2018 IL App (4th) 170949-U

NOS. 4-17-0949, 4-17-0950 cons.

FILED
May 21, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re A.S.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Logan County
Petitioner-Appellee,	)	No. 15JA4
v. (No. 4-17-0949)	)	
Nicole Gee,	)	
Respondent-Appellant).	)	
	)	
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In re C.H., a Minor	)	No. 15JA5
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0950)	)	
Nicole Gee,	)	
Respondent-Appellant).	)	William G. Workman,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment terminating respondent's parental rights, concluding (1) respondent failed to show she received ineffective assistance from her trial counsel, (2) the trial court's fitness and best-interest findings were not against the manifest weight of the evidence, and (3) respondent failed to show she was prejudiced by the trial court's denial of her motion for a continuance at the best-interest hearing.

¶ 2 In October 2016, respondent, Nicole Gee, appealed from the trial court's order terminating her parental rights to A.H. (born April 14, 2000) and C.H. (born August 6, 2009). On appeal, respondent, through newly appointed counsel, argued (1) she received ineffective

assistance from her trial counsel, Edwin C. Mills III, in the proceedings which led to the termination of her parental rights; (2) the trial court erred in finding she was an unfit parent and terminating her parental rights; and (3) the trial court erred in denying her motion for a continuance at the best-interest hearing.

¶ 3 In May 2017, this court issued an order, rejecting respondent's claims of ineffective assistance with one exception. *In re A.H.*, 2017 IL App (4th) 160769-U, ¶¶ 199-218. We found, based on the record presented, we were unable to fully evaluate respondent's claim of ineffective assistance relating to her counsel's failure to subpoena two witnesses, Pat Lawson and Nancy Howard (also known as Nancy Robling), in the best-interest hearing. *Id.* ¶ 217. That is, we concluded we could not "rule out, *sight unseen*, that the testimony of these two witnesses would have created a reasonable probability of a different outcome." (Emphasis in original.) *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). We "retain[ed] jurisdiction" and remanded for "an evidentiary hearing and decision on the limited question of whether the failure to subpoena Pat Lawson and Nancy Howard in the best-interest hearing amounted to ineffective assistance of counsel." *Id.* ¶ 220.

¶ 4 On remand, the trial court conducted an evidentiary hearing, at which it heard testimony from Pat Lawson and Nancy Howard. Based on that testimony, the court found respondent was not prejudiced by counsel's failure to subpoena these two witnesses, and therefore, she did not receive ineffective assistance. After the trial court rendered its decision, respondent expressed a desire for further review by this court, and the trial court appointed different counsel to represent respondent before us.

¶ 5 Respondent and the State have now filed additional briefs with this court. In her initial brief, respondent argues, based on the evidence presented at both the best-interest hearing

and the evidentiary hearing on remand, the trial court's best-interest findings are against the manifest weight of the evidence. In response, the State only addresses the trial court's decision finding the failure to subpoena Pat Lawson and Nancy Howard did not amount to ineffective assistance, maintaining that decision was correct. In her reply brief, respondent disagrees with the State's argument, asserting her counsel's failure to subpoena Pat Lawson and Nancy Howard amounts to ineffective assistance.

¶ 6 We affirm the trial court's judgment terminating respondent's parental rights to A.H. and C.H., concluding (1) respondent failed to show she received ineffective assistance from her trial counsel, (2) the trial court's fitness and best-interest findings were not against the manifest weight of the evidence, and (3) respondent failed to show she was prejudiced by the trial court's denial of her motion for a continuance at the best-interest hearing.

¶ 7 I. BACKGROUND

¶ 8 A. The Petition for the Termination of Parental Rights

¶ 9 On April 20, 2016, the State filed a petition for the termination of parental rights. The State alleged respondent met two of the statutory definitions of an "unfit person": (1) she had failed to make reasonable efforts to correct the conditions that had been the bases of removing the children from their parents (see 750 ILCS 50/1(D)(m)(i) (West 2014)), and (2) during the nine-month period following the adjudication of neglect, *i.e.*, from April 16, 2015, to January 16, 2016, she failed to make reasonable progress toward the return of the children (see 750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 10 B. The Fitness Hearing

¶ 11 On July 21, 2016, the trial court held a fitness hearing. At the beginning of the hearing, the State moved for the admission of certified court records from other cases. People's

exhibit No. 2 showed, on September 2, 2015, in Logan County case No. 15-CM-59, respondent pleaded guilty to the domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) of A.H., an offense she committed on February 17, 2015. People's exhibit No. 10 showed, on September 2, 2015, in Logan County case No. 15-CF-101, respondent pleaded guilty to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)), specifically, a substance containing cocaine, an offense she committed on June 18, 2015.

¶ 12 In addition, the State requested the trial court to take judicial notice of the following court records in this case: three service plans (bearing the plan dates of March 15, 2015; August 15, 2015; and February 22, 2016); the adjudicatory order of April 16, 2015; the dispositional order of June 11, 2015; and two permanency orders, entered on November 2, 2015, and April 21, 2016. There was no objection to the proposed judicial notice.

¶ 13 The State then called Jeanna Daughty to the stand. She testified substantially as follows. She was a foster-care case manager at the Center for Youth and Family Solutions (Center). She had been the case manager for A.H. and C.H. and their parents since late February 2015.

¶ 14 Each parent had a service plan, and each service plan contained "desired outcomes," or goals. For respondent, there were three service plans, and the goals and subgoals remained the same from one service plan to the other. Daughty had provided respondent copies of each service plan and had discussed with her the goals and subgoals and, in the periodic assessments, her progress in meeting those goals and subgoals.

¶ 15 The first service plan was dated March 15, 2015. The second service plan was dated August 15, 2015, and in that service plan, the Center assessed respondent's progress since March 15, 2015 (that is, her progress in meeting the goals and subgoals). The third service plan

was dated February 22, 2016, and, in that service plan, the Center assessed respondent's progress since August 15, 2015.

¶ 16 1. *Goal No. 1: Cooperate With the Agency and Successfully Complete Services*

¶ 17 a. Subgoal A: Keep All Appointments With Daughty, "Both Scheduled and Unscheduled Visits"

¶ 18 Generally, respondent attended scheduled appointments with Daughty, but "unannounced drop-ins and unannounced schedules ha[d] been more difficult."

¶ 19 b. Subgoal B: Cooperate With All Court Orders Regarding Services and Visitation

¶ 20 All in all, respondent had cooperated with weekly visitation, although she tended to show up a couple of minutes late and there had "been a couple of [incidents] of her being around the children unsupervised."

¶ 21 c. Subgoal C: Signing All Consents for the Release of Information

¶ 22 In the beginning, respondent was "pretty compliant" with signing consents. At times, though, "it was difficult to find her, so consents would not get signed right away." After she reported receiving treatment from a new mental-health-care provider, it took a couple of months to obtain a consent from her for that provider, because she wanted to consult an attorney.

¶ 23 d. Subgoal D: Not To Discontinue Services Without Approval

¶ 24 Respondent "ha[d] discontinued almost every single one of her services without prior approval."

¶ 25 e. Subgoal E: Refrain From Illegal Behaviors and From Situations That Could Lead to Police Involvement

¶ 26 "Early on in the case, [respondent] was arrested on a couple of occasions for possession of controlled substance, trespassing, [and] those types of things."

¶ 27 f. Subgoal F: Call Within 24 Hours Ahead of Time To Cancel Appointments

¶ 28 "A lot of her missed appointments have been no calls, no shows."

