and looked to her for comfort; the minor had lived with the foster parent for the past 32 months and there was no indication that respondent would be restored to fitness; the minor was currently living in a stable and loving environment; and the foster parent wanted to provide permanence for the minor and was willing to adopt the minor. With regard to respondent's more specific claims, the State asserts further that: (1) the trial court rightly focused on respondent's failure to make progress after the parental fitness hearing because that failure demonstrated why it was not in the minor's best interest to maintain respondent's parental rights—respondent's dilatory behavior in

the face of permanently losing her child showed that she was unable to adequately handle being a parent; and (2) Shoen's testimony was basically worthless because Shoen had no current information about the relationship between respondent and the minor. For all of the reasons set forth, the State asks that we affirm the trial court's order terminating respondent's parental rights to the minor.

¶ 44 In a termination proceeding, once the trial court finds that a parent is unfit as defined in section 1(D) of the Adoption Act, the trial court must then determine, pursuant to the Juvenile Court Act, whether it is in the minor's best interest to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2016); *Tiffany M.*, 353 Ill. App. 3d at 891. The burden of proof in the trial court is upon the State to show by a preponderance of the evidence that termination is in the minor's best interest. *Tiffany M.*, 353 Ill. App. 3d at 891. The trial court's ruling in that regard will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion or that the conclusion itself is unreasonable, arbitrary, or not based on the evidence presented. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005), *abrogated on other grounds by In re M.M.*, 2016 IL 119932, ¶ 28; *Tiffany M.*, 353 Ill. App. 3d at 890-92.

¶ 45 In a best interest hearing, the focus of the termination proceeding shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in having a stable and loving home life. *D.T.*, 212 Ill. 2d at 364. The issue is no longer whether parental rights can be terminated, but rather, whether in the child's best interest, parental rights should be terminated. See *id*. In making a best interest determination, the trial court must consider, in the context of the child's age and developmental needs, the numerous statutory best interest factors listed in section 1-3(4.05) of the Juvenile Court Act. See 705 ILCS 405/1-3(4.05)

(West 2016); *Tiffany M.*, 353 Ill. App. 3d at 892-93. Some of those factors include the child's physical safety and welfare, the development of the child's identity, the child's background and ties, the child's sense of attachment, the child's need for permanence and stability, and the preferences of the persons available to care for the child. See 705 ILCS 405/1-3(4.05) (West 2016); *Tiffany M.*, 353 Ill. App. 3d at 892-93. The trial court may also consider the nature and length of the child's relationship with the current caretaker and the effect that a change in placement would have on the child's emotional and psychological well-being. *Tiffany M.*, 353 Ill. App. 3d at 893. Although the trial court is required to consider the statutory factors in making its best-interest determination, it is not required to articulate any specific rationale for its decision. *Id*.

¶ 46 In the present case, after having reviewed the record, we find that the trial court's best interest determination (that it was in the minor's best interest to terminate respondent's parental rights) was not against the manifest weight of the evidence. The evidence presented at the best interest hearing indicated that the minor was in the stable, secure, and loving home of his paternal great-aunt, June W., where he was doing well and had stability and where all of his needs were being met. The minor had lived in that home for the past 32 months from the time that he was 2½ years old. June W.'s mother, niece, and nephew also lived in the home, and the minor would have important social contact with other children, since June W. was a licensed in-home daycare provider and was willing to allow the minor to have visits with his half-siblings. The minor had a strong and loving relationship with June W., and June W. was willing to provide permanency and adopt the minor. It was the opinion of the caseworker and of the GAL that it was in the minor's best interest to terminate respondent's parental rights. The trial court's

best interest determination in this case was well supported by the evidence and, based upon the standard of review, must be affirmed. See *Tiffany M.*, 353 Ill. App. 3d at 890-92.

¶ 47 In reaching that conclusion, we must point out that we find nothing inappropriate in this case about the trial court considering at the best interest hearing how respondent performed on certain matters from the time period between the parental fitness hearing and the best interest hearing. We note that it was respondent's own attorney who elicited that information in his cross-examination of the caseworker. Thus, even if we assumed for argument's sake that the trial court should not have considered that information, respondent cannot complain about that alleged error on appeal because respondent's own attorney induced the trial court to consider that information by presenting it. See *McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000) (a party cannot complain of an error which he or she induced the trial court to make). Finally, it was ultimately for the trial court to decide how much weight to give to the testimony of the caseworker, respondent, and Shoen. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) (recognizing that under the manifest weight of the evidence standard of review, the reviewing court gives deference to the trial court as the finder of fact because the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses and that the reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn from the evidence).

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, we affirm the judgment of the circuit court of Henry County.

¶ 50 Affirmed.

¶ 51 JUSTICE O'BRIEN, dissenting.

¶ 52 The respondent's minor children, including T.I.-K., were removed after they were found outside, alone, on more than one occasion. One of the minors reported that he could not wake his mother up. The neighbor who reported the children were unsupervised further alleged that known drug users lived in the same residence where respondent was staying with the minor children. As a result of these reports, T.I.-K. and his siblings were removed from respondent's care. The State alleged T.I.-K. was neglected based on inadequate supervision.

