2018 IL App (4th) 180155-U

NO. 4-18-0155

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 2, 2018
Carla Bender
4th District Appellate
Court, IL

In re A.D., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Sangamon County
Petitioner-Appellee,	)	No. 15JA10
v.	)	
Audrey D.,	)	
Respondent-Appellant.)	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In June 2017, the State filed a petition to terminate the parental rights of respondent, Audrey D., as to her minor child, A.D. (born June 11, 2012). Following a fitness hearing, the trial court found respondent unfit. In March 2018, the court found it was in A.D.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court's fitness and best-interest findings were against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In January 2015, the State filed a petition for adjudication of wardship, alleging A.D. was neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)), in that his environment was injurious to his welfare based on the bruises and loop marks to his foster sibling. The petition further alleged A.D. was abused in that he was at substantial risk of physical injury by other than accidental means (705 ILCS 405/2-3(2)(ii) (West 2014)), and respondent inflicted excessive corporal punishment (705 ILCS 405/2-3(2)(v) (West 2014)). The petition also included allegations regarding a second child, a daughter, who is not involved in this appeal. Following a June 2016 adjudicatory hearing, the trial court found the State proved A.D. was (1) neglected in that his environment was injurious to his welfare based on the bruises and marks to his foster sibling and (2) abused in that he was at substantial risk of physical abuse based on respondent's actions toward the foster sibling. In July 2016, the court entered a dispositional order (1) finding respondent unfit and unable to care for A.D.; (2) making A.D. a ward of the court; and (3) placing guardianship of A.D. with the Department of Children and Family Services (DCFS).

¶ 7 B. Termination Proceedings

¶ 8 In June 2017, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to A.D. (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis of removal (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of A.D. within nine months after an adjudication of neglect, specifically June 16, 2016, to March 16, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 9 1. *Fitness Hearing*

¶ 10 Over the course of four nonconsecutive days, the trial court heard the following evidence.

¶ 11 a. Elizabeth Collins

¶ 12 Elizabeth Collins, a caseworker formerly employed by the Family Service Center, testified she was assigned to A.D.'s case from January 2015 to February 2017. According to Collins, A.D. was removed from respondent's care due to allegations of physical abuse to the foster siblings in the home. In a related criminal case, respondent pleaded guilty to aggravated battery to a child, a Class 3 felony. Based on that conviction, respondent was required to sign a registry "for individuals that are violent towards children."

¶ 13 In March 2015, Collins created the first service plan, which included the following tasks: visitation, a psychological evaluation, mental-health counseling, parenting education, providing the integrated assessment to service providers, looking over the investigation to ensure referrals were made properly, and attending A.D.'s medical appointments. In a July 2015 administrative case review, respondent's progress was unsatisfactory because she refused mental-health treatment, most of the visitation time was focused on inappropriate grooming, and respondent refused to acknowledge any abuse or take responsibility for the conditions that led to DCFS involvement.

¶ 14 Respondent attended medical appointments, but Collins testified, "the foster parents would report one thing, [respondent] would report another issue and would almost take over the doctor's appointments to the point where the doctor actually requested that it just be the foster parents." When A.D. was first taken into care, Collins received a document two pages long detailing his medical issues. Accordingly, A.D. was put in a placement that tended to specialized needs. Collins testified, "Upon further documentation, further medical appointments

and also an examination that was conducted by social security to declare him disabled, they were found that the majority of those diagnos[e]s that were given to us were no longer either affecting him or were void to begin with." Collins acknowledged it was possible A.D. aged out of some of his medical issues.

¶ 15 The service plan was extended for another six months and an administrative case review in January 2016 showed respondent's progress was unsatisfactory due to her incarceration from November 2015 through April 2016. According to Collins, the service plan was again extended for six months and a probation task and a sex offender risk assessment were added. The sex offender risk assessment was added based on indicated findings of sexual abuse against the foster siblings perpetrated by respondent.

¶ 16 At a July 2016 administrative case review, respondent was rated unsatisfactory with respect to attending A.D.'s medical appointments because she was unable to participate based on a diagnosis of "Munchausen[] by proxy." Respondent's compliance with mental-health counseling was also rated unsatisfactory because she was not engaged in counseling and refused to talk about any of the reasons A.D. was in DCFS care. Although respondent completed parenting classes, this task was rated unsatisfactory because she "maintained that she took no responsibility for the abuse of the children and that she played no part in that." According to Collins, respondent refused to follow through with the sex offender risk assessment referral, leading to an unsatisfactory rating for that task. Respondent's overall cooperation was rated satisfactory because she kept all scheduled appointments. Respondent was also rated satisfactory on her probation task because she participated in the required anger-management class and maintained her registry on a database of persons convicted of violent offenses against children.

¶ 17 Collins testified the service plan was again extended and, in January 2017, another administrative case review showed respondent's progress was unsatisfactory. Respondent was still not allowed to attend medical appointments (although the service plan listed this task as satisfactory), and she continued to refuse to engage in counseling. Collins testified she talked with respondent about the need for her to take responsibility for her actions or to acknowledge the reasons why A.D. was in DCFS care. However, respondent refused to acknowledge any reasons for DCFS involvement and continued to maintain she was falsely accused, despite her stipulation in court that she had inappropriately disciplined the foster children. Respondent was satisfactory with respect to visitation and probation. According to Collins, respondent said she was not a sex offender and refused to participate in the sex offender risk assessment.

¶ 18 According to Collins, respondent's visitation schedule when the case opened was one hour, once a week. The visits were increased at some point but were decreased after she was released from incarceration. Respondent had no visitation while incarcerated and returned to one-hour weekly visits after her release. Visits were again increased, and by the time Collins left the Family Service Center in February 2017, respondent had two-hour weekly visits. Prior to respondent's incarceration, there were issues with grooming and food during visits. According to Collins, the quality of visits improved after respondent was released from incarceration, and she would bring gifts and play games with A.D.