¶ 29 g. Overall Rating on Goal No. 1

¶ 30 On both August 18, 2015, and February 22, 2016, the Center rated respondent's progress as unsatisfactory on the first goal. "That was due to her missed appointments, discharging from services, [and Daughty's] inability to reach her on a regular basis."

¶ 31 2. *Goal No. 2: Maintain Adequate Housing and Income*

¶ 32 a. Subgoal A: Notify Daughty Whenever Anyone Moves Into or Out of the House

¶ 33 In summer or fall 2015, respondent moved out of her grandmother's house in Beason, Illinois, and into a relative's house to save money on utilities, and Daughty did not learn about the move until three or four months later. Further, respondent refused to give her the new address.

¶ 34 b. Subgoal B: Maintain Stable Income Through Employment, Child Support, or Public Assistance

¶ 35 At the beginning of the case, respondent admitted she was not always able to make ends meet doing odd jobs, such as painting, cleaning, and yard work. Her monthly income remained unknown. The only proof of income that respondent ever provided to Daughty was a week's schedule when she was a waitress in Clinton, Illinois.

¶ 36 c. Subgoal C: Notify Daughty of Any Changes in Address, Telephone Number, or Income

¶ 37 Respondent moved out of the Beason house without giving Daughty a new address. "When [Daughty] really tried to push the issue," respondent said she was still checking her mail at the Beason address and that it therefore was unnecessary for her to give Daughty the

address where she currently was staying. Respondent's "phone number ha[d] been off or changed a couple of times and so [it had] been hard to reach her via phone."

¶ 38 d. Overall Rating on Goal No. 2

¶ 39 On August 18, 2015, and again on February 22, 2016, respondent's progress was rated as unsatisfactory on the second goal, "[b]ased on not being able to reach her at her addresses, not getting proof of income, [and] just general issues with not knowing how to reach her [or] where she was at."

¶ 40 3. *Goal No. 3: Obtain and Maintain an Alcohol- and Drug-Free Level of Personal Functioning*

¶ 41 a. Subgoal A: Completing a Substance-Abuse Assessment and Any Recommended Treatment

¶ 42 Respondent completed two evaluations and started a third evaluation, but she did not complete it. She never followed through with the recommendations made in the assessments.

¶ 43 b. Subgoal B: Stop Using Alcohol, Nonprescription Medications, and Illegal Substances

¶ 44 It was "hard to really know if [she was] satisfactorily refraining," considering that, "[d]uring the lifetime of this case, [she had] been asked to complete almost 60 drug screens" and she had "completed 10" or so.

¶ 45 c. Subgoal C: Notify Daughty or the Treatment Provider of Any Relapse

¶ 46 Respondent never notified Daughty of any relapse, although, early on in the case, respondent was charged with unlawful possession of a controlled substance—as Daughty learned from public records, not from respondent.

¶ 47 d. Overall Rating on Goal No. 3

¶ 48 Both on August 18, 2015, and on February 22, 2016, respondent's progress on the third goal was rated as unsatisfactory, "based on her inability to complete services as recommended and her failure to comply with drug screens."

¶ 49 4. *Goal No. 4: Achieve an Appropriate Level of Understanding of Mental Illness and How It Affects Parenting and Relationships*

¶ 50 a. Subgoal A: Attend Scheduled Appointments With Physicians, To Monitor Psychotropic Medications and To Ensure That Prescriptions Stay Current

¶ 51 The State asked Daughty:

"Q. And how has she done on that goal?

A. That's kind of a tricky one for me to evaluate because I have to rely on her, kind of, to tell me how she's doing with taking her medications, however, I know throughout the case and when it opened she told us she was on [V]alium and then there was a period of time where she told me that she was discharged from her physician for failing to attend appointments, so she didn't have an active script. She later on in the case told me that she was re-prescribed [V]alium again and I didn't—she never gave me the dates exactly of when she was on it and when she was off of it.

Q. And to your knowledge, was she prescribed [V]alium and then subsequently not taking it against doctor's advice?

A. I believe because she wasn't attending her medical appointments, she couldn't get the prescriptions, so I believe that that would have been against doctor's advice."

¶ 52 b. Subgoal B: Address Certain Issues in Treatment, Including Mental Health, Self-Esteem Issues, and Past Trauma Affecting the Ability To Parent

¶ 53 Daughty testified: "She has not completed counseling services, so that has been unsatisfactory."

¶ 54 c. Overall Rating on Goal No. 3

¶ 55 On August 18, 2015, respondent "was rated satisfactory because even though counseling referrals had been made, it took a while for her to start counseling services, and so [Daughty] evaluated it at the point where [respondent] had only attended four sessions."

¶ 56 Immediately after that evaluation period, however, respondent stopped attending counseling sessions. In mid-September 2015, she was discharged for missing four sessions in a row.

¶ 57 Therefore, on February 22, 2016, the overall rating on goal No. 3 was unsatisfactory.

¶ 58 5. *Goal No. 5: Develop Parenting Skills and Use Those Skills in Interactions With the Children*

¶ 59 Respondent's progress on this goal was rated as satisfactory on both of the dates of evaluation. Early on in the case, she completed the parenting course at the Center. In September 2015, she began supervised visitation with C.H. "[S]he provided snacks, she talked to him on his level, she got on the floor, she played games with him, her interaction with him was very positive." Her physical affection, however, tended to be rather excessive or "smothering," in Daughty's opinion (C.H. told respondent to stop, and she refused).

¶ 60 On cross-examination by attorney Mills, Daughty testified, around April 2016, A.H. "re-engaged in a relationship with [respondent]." It first started with Facebook communications, and then A.H. began attending the supervised visitations. "The visits went well."

¶ 61 Attorney Mills asked:

"Q. Do you have any reason to think anything other than the relationship is currently either good or on its way to becoming good?

A. I definitely have some concerns about their relationship and the type of relationship they have.

Q. Why?

A. It, in recent conversations with [respondent] and [A.H.],

it is clear that [respondent] treats [A.H.] more as a good friend, close buddy, shares things with her that shouldn't be put on the stress of a minor child, things like her pregnancy and miscarriage, her own mental health symptoms. [A.H.] has shared with us that [respondent] is talking to her about these things.

Q. Are those the only concerns that you have?

A. Well, I just have a lot of concerns about how much [A.H.'s] behaviors have regressed since re-engaging in a relationship with her mom.

Q. I'm sorry, could you say that again?

A. I have a lot of concerns about [A.H.'s] behaviors, mental health has regressed since re-engaging in a relationship with [respondent]."

¶ 62 The guardian *ad litem* asked Daughty on cross-examination:

"Q. You had mentioned earlier in your testimony about [respondent's] having two substance abuse evaluations. Is that what you testified?

A. Yes.

Q. And do you know what the recommendations of those assessments were?

A. I believe the recommendations of the first one she completed with [Tazwood Mental Health Center] was that she participate in Level 2 treatment, which is multiple appointments a week.