¶ 53 Following the first court appearance, the respondent and the minor children underwent an integrated assessment in order to determine what issues may have caused the family to come into care, as well as to make recommendations for services for the respondent and the minor children.[1] The findings and recommendations made in those assessments detail that the respondent and minors all suffered from significant trauma related to chaos and instability stemming, in large part, from the respondent's inability to provide the family with stable housing. The respondent had been evicted from her residence following the death of T.I.-K.'s father when she could no longer afford to pay the rent. The respondent did not complete high school and was not employed full-time. Respondent indicated she would like to obtain a GED and then go on to obtain a college education. Among the recommendations made in order to help the respondent meet the goal of the children being returned home were requirements that the respondent obtain full-time employment and obtain suitable housing. Housing advocacy was also recommended. The record clearly demonstrates that at no time did the respondent receive any housing advocacy, job training or educational assistance from the agency.

¶ 54 In addition to submitting to the integrated assessment, the respondent was ordered to submit to an alcohol and drug evaluation. Even though the evaluation determined that respondent

[1] Although this appeal only deals with T.I.-K., the integrated assessment included all three minors and information gathered from the verbal minors is helpful to understand the issues that brought this family into care and the services that would help respondent correct those issues. For that reason the other minors are included in this discussion.

was not in need of any services or drug and alcohol counseling, the agency continued to require that respondent submit to random urine testing. Despite being unemployed at the outset of the case and underemployed throughout the remainder of the case, the agency did not provide respondent with any money for transportation to and from the urine drops. Because the drug and alcohol evaluation found that respondent was not in need of treatment, the mandated urine drops did nothing to correct the circumstances that brought the family into care and therefore could not form the basis of finding the respondent unfit. See *In re A.J.*, 296 Ill. App. 3d 903, 916 (1998) (determining respondent could not be found unfit for failure to comply with drug testing when there was no evidence he had drug problem or that the service plan requirement related to a parental shortcoming).

¶ 55 At the time T.I.-K. was taken into protective custody, there was no indication that domestic violence played any role in T.I.-K. being unsupervised, so the initial service plan did not include any domestic violence counseling. The requirement for respondent to undergo counseling for domestic violence was included in the second service plan because respondent was in a relationship with a man named Dean S. and various reports, including one made to the caseworker by T.I.-K.'s half brother that Dean was mean to him and had spanked him, raised concerns for respondent and T.I.-K.'s safety. Further, the service plan required Dean to cooperate with the agency if he was going to be part of the respondent's life. The respondent did not deny that she was in a relationship with Dean, but the agency reports are all inconsistent with respect to the role of Dean within the family unit, at once indicating that Dean was residing with respondent and that his whereabouts were unknown. During the relevant time period, respondent was not instructed to discontinue contact with Dean or to obtain an order of protection to keep

him away from her, so to the extent the trial court relied on her failure to do so as a basis for finding the respondent unfit, those findings were against the manifest weight of the evidence.

¶ 56 Further, I find the court's reliance on the failure of the respondent to sign a release for DCFS to obtain her information from the domestic violence program as a basis to determine that respondent had failed to complete the domestic violence program when there was no basis to believe the certification presented by the respondent to the court was fraudulently completed by the provider or fraudulently obtained by the respondent. Such a finding places form over substance and does not promote the goal of ascertaining whether the respondent has made progress in correcting the situation that brought the minor into care. Based on the respondent's production of a certification of completion of the domestic violence program from a provider that was referred to respondent by the agency, I find the trial court's finding that respondent failed to make reasonable progress in this area was against the manifest weight of the evidence.

¶ 57 The minor child was brought into care because the respondent could not provide a stable home. The integrated assessment demonstrated that the respondent was evicted from her former residence and, as a result, her living situation had become very unstable. With no high school diploma, the respondent struggled to find employment that would give her the financial ability to provide housing for herself and T.I.-K. The respondent’s homelessness was a result of her financial circumstances, not because she had a problem with drugs or alcohol and not because she was a victim of domestic violence, yet her service plan did not include any assistance with housing or employment. The court found that respondent had made reasonable efforts to correct the issues that had brought the child into care but found that her progress was unreasonable. In light of the respondent’s educational background and lack of prior full-time employment, I would find the court’s ruling was against the manifest weight of the evidence. *In re A.A.*, 324 Ill.

App. 3d 227, 236 (2001) (reasonable progress is "an objective standard applied by the trial court, focusing on the amount of progress toward the goal of reunification that can be reasonably expected under the circumstances"). Here, the respondent was working and did secure employment that paid an amount that would allow her to obtain suitable housing and, as such, respondent demonstrated that she had made reasonable progress as it has been defined by Illinois courts. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991) (discussing concept of reasonable progress).

¶ 58 Lastly, I believe parental unfitness cannot based on subsection (m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016) (failure to correct the conditions that were the basis for the child's removal from the parent)) when the basis for the removal was the parent's financial inability to provide a home for the minor. See *Paul v. Steele*, 101 Ill. 2d 345, 353-54 (1984).

¶ 59 For those reasons, I would reverse the trial court's orders finding the respondent unfit and terminating her parental rights.