Q. Is Level 2 treatment for some sort of a dependency of either drugs or alcohol?

A. Yes, sir.

Q. Do you recall whether the diagnosis was for drugs or alcohol or both?

A. I believe it was on drugs.

Q. And do you recall what the second assessment, what the results of that assessment were?

A. The second assessment was completed in December of 2015 and they recommended Level 1 treatment.

Q. So the assessments were different in their conclusions?

A. Yes."

¶ 63 After the presentation of evidence, the trial court heard arguments. The State argued it had proved respondent was an unfit person as alleged in its petition. Specifically, it argued:

"The [S]tate has also met its burden on the counts relating to [respondent], in that she has failed to make reasonable efforts to correct the conditions and that she has failed to make reasonable progress towards the return of the children after nine months of adjudication. The [S]tate went through its service plan in detail and described the desired outcomes and the subcategories of those outcomes and the evaluations and reasons why [respondent] was rated how she was, and almost

all of them she was rated unsatisfactory for not completing any subcategories and not completing the desired outcomes of her service plans, that she has not kept appointments, that she has not cooperated, that she didn't return consents in a timely manner, that she has discontinued services without approval, that she has not refrained from illegal behaviors, and in fact the [S]tate provided People's Exhibit No. [10] that shows that she had committed the new offense while this case was open and that's possession of a controlled substance, being cocaine. [Respondent] has also not maintained consistent housing, she has not informed the caseworker of her housing where she was for months periods, three or four months at a time, and without knowing her address.

[Respondent] has not had stable employment, has not shown proof that she can sustain supporting a child, supporting herself, that [respondent] has also not maintained a substance-abuse[-free] lifestyle, that she *** again has a felony for possession of a controlled substance, that she was discontinued from her mental health treatment by her physician, that she was prescribed [V]alium and she was taking and not taking as prescribed, and that she has failed to show up for drug drops, that she was asked to screen over close to 60 times, and that she has maybe dropped 10 times.

She is not fulfilling her part in these service plans and that she has not made satisfactory progress throughout ***."

¶ 64 Respondent, through attorney Mills, argued:

"MR. MILLS: Your Honor, it's true that my client has not done every single thing that was demanded of her, but some of the things she has done. She completed her parenting skills class, she's engaged in visitation, and most of the visitations was described by Ms. Daughty, I think, as satisfactory or good interaction.

I, not being a parent or [Department of Children and Family Services (Department)] person or otherwise experienced in psychology, bonding and things like that, I'm having a hard time trying to figure out why hugging the child might be objectionable and Ms. Daughty referred to as too much hugging or too close, but, in any event, her employment has been sporadic, but she doesn't have any training for, I suppose, some higher level positions, and when she works in manual labor positions such as cleaning houses and yard mowing and so forth and so on, I would expect that that would entail being paid probably by cash or check, and she doesn't make that much money, it wouldn't surprise me that she doesn't have a bank account or checking account for which she could provide statements, a schedule from these types of jobs. So even though she may not have had the type of employment that might be desirable in so far as a 40-hour work week, 9:00 to 5:00, Monday through Friday, she was still making income and I'm sure it was hard for her to make ends meet working those types of jobs.

She also did attend two evaluations. She did not follow up with the recommendations as she should have, but she was trying, at least, going through the two evaluations, and at our next hearing we'll hear a little bit more about certain other efforts. Even though she hasn't completed everything that she's been

asked, she's been doing some of the things, and the things that she has been doing she's been doing satisfactorily, and so we leave the matters of fitness and whether or not the [S]tate's met its burden to the discretion of the court. Thank you."

¶ 65 The guardian *ad litem* stated his belief the State had met its burden of proof as to both parents. With respect to respondent, he remarked:

"I think it's clear that her drug use and failed drug drops and failure to take a great majority of her drug drops and her failure to complete counseling after given two evaluations recommending counseling is very telling in this matter that she did not complete the very necessary things in this case to be able to maintain her parental rights ***."

¶ 66 After hearing the arguments, the trial court found the State had met its burden of proof as to both parents. With respect to respondent, the court reasoned that although respondent had completed the parenting course and had performed well in visitations, those things were "just a small portion of what she was required to do." She never opened a bank account so as to be able to document her income and her ability to support the children. She was convicted of possessing cocaine, an offense she committed during the pendency of these cases. Of the 60 times she was requested to undergo drug screening, she did so only 10 times. Neither her employment nor her residence had been consistent, and the caseworker had experienced great difficulty just maintaining contact with her. Consequently, unscheduled meetings could not occur. She unilaterally discontinued all of the services other than the parenting course and visitation.

¶ 67 C. The Best-Interest Report

¶ 68 On August 25, 2016, Daughty filed a best-interest report. In that report, Daughty stated the children had been removed from a foster home, and then from another foster home, because of problems with the foster parents. In the relatives' home, the Harris residence, in which the children had been placed, the foster mother separated from the foster father, moving out of the house on January 30, 2016. Then, on April 20, 2016, the Center received a report that the foster father had injured C.H. through the infliction of corporal punishment.

¶ 69 Consequently, the Center moved the children out of the Harris residence and into a "fictive kin home in Beason." But a problem emerged in that home, too. On July 8, 2016, after receiving reports that the caregiver and another adult had been getting drunk and "displaying unsafe behaviors around the children," the Center moved the children yet again, to a traditional foster home. A.H. ran away from that home. After she was located and returned home five days later, she threatened to run away again.

¶ 70 The Center then decided to move A.H. to a different traditional foster home, in Lincoln, Illinois, while keeping C.H. in the same traditional foster home (the one that had taken over from the "fictive kin home"). On July 25, 2016, A.H. ran away from that home, too, but returned the same day. She remained there until August 17, 2016, when she ran away again (in her report, Daughty uses the word "eloped"). A.H. insisted she wanted to live with relatives and, in eight months, when she turned 17, seek emancipation. The trouble was, none of the relatives met the qualifications to be foster parents. And now the foster home from which A.H. had twice run away was unwilling to accept her back.

¶ 71 Upon learning his sister would be living elsewhere, C.H. threw tantrums and said he wanted to die. The repeated changes of residence have been rough on him. His behaviors tend to spring up when he is moved to someplace new. He has been rereferred for counseling. He

sees Terri Clayton twice a month at the Center to address his behaviors, help him learn more acceptable ways to express his anger, and help him endure the separation from his sister. It appears his current foster parents are willing to continue being his foster parents, but they have no plans to adopt him.

¶ 72 D. The Best-Interest Hearing

¶ 73 A best-interest hearing was scheduled for August 25, 2016, but, on that date, the trial court granted a motion by attorney Mills to continue the hearing, on the ground respondent had "committed herself to [a] mental hospital for [a] reported nervous breakdown" (to quote the docket entry). The court rescheduled the hearing for October 20, 2016, and the hearing took place as rescheduled.

¶ 74 At the beginning of the hearing, the State offered various exhibits in evidence.

¶ 75 People's exhibit No. 2 was a certified copy of court records showing respondent had been convicted of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) in Logan County case No. 15-CM-59. The victim was A.H., and the date of the offense was February 17, 2015.

¶ 76 People's exhibit Nos. 3 to 8 were photographs of A.H.'s injuries from domestic battery, *i.e.*, scratches on her arms and neck.

¶ 77 People's exhibit No. 9 was a statement A.H. wrote for the Logan County sheriff's department on February 17, 2015, regarding the domestic battery. According to the statement, A.H. was in her bedroom when respondent entered and threatened to "trash [her] room and break things." A.H. responded, " ['G]o ahead and do it[,'] " and walked out of her bedroom. Respondent followed her out of the bedroom and down the stairs, pushing her and threatening to "whoop [her] butt." A.H. then yelled at respondent that she was tired of her doing drugs, called her a drunk, and added, sarcastically, " 'Why don't you go do more crack?' " Respondent

grabbed A.H. by the hair and the arm, and they went down to the floor, with A.H. saying, " 'I can't do this anymore. I'm done with this.' " A.H. managed to extricate herself, left the house, and went to a friend's house. The statement concludes by saying: "My mother has also offered me drugs[,] which would be crack that she made in front of me[,] in a shot glass[,] then she put it in the microwave[,] and I left the kitchen. She has offered it to me to smoke multiple times. I said no every time."

¶ 78 People's exhibit No. 10 was a certified copy of court records showing respondent had been convicted of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) in Logan County case No. 15-CF-101. The controlled substance was cocaine, and the date of the offense was June 18, 2015.

¶ 79 People's exhibit No. 11 was a digital video disk recording of an interview respondent gave on June 19, 2015, regarding her unlawful possession of a controlled substance.

¶ 80 Respondent's exhibit No. 12 was a printout of electronic communications between respondent and A.H. in October and November 2015. In a message dated October 24, 2015, A.H. tells respondent:

> "What do you want to talk about? How you ALWAYS only care about yourself? How you never put us first? You wouldn't have gotten in trouble all the time if you actually cared. You would have a job[;] you would have supported us like a REAL mother. *** [C.H.] and I BOTH deserve a fun, loving[,] and memorable childhood. You took it all away from me[,] and I will not stand by and let you do the same to my brother. *** How is it fai[r] that I've seen the stuff I have[?] Like in Florida you being a 'dancer' and having me count your stripper money[,] or walking the streets homeless[,] or having physical abuse from your

boy toy[,] in front of us[,] and him harming [C.H.] What about you bringing guys in[to] our hotel room when you 'thought' I was asleep[?] What about you doing drugs in front of me[,] saying 'it's okay'[?] How about you trying to get me to do crack with you or showing me how to make it out of cocaine[?] What about continually letting a stalker co[m]e around and do crack around us? Parties at the house? Saying you want to kill yourself? You feeding in to a drug problem and buying me a marijuana hookah for Christmas? What do you think my dad would say to all of this? What about when I was a child and I was taken to the doctor for sexual contact[:] did you ever try and see if that happened? No[,] you didn't. But[,] guess what[,] it did[,] by [D]illen[,] from [nine] and under. You have put me through so much that I will NEVER forget. I'm glad [C.H.] was to[o] little to understand. What about all the [t]imes with no food, power, or water? Where did the money go to? DRUGS. How about I mention you selling your [L]ink card for money instead of food[?] Please, enlighten me. Is all of this something a good mom does? *** You have already been arrested [two] times since the last court date. And [in one of the arrests,] you had drugs on you. Did you learn? No. You obviously don't care. So back to the beginning. I want NOTHING to do with you! EVER! My life is the best it ever had been. We are loved. Very well taken care of, hot food every night, enough cloth[e]s for an army. We eat whenever we want. *** Do you know what happened when I was with you? Me crying myself to sleep, hurting myself, hating my life and myself, because of . . . guess who? YOU. *** How about we talk about [C.H.]? Yeah? When we first got taken[,] he was awful. He had huge behavior issues. He wouldn't eat or be good in school. JUST

> LIKE WHEN WE WERE WITH YOU. He peed his pants on purpose. *** He always had these behaviors[,] especially at your house. After several weeks in a good home[,] it all stopped. He's a perfect child now. He eats everything. And never has behaviors. He learned to ride a bike with no training wheels in one day. He's been happy. Never once did he ever talk about you[;] up until now[,] he obviously was happy without you. Funny how[,] right after he sees you[,] his behaviors suddenly come back. After the first visit with you[,] he hit [B]raydin, bloodied [M]ikayla[']s nose[,] and broke [A]manda's sunglasses[.] I then had an anxiety attack. Where [was] the problem? YOU! *** You had your chance[,] a 15[-]year chance. Did you change? No. *** I am not begging you[;] I am telling you leave us alone. We deserve at least this after all you have done. If you love us[,] you will. Oh[,] and enough with the pity party about my dead family. It make[s] me sick that you use that to your advantage. But if you'll please excuse me, I'm going to have a fun time at a haunted house with family that actually cares. Thanks for 'EVERYTHING.' "

¶ 81 In addition to moving for the admission of these exhibits, the State requested the trial court to consider the best-interest report and also to take judicial notice of Logan County case No. 16-CF-142, in which, most recently, respondent had been charged with criminal damage to property (720 ILCS 5/21-1 (West 2014)). That charge was still pending, and as the court file would reveal (the State asked the clerk to fetch the file and bring it into the courtroom), respondent had been in the sheriff's custody since September 4, 2016 (at the beginning of the hearing, the court granted attorney Mills's request to remove her handcuffs). There was no objection to these exhibits or to the proposed judicial notice, and none of the attorneys had any

additions or corrections to make to the best-interest report. Therefore, the court admitted all these materials or accepted them for consideration. The State rested.

¶ 82 Next, attorney Mills moved for the admission of the following exhibits.

¶ 83 Respondent's exhibit No. 1 was a letter, dated January 14, 2016, from Erin McQuirter, a clinician at Chestnut Health Systems, to respondent and memorializing that, on December 29, 2015, upon Daughty's referral, respondent "presented [herself] to complete a substance abuse evaluation." "Based on the information gathered," McQuirter believed respondent "could benefit from participating in" the "Level 1 Primary Treatment Group," which met every Tuesday, from 5 to 7 p.m., for 10 weeks. McQuirter further recommended respondent confer with a physician to see if she could obtain alternatives to her prescribed medications of Valium and hydrocodone, because those medications were so addictive. She advised respondent, however, against unilaterally discontinuing Valium and hydrocodone without a physician's advice, "due to the serious physical and emotional health problems that [might] result."

¶ 84 Respondent's exhibit No. 2 was a certificate from the Center showing, on May 19, 2015, respondent completed the "parenting curriculum."

¶ 85 Respondent's exhibit No. 3 was a comprehensive assessment from the Mental Health Centers of Central Illinois, which stated, on January 19, 2016, respondent began an assessment and, four months later, on May 20, 2016, she completed the assessment. The document notes:

> "[Respondent] missed several appointments and had a long period of noncompliance between the beginning and completing this assessment. When she presented in May [2016] to complete her assessment, she stated that she had found a new primary care doctor willing to prescribe her Valium. During her most

> current appointment she states that the Valium has significantly decreased her symptoms of anxiety to the point that they no longer impact her life. She reports feeling as though everything is under control."

Although the evaluator recommended adult outpatient therapy, respondent "reported feeling as though it was not needed at this time. [She] state[d] that she wishe[d] to continue with medication management through her [primary care physician]. [Her] prognosis [was] guarded as she lack[ed] desire to participate in treatment."

¶ 86 Respondent's exhibit No. 4 was a letter, dated July 20, 2016, from Ashley Cox, a child and family therapist at the Center, to attorney Mills. According to this letter, respondent returned to the Center "on her own accord" and "request[ed] completion of the Anger Management program that she stopped attending in March 2016." The letter continues: "[Respondent] and I have been working in a counseling setting to address the remaining aspects of the Anger Management session that she missed. As of today, [respondent] has attended [four] sessions. She reports a plan to continue attending these sessions until completion, and has been paying for these sessions out of her pocket."

¶ 87 Respondent's exhibit No. 5 was a certificate from the Center showing, in 2016, respondent completed the nine-week course in anger management.

¶ 88 Respondent's exhibit Nos. 6 and 7 were signed documents, dated August 18, 2016, in which respondent agreed to make "donations," to the extent she was able to do so, to a psychotherapist, Cheryl Walton Strong, in return for counseling services.

¶ 89 Respondent's exhibit No. 8 was a letter, dated August 31, 2016, from Daisy Cravens, of HSHS St. Mary's Hospital, to attorney Mills and stating, on August 28, 2016, respondent was admitted to the behavioral health unit. The letter said no discharge date had been

set as of yet and the purpose of the letter was to explain respondent's absence from a scheduled court hearing.

¶ 90 Respondent's exhibit No. 9 was a note from St. Mary's Hospital, dated August 30, 2016, and stating respondent was an inpatient at the behavioral health unit of the hospital and she was under the care of Dr. Rohi Patel.

¶ 91 Respondent's exhibit No. 10 was a letter from respondent to Judge William G. Workman, in which she insisted she was a "good, loving[,] and nurturing mother" and the accusations A.H. had made against her, and which had served as the basis for removing the children from her care, were untrue. The truth was, on February 17, 2014, respondent explained, A.H. had been refusing, for three days straight, to do chores respondent had been paying her $20 a week to do. Respondent confronted her about this, and A.H. did not take it well. She screamed and threw things down the hallway, frightening her brother, and then she left the house in a huff. Respondent decided it would be best to let her go and cool down. She assumed A.H. would go to a friend's house across the street. Dinnertime arrived, and respondent began calling friends and neighbors to locate A.H. The next thing respondent knew, the police were at her door, putting her in handcuffs, and taking her children. Some of the scratches on A.H. were self-inflicted, and other scratches were from A.H.'s attempts to pull away as respondent was holding onto her arm, trying to "prevent her from backing into a mirror."

¶ 92 In an addendum to the letter, respondent explained to the judge why she currently was incarcerated:

> "The in[c]ident took place at my grandmother[']s property[,] o[n] which I had been working[,] to help for up for sale [*sic*]. I didn't re[a]lize it at the time[,] but I had been having mental breakdowns. I spoke to my grandmother about this and

> decided to admit myself into St. Mary[']s [Hospital]. The decision was made to best benefit my state of mental health[,] which was compromised due to having [two] miscar[ri]ages in [a six-month] period, the loss of my kids, and at that time my daughter ran away with a 19[-year-]old male adult doing drugs. I was assured my grandmother wasn't pressing charges and didn't want the law involved. But she made insurance claims[,] which brought it to the State[']s attention. I am to plead out on the 25th [of October] with a PTR [(petition to revoke probation)] and time served. Let it be known I am now stable and fully mentally capable upon release to care for my children to their best benefit ***."

¶ 93 Respondent's exhibit No. 11 was a letter, dated October 7, 2016, from respondent to Daughty. The letter informed Daughty that respondent was to "plea[d] out on [October 25, 2016,] at time served plus 30 probation [*sic*]." Respondent did not think it would be "healthy" for C.H. to visit her in jail. But she enclosed a letter she had written to C.H. (respondent's exhibit No. 12) as well as a letter she had written to A.H. (respondent's exhibit No. 13), asking Daughty to forward them to the children.

¶ 94 The trial court admitted respondent's exhibits over no objection.

¶ 95 Attorney Mills then called respondent to the stand. She testified, in four days, she would be released from jail pursuant to plea negotiations, and she then would return to her home in Beason, which she was buying from her grandmother for $250 a month. Her husband, Lonnie Buckner, and his son were now living in the home, but there was still plenty of room there for A.H. and C.H.

¶ 96 She intended to support A.H. and C.H. by doing housecleaning, painting, and home renovations for people in town, as she always had done. She anticipated earning $20,000 to

$24,000 that year. She and the children had medical cards, and she received a little bit of food assistance from the government.

¶ 97 On cross-examination, the State asked respondent:

> "Q. You've cleaned Matthew Henderson's residence?
>
> A. Yes, I did.
>
> Q. And that was in exchange for cocaine?
>
> A. No.
>
> Q. You never cleaned his house in exchange for cocaine?
>
> A. No, I cleaned his house on a weekly basis for quite some time.
>
> Q. Did you ever tell the police that you cleaned his house for cocaine?
>
> A. It's possible in my drug influenced days.
>
> Q. Do you remember giving an interview on June 19, 2015, to the Logan County sheriff's department in which you said that you cleaned Matthew Henderson's residence for cocaine?
>
> A. No, I don't remember."

¶ 98 Respondent admitted, on cross-examination, her husband, Lonnie Buckner, had obtained an order of protection against her and the order required her to keep away from the Beason house. She was working things out, however, with her husband, and she believed the order of protection would be lifted.

¶ 99 Attorney Mills next called A.H., who testified the electronic message she sent respondent in October 2015 was "slightly over[-]exaggerated" and her foster parents had "encouraged" her to make these exaggerated accusations against respondent. Actually, A.H.

testified, respondent had taken pretty good care of her and C.H. up until February 2015. A.H. insisted she loved respondent and she did not want to see her parental rights terminated.

¶ 100 On cross-examination by the State, A.H. testified she saw respondent use cocaine in the home on perhaps two occasions and, toward the end of 2014 or in early 2015, respondent offered her cocaine.

¶ 101 Attorney Mills next called Paula Gee, respondent's mother, who testified she had seen the children with respondent plenty of times and respondent always had been a "good, nurturing mother" who provided for the children's needs.

¶ 102 Attorney Mills then moved for a continuance. He told the trial court:

> "MR. MILLS: Your Honor, my client has asked me to ask for a continuance so we could obtain the testimony of Pat Lawson who's a former foster parent, and also my client's grandmother, Nancy Howard. Pat Lawson was planning on coming today but was having trouble getting a ride here, and Nancy Howard is, I think she's getting surgery, is that correct?
>
> [Respondent]: Yes."

The trial court asked attorney Mills if he had subpoenaed Lawson and Howard. Attorney Mills answered he had not.

¶ 103 The trial court ruled as follows:

> "THE COURT: Well, this case was originally set for this hearing back on August [25, 2016], it was continued from that day when [respondent] did not appear, and it has been set again since September 1st of 2016. [Respondent] was present with her attorney and there has been ample time to prepare and to subpoena any witnesses that the parties would have preferred to have present

here. This case has been continued now for a couple of months, since August [2016], here we are on October [20, 2016], the court is not going to allow another continuance. I'm going to deny that motion to continue."

Respondent rested.

¶ 104 In rebuttal, the State called Daughty, who stated the following concerning respondent's testimony indicating she had provided Daughty with proof of income:

"A. In December of 2015 I recall her bringing me one work schedule from the restaurant in Clinton. It was just one week's worth of schedule. She also provided me with two letters from people she reported she was doing housework for, but those letters didn't specify how often she worked for them or how much money she got while working for them.

Q. Did she ever tell you how much money she was earning working?

A. On occasion when I asked her for proof of income, she would make statements like I recently made $2,000 doing this job, but she never provided proof."

¶ 105 The State also asked Daughty, on cross-examination:

"Q. And were you present during [A.H.'s] testimony?

A. Yes, I was.

Q. I want to ask you a little bit about that as well. There was some testimony regarding visitation with [respondent]. I want to talk about that. What was [A.H.'s] attitude towards visitation at the beginning of the case?

A. [A.H.] didn't want visitation with [respondent].

Q. Was that as soon as the case came into care?

A. Yes.

Q. And was that something that she voiced to you?

A. Yes.

Q. And at some point did that change?

A. Yes.

Q. And when was that?

A. I believe the first time that she talked about visitation was in March, 2016.

Q. So a year into the case?

A. Yes.

Q. And did anything correspond around March, 2016, in the foster home where [A.H.] was staying?

A. Yes, about a month prior to that, the mother of the foster home had left.

Q. And why was that?

A. She had began a relationship with another man and had chose[n] to leave the home.

Q. And was there an incident involving [C.H.] and the foster father?

A. Yes, there was.

Q. And what was that incident?

A. That incident happened in April of 2016. We received reports that excessive corporal punishment was used. I took [C.H.] to the ER [(emergency room)] and bruising on his lower back and buttocks was documented.

Q. And was it around this time that [A.H.] wanted to start having more visitation with her mother?

A. Yes.

Q. And was it around this time that the children were removed from that foster family?

A. Yes.

Q. And since then, [A.H.] has been having more contact with [respondent]?

A. Upon leaving the relative foster home with Mr. and Mrs. Harris, she was moved to another identified relative foster home who was identified by [respondent]. Her name was Pat Laughlin. The children stayed with her, I believe, approximately two months. She lived one block away from [respondent]. I could exit their back door and see [respondent's] home, and during that time we had approved for Pat to supervise some of the contact between [respondent] and the children and [A.H.] had expressed an increased want to see [respondent]."

¶ 106 There was no further evidence in rebuttal.

¶ 107 For the following reasons, the trial court found it would be in the children's best interest to terminate respondent's parental rights to both children:

"As for [respondent], since the fitness stage, quite frankly, it appears that she has gone even further backwards on the unfitness, that she has not complied with the service plan, has not completed mental health treatment. She did, in fact, place herself in St. Mary's [Hospital], but as for any of the other conditions of her safety plan or the plan that was put in place by the [D]epartment, she has woefully

failed to comply with any of those aspects. The drug use has continued, the mental health treatment, the only thing that we can say positive is that she completed the parenting class, but even from the reports and the testimony and the evidence we have received, even though she's completed the parenting class, it has had no effect on her and her abilities to parent a child.

She does not have the proper residence, her employment has been undocumented, although she constantly indicates that she has employment, one of the exhibits that was received by the people, People's Exhibit No. 11, clearly demonstrated on that interview that, yeah, she was cleaning houses for people, specifically for that one individual, Mr. Henderson, but she was cleaning it not to provide for her children, but to provide for her habit and was being paid in cocaine.

So[,] the parental rights of *** [respondent] are hereby terminated as it refers to [C.H.]

As for [A.H.], I think the guardian *ad litem* and the attorneys that have been here today have pointed out that we should probably take stock in [A.H.'s] desires, but [A.H.] is 16 years old[,] and her desires or requests have fluctuated during the pendency of this case. Initially[,] she wanted no contact whatsoever with [respondent]; then it appears that there were problems with her placement. Once those problems with the placement became known, then her request or her desires have changed, and I don't believe that we—and this court is not going to just put it on [A.H.'s] shoulders on what is her best interests.

> When I look at the evidence that has been presented, the testimony, even [A.H.'s] testimony here today where it is evident that when she first reported this and wrote the letter that she wrote earlier in which she described or called the [']nasty letter,['] some of her major complaints were the parties that [respondent] was presenting and exposing both her and her younger brother to, and it greatly disturbs the court the drug use of [respondent] and then [respondent's] attempt to push that onto her daughter, offering her cocaine, and I am happy to hear the testimony of [A.H.] where she rejects that and rejects that partying lifestyle.
>
> So[,] the court is going to find that it is in the best interests of [A.H.] that [respondent's] parental rights be terminated."

¶ 108 E. Respondent's Appeal

¶ 109 In October 2016, respondent filed a notice of appeal from the trial court's judgment terminating her parental rights to A.H. and C.H. In November 2016, the trial court appointed Sara M. Vig to represent respondent on appeal. On appeal, respondent, through appointed counsel, argued (1) she received ineffective assistance of counsel in the proceedings which lead to the termination of her parental rights, (2) the trial court erred in finding she was unfit parent and terminating her parental rights, and (3) the trial court erred in denying her motion for a continuance at the best-interest hearing.

¶ 110 In May 2017, this court issued an order, rejecting respondent's claims of ineffective assistance with one exception. *A.H.*, 2017 IL App (4th) 160769-U, ¶¶ 199-218. We found, based on the record presented, we were unable to fully evaluate respondent's claim of ineffective assistance concerning her counsel's failure to subpoena Pat Lawson and Nancy Howard in the best-interest hearing. *Id.* ¶ 217. That is, we concluded we could not "rule out,

sight unseen, that the testimony of these two witnesses would have created a reasonable probability of a different outcome." (Emphasis in original.) *Id.* (citing *Strickland*, 466 U.S. at 694). We "retain[ed] jurisdiction" and remanded for "an evidentiary hearing and decision on the limited question of whether the failure to subpoena Pat Lawson and Nancy Howard in the best-interest hearing amounted to ineffective assistance of counsel." *Id.* ¶ 220.

¶ 111 F. Evidentiary Hearing

¶ 112 On remand, the trial court conducted an evidentiary hearing on two separate days in November and December 2017. Respondent continued to be represented by attorney Vig on remand. During the evidentiary hearing, attorney Vig presented testimony from Nancy Howard, Pat Lawson, and respondent. The State presented rebuttal testimony of Sergeant Todd Bauer and attorney Mills. The court took judicial notice of the transcripts from the best-interest hearing.

¶ 113 Nancy Howard, respondent's grandmother, testified "Howard" was her maiden name, which she had not gone by since 1962, and she went by "Nancy Robling." Nancy testified she last saw respondent in summer 2016, after respondent left St. Mary's Hospital. Prior to that occasion, Nancy saw respondent three to four years earlier for approximately two to four hours when respondent and her children came to her house for Thanksgiving. At that time, Nancy testified, the relationship between the respondent and the children "seemed all right" as they were not "arguing or fighting or anything." She also testified respondent and the children were "loving" to each other. Nancy acknowledged, however, she had to dedicate her attention to multiple guests during the short period respondent and her children were present for Thanksgiving. She also acknowledged she did not keep in touch with respondent and her children "very much," and her memory was not as good as it used to be. When asked how many times she observed respondent interact with her children, Nancy testified: "Minimal. It's not very

many." Other than Thanksgiving, Nancy could not recall a time she observed respondent and her children interacting. Nancy did not recall whether she was contacted by attorney Mills to testify at the best-interest hearing.

¶ 114 Pat Lawson testified she had known respondent since respondent was seven or eight years old. For two months in 2016, Pat served as a foster parent to A.H. and C.H. At that time, respondent lived near Pat, and she would often visit the children at Pat's home and help provide for the children's needs. Pat believed respondent had a "great impact" on the children. Pat testified respondent helped calm C.H., and C.H. grew to be more loving, caring, and not throwing as many fits due to respondent's involvement. A.H. expressed to Pat her desire to be with respondent. While in Pat's custody, A.H. would sneak out of the home to be with respondent. Pat had no safety concerns when the children were with respondent. Pat observed respondent's husband assist with caring for the minors and believed he would be a great father. Pat believed it was in the children's best interests to be with respondent. She did not recall being contacted by attorney Mills.

¶ 115 Pat acknowledged she was removed as a foster parent because she allowed respondent to participate in the day-to-day activities with the children without prior authorization. She also acknowledged she did not timely report an incident when A.H. ran away from her home. Pat initially testified she never observed A.H. in a nonsober state and A.H. did not run away from her home to party with respondent. Pat acknowledged meeting with Sergeant Todd Bauer on September 15, 2017, but she did not recall telling him A.H. would run away to party with respondent. She did acknowledge telling Sergeant Bauer she had found A.H. in a non-sober state and believed A.H. was smoking "weed" but clarified that occurred after A.H. ran

away with her boyfriend and not respondent. Pat stated her memory was not good because of certain medications she was taking.

¶ 116 Respondent testified she requested attorney Mills to call her grandmother and Pat Lawson to testify prior to the filing of the petition to terminate her parental rights.

¶ 117 Sergeant Todd Bauer testified, on September 15, 2017, he met with Pat Lawson, who stated (1) A.H. had previously ran away to respondent's home to party, and (2) she would find A.H. in a nonsober state and believed A.H. was smoking "weed."

¶ 118 Attorney Mills initially testified respondent never asked him to subpoena Pat Lawson or Nancy Howard to testify after the petition to terminate parental rights was filed. On cross-examination, however, attorney Mills indicated he moved to continue the best-interest hearing after respondent requested he subpoena Pat and Nancy during that hearing.

¶ 119 Based on the evidence and arguments presented, the trial court found attorney Mill's failure to subpoena Pat Lawson and Nancy Howard did not amount to ineffective assistance because respondent was not prejudiced by counsel's performance. Specifically, the court found as follows:

> "I'm looking back at the transcript[s] *** of the October 26th hearing where Mr. Mills had asked for a continuance so he could subpoena witnesses, specifically Ms. Howard and Ms. Lawson. He indicated that they were planning on coming in that day but was having trouble getting a ride there. They believed that Ms. Howard was having surgery at that time. These were individuals that evidently were known, or at least known that day, but they were not subpoenaed; and as I indicated, that that case had been set since August 25th and there was

more than sufficient time to get those witnesses under subpoena, and that was why I denied the motion to continue any further.

The [c]ourt didn't find or feel that there was due diligence in getting the individuals subpoenaed at that time. Evidently, they had been talked to; evidently, they had indicated they were going to come. Ms. Lawson was going to come, but she had trouble getting a ride in, and it's not clear—I couldn't remember for sure, but I was looking back through here just to see exactly when he became aware of those.

I do note that Mr. Mills did indicate, 'Your Honor, my client has asked me to ask for a continuance so we could obtain the testimony of Pat Lawson, who is a former foster parent, and also my client's grandmother, Nancy Howard. Pat Lawson was planning on coming today but was having trouble getting a ride here, and Nancy Howard is—I think, she I getting surgery; is that correct?' And [respondent] answered, 'Yes.'

So the individuals were known. They had evidently anticipated them being there, but no subpoenas had been issued; and why we are back here today was the Appellate Court wanted us to hear from *** those two witnesses—Nancy Howard and Pat Lawson—to see what their testimony would be and to see if that would have impacted the [c]ourt's decision on best interest.

Probably the easiest one is Nancy Howard, [respondent's] grandmother. From her testimony, she had very little—very little contact, very little knowledge of [respondent's] dealings with her children, and basically had no information really that the [c]ourt could rely on to see if it was not within the best interest of

the children that the rights be terminated. So from that standpoint, the testimony of Nancy Howard doesn't change the [c]ourt's mind at all.

Now we have Pat Lawson's testimony from today. I have a little bit of problem with Ms. Lawson's testimony. Even from her own testimony here today, she says she takes a lot of meds and her memory does not—is not so good, which I think the Court would agree with because she testified as to what a great relationship [respondent] has with her children, but this [c]ourt has been involved in this case from the very beginning. I recall the reasons why this case was, in fact, brought. I don't agree with Ms. Lawson's testimony regarding [A.H.] wanting to be with her mother because I remember at the very beginning of this case she specifically didn't want anything to do with her mother at the very beginning. Now, that had changed over the course of the time that this case was pending, and I think part of the problem or part of the reason for that was that she was having more contact with her mother.

There were issues of drug use. There were issues of running away, and the [c]ourt also finds it very troubling from Ms. Lawson's standpoint of she had these children in foster care, but it sounded like she was letting [respondent] have free reign with these children on a daily basis, which totally went against the Department of [C]hildren and Family Services, why they had the children in foster care.

I do not find her testimony to be that credible, and I do not find that it would persuade the [c]ourt that it was not in the best interest of these children that the parental rights be terminated; and, again, I do know [A.H.] came in here. I do

know that she testified she did not want parental rights terminated; but as I said at that time, I was not going to put it on that young lady's shoulders to make that decision. There were too many issues in that family dynamic, too many problems, and the [c]ourt did feel and still feels it was in the best interest of those children that the parental rights be terminated, and that is going to be the position of the Court."

¶ 120 After the trial court rendered its decision, respondent expressed a desire for further review by this court, and the trial court appointed attorney Craig Reiser to represent respondent before us.

¶ 121 II. ANALYSIS

¶ 122 Before this court, respondent has argued (1) she received ineffective assistance from her trial counsel in the proceedings which lead to the termination of her parental rights, (2) the trial court erred in finding she was unfit parent and terminating her parental rights, and (3) the trial court erred in denying her motion for a continuance at the best-interest hearing.

¶ 123 A. Counsel's Performance

¶ 124 Respondent argues she received ineffective assistance from attorney Mills in the proceedings which led to the termination of her parental rights. Again, we have previously rejected respondent's claims of ineffective assistance with the exception of her claim relating to her counsel's failure to subpoena Pat Lawson and Nancy Howard in the best-interest hearing. *A.H.*, 2017 IL App (4th) 160769-U, ¶¶ 199-218. We retained jurisdiction and remanded for an evidentiary hearing on respondent's remaining claim of ineffective assistance. *Id.* ¶ 220. Following an evidentiary hearing on remand, the trial court found respondent was not prejudiced by counsel's failure to subpoena Pat Lawson and Nancy Howard, and therefore, she did not

receive ineffective assistance. Respondent contends the trial court's finding on remand was incorrect.

¶ 125 Under section 1-5(1) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-5(1) (West 2014)), minors and their parents in juvenile proceedings have the right to effective representation by counsel. *In re Abel C.*, 2013 IL App (2d) 130263, ¶ 12, 990 N.E. 2d 175. Even though this right is statutory rather than constitutional, Illinois courts gauge the effectiveness of counsel in juvenile proceedings by applying the constitutional standard from criminal law, specifically, the standard in *Strickland*. *In re Ch. W.*, 399 Ill. App. 3d 825, 828, 927 N.E.2d 872, 875 (2010). Under *Strickland*, a party alleging ineffective assistance must prove two propositions: (1) "counsel's representation fell below an objective standard of reasonableness" (*Strickland*, 466 U.S. at 669), and (2) there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

¶ 126 Merely showing "counsel's deficient conduct" had "*some conceivable effect* on the outcome of the proceedings" does not establish a "reasonable probability" of a different outcome. (Emphasis added.) *Id.* at 693. On the other hand, it is unnecessary to show that conduct "*more likely than not* altered the outcome." (Emphasis added.) *Id.* A "reasonable probability" is somewhere between those two extremes: it is "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. "The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Id.*

¶ 127 When, as in this case, the trial court has conducted an evidentiary hearing and addressed a claim of ineffective assistance, we will apply a hybrid standard of review in deciding whether the respondent has proved less than reasonable representation and resulting prejudice.

See *People v. Phillips*, 2017 IL App (4th) 160557, ¶¶ 54-55, 92 N.E.3d 544. That is, we will defer to the trial court's factual findings and will disturb them only if they are against the manifest weight of the evidence but review *de novo* the court's ultimate determination of whether counsel rendered ineffective assistance. See *id.* ¶ 55. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 128 At the evidentiary hearing on remand, the trial court, with the same judge who presided over the best-interest hearing, heard and evaluated the testimony from Pat Lawson and Nancy Howard. The court found Nancy's testimony would not have impacted its best-interest findings, noting she had minimal contact and knowledge of respondent's dealings with her children. The court found Pat's testimony would not have impacted its best-interest findings, noting her memory was questionable and she allowed respondent unauthorized access to the children. Given the testimony presented, we find the trial court's factual findings were not against the manifest weight of the evidence. Because it is clear the additional testimony would not have dissuaded the trial court from finding it was in the children's best interests to terminate respondent's parental rights, we find no prejudice from attorney Mills's failure to subpoena the two witnesses to testify at the best-interest hearing. See *Strickland*, 466 U.S. at 694. Respondent has failed to show she received ineffective assistance from her trial counsel.

¶ 129 B. Fitness and Best-Interest Findings

¶ 130 Respondent argues the trial court erred in finding she was unfit parent and terminating her parental rights. That is, respondent suggests the trial court's fitness and best-interest findings are against the manifest weight of the evidence. With respect to its fitness finding, respondent asserts the court erred in finding she was an unfit parent where the evidence

showed she was initially evaluated as a Level 2 for drug and alcohol treatment and then later evaluated as a Level 1. With respect to its best-interest findings, respondent asserts the court erred in finding it was in the minors' best interests to terminate her parental rights based on the evidence presented at both the best-interest hearing and the evidentiary hearing on remand.

¶ 131 The involuntary termination of parental rights involves a two-step process. 705 ILCS 405/2-29(2) (West 2014)). First, the State must prove by clear and convincing evidence the parent is "unfit" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, the State must then prove by a preponderance of the evidence it is in the child's best interest parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 132 Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005); *In re M.R.*, 393 Ill. App. 3d 609, 613, 912 N.E.2d 337, 342 (2009). We will not disturb a trial court's unfitness finding unless it is against the manifest weight of the evidence. See *Gwynne P.*, 215 Ill. 2d at 354. Again, a finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Daphnie E.*, 368 Ill. App. 3d at 1072.

¶ 133 The trial court found respondent was an unfit parent as defined in Section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)). Section 1(D)(m)(ii) provides a parent will be considered an "unfit person" if he or she fails to make "reasonable progress" toward the return of a child within nine months following an adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). "Progress" has been defined as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030,

1047 (2001). This is an objective standard, focusing on the amount of progress toward the goal of reunification one can reasonably expect under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). The benchmark for measuring a parent's progress toward reunification "encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17.

¶ 134 Respondent previously, in support of her claim of ineffective assistance relating to counsel's performance at her fitness hearing, relied upon the fact she was initially evaluated as a Level 2 for drug and alcohol treatment and then later evaluated as a Level 1. See *A.H.*, 2017 IL App (4th) 160769-U, ¶¶ 213-15. In addressing her argument, we found, even if the differing evaluations could be regarded as evidence of progress, the elucidation of the distinction between levels 1 and 2 would not have changed the outcome of the fitness hearing. *Id.* ¶ 214. We stated:

> "[D]uring the nine-month period following the adjudication of neglect (April 16, 2015, to January 16, 2016), respondent failed to complete substance-abuse treatment and failed to complete aggression-management counseling, even though drug abuse and domestic violence were the very reasons why the children had been removed. [Citation.] *** On top of being dropped from those programs for no-calls, no-shows, she missed most of the requested drug screens, and on June 18, 2015, she was in possession of cocaine, as her guilty plea in Logan County case No. 15-CF-101 had established. Given those damaging facts, there is no reasonable probability the trial court would have found it to be unproved, by clear

and convincing evidence, that respondent failed to make reasonable progress from April 16, 2015, to January 16, 2016." *Id.* ¶ 214.

The damaging facts we previously highlighted show the trial court's finding of unfitness for respondent's failure to make reasonable progress toward the return of the children is not against the manifest weight of the evidence. As only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other basis for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 135 We turn next to the trial court's best-interest findings. At the best-interest stage of termination proceedings, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence termination is in the child's best interests. *Id.* at 367.

¶ 136 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in the minor's best interest: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including continuity of affection for the child, the child's feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 137 On review, this court will not reverse a trial court's best-interest finding unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). Again, a decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Daphnie E.*, 368 Ill. App. 3d at 1072.

¶ 138 It is undisputed both A.H. and C.H. suffered significant setbacks in their placement. However, it is also clear the Center worked to stabilize placement and provide additional support. While respondent made some progress, she did not have the capabilities to provide either A.H. or C.H. with the necessary care and support. At the time of the best-interest hearing, respondent was in custody on a recent charge of criminal damage to property. Respondent explained to the judge she was incarcerated because she "had been having mental breakdowns." While respondent planned to return to the Beason home after being released from custody, she acknowledged her husband, who lived at the Beason home, had an order of protection against her. While respondent planned to support A.H. and C.H. by doing various odd jobs around town as she had done in the past, she never provided any documentation showing the income she could obtain through this type of work. Respondent had a conviction for domestic battery against A.H. Respondent insisted the accusations A.H. had made against her, and which had served as the basis for removing the children from her care, were untrue. Respondent had a conviction for unlawful possession of a controlled substance. A.H. observed respondent consume cocaine, and respondent had offered A.H. cocaine in the past. The trial court carefully considered A.H.'s recent desire to be with respondent but ultimately concluded it was not in her best interest. Given the evidence presented, we find the trial court's best-interest findings are not against the manifest weight of the evidence.

¶ 139 As a final matter, respondent briefly notes "[t]he record is silent as to whether the guardian *ad litem* met with C.H. or A.H. to determine what effect the termination of parental rights might have on them or to determine how they were doing in their current placements." Respondent then argues: "To the extent that the guardian *ad litem* did not meet with the children as required [by section 2-17(8) of the Act (705 ILCS 405/2-17(8) (West 2014))], the trial court should have required those meetings prior to making a determination as to the best interests of the [children]." Respondent did not raise this argument before the trial court, thereby forfeiting it for review. See *In re H.D.*, 343 Ill. App. 3d 483, 490, 797 N.E.2d 1112, 1118 (2003). We decline to consider respondent's argument further.

¶ 140 C. Motion for a Continuance

¶ 141 Respondent argues the trial court erred in denying her motion for a continuance to secure the presence of Pat Lawson and Nancy Howard at the best-interest hearing.

¶ 142 The decision of whether to grant or deny a motion for a continuance is within the sound discretion of the trial court, which will not be reversed on appeal absent an abuse of that discretion. *People v. Ward*, 154 Ill. 2d 272, 307, 609 N.E.2d 252, 266 (1992). "Moreover, the denial of a request for continuance will not be grounds for reversal unless the complaining party has been prejudiced by such denial." *In re M.R.*, 305 Ill. App. 3d 1083, 1086, 713 N.E.2d 1241, 1242 (1999).

¶ 143 Here, it is clear respondent was not prejudiced by the denial of her motion for a continuance to secure the presence of Pat Lawson and Nancy Howard at the best-interest hearing. At the evidentiary hearing on remand, the trial court heard the testimony from these witnesses that would have been presented had the continuance been granted. The court found

that testimony would not have dissuaded it from finding it was in the children's best interests to terminate respondent's parental rights. Respondent suffered no prejudice.

¶ 144 III. CONCLUSION

¶ 145 We affirm the trial court's judgment.

¶ 146 Affirmed.