¶ 19 Collins testified she tried to work with respondent to motivate her to engage with services. Specifically, Collins stated she allowed respondent time to appeal the indicated sexual-abuse findings and did not count that time against respondent. However, when the appeal was unsuccessful, Collins again referred respondent to the sex offender risk assessment, which

respondent refused to complete. Collins also referred respondent to different agencies when she disliked the first agency Collins selected for services. Collins testified respondent would attend one counseling session, say she had nothing to discuss, and request a new counselor. Respondent saw at least two counselors with the Family Service Center. Respondent claimed there was bullying and racism, so Collins referred her to another agency. According to Collins, respondent ended up picking her own counselor.

¶ 20 Ultimately, respondent was rated unsatisfactory for parenting, counseling, and failing to complete the sex offender risk assessment. Collins testified parenting was unsatisfactory because respondent refused to acknowledge she was in some way at fault for her children being placed with DCFS. Counseling was rated unsatisfactory because she refused to talk about DCFS whatsoever or address the issues that led to her children being taken into DCFS care. According to Collins, she was never close to returning A.D. to respondent's home.

¶ 21 b. Rachael Fornoff

¶ 22 Rachael Fornoff, a caseworker with the Family Service Center, testified she was assigned A.D.'s case in February 2017. At a July 2017 administrative case review, respondent was rated satisfactory on the following tasks: probation, psychological evaluation, visitation, and A.D.'s medical care. However, respondent was rated unsatisfactory for overall cooperation and the sex offender risk assessment because she did not sign a release of information for the sex offender risk assessment. Respondent's mental-health counseling task was also rated unsatisfactory because "[s]he was not fully open and honest with the counselor regarding the full DCFS involvement." Although respondent had completed parenting classes, the parenting task was unsatisfactory because she failed to take responsibility for the abuse that occurred in her home.

¶ 23 Fornoff testified that, in June 2017, she was not close to returning A.D. to respondent's care because she had not completed all the necessary services. According to Fornoff, respondent refused to complete the sex offender risk assessment. Additionally, respondent participated in counseling but she was not fully communicative with her counselor. Respondent's psychological evaluation indicated a need for more openness and a higher level of counseling, and her lack of progress was a factor in Fornoff's determination that she was not close to returning A.D. to respondent's care.

¶ 24 c. Bridget Palmatier

¶ 25 Bridget Palmatier, a licensed professional counselor at the time of the hearing, testified she previously was an intern at the Family Service Center, where she was not licensed to practice without supervision. In March 2015, Palmatier performed a mental health assessment on respondent. Palmatier diagnosed a parent/child relational problem—issues between a parent and child significant enough to affect daily life and functioning, requiring professional help—as the primary concern.

¶ 26 The mental health assessment also documented two "rule-outs" of narcissistic personality disorder and factitious disorder by proxy. A "rule-out" meant Palmatier did not have enough information to definitively make a diagnosis, but she had enough supporting evidence to say the diagnosis was a possibility. Although the "rule outs" were not diagnoses, they were included in the assessment to be followed up on over time. To Palmatier's knowledge, a subsequent therapist diagnosed respondent with narcissistic personality disorder and factitious disorder by proxy.

¶ 27 After completing the mental-health assessment, Palmatier recommended individual and group therapy for respondent to learn anger-management strategies and address

her grief over having her children in foster care. Palmatier recommended further psychological testing to collect more information regarding the possible narcissistic personality disorder and factitious disorder by proxy diagnoses. A supervisor reviewed the mental-health assessment and the agency approved the assessment.

¶ 28 According to Palmatier, respondent attended approximately three counseling sessions before Palmatier's internship ended. Respondent failed to make progress during those sessions because she was unwilling to acknowledge any problems. However, Palmatier acknowledged she would not expect to see much progress after only three sessions.

¶ 29 d. Julia Lopez

¶ 30 Julia Lopez, a licensed professional counselor, testified she previously worked at the Family Service Center as a therapist. Lopez took over respondent's counseling after Palmatier's internship ended, and she met with respondent for four individual sessions and two family meetings. The first meeting involved respondent, Palmatier, and Lopez, and they discussed problems Palmatier had in getting respondent to commit to any pertinent counseling goals. According to Lopez, respondent indicated she was willing to do counseling but "she didn't really feel like she needed any support."

¶ 31 Lopez reviewed respondent's mental-health assessment and eventually made changes to the "rule outs." Lopez stated, "I was instructed by my supervisors that I had to change a rule-out. So, you can't—you couldn't have a rule-out on the diagnosis for a certain amount of time. And so that per Medicaid, and thus, I was kind of put to where I had to evaluate whether or not she met the [rule-out] diagnoses." Lopez testified she felt pressured to include the "rule-outs" as part of respondent's diagnosis. However, Lopez did not feel as though she did

anything unethical in making the diagnoses. Lopez testified she would have preferred to have taken more time in making those diagnoses.

¶ 32 Lopez testified she determined a narcissistic personality was clearly present and changed that "rule-out" to a diagnosis. Lopez based this diagnosis on numerous occasions where respondent tried to "express her importance" and her need to be treated differently. According to Lopez, respondent displayed a lack of empathy and made "kind of rehearsed statements about how important and connected she was, how she had many ties to people of high importances [*sic*]." Lopez further determined the factitious disorder by proxy was a valid diagnosis. This diagnosis was based on respondent's numerous requests for medical evaluations of her children and reports of different illnesses. Respondent continued to report illnesses both her children suffered to Lopez, although there was no medical evidence to support the existence of the alleged illnesses. Lopez acknowledged she had not viewed A.D.'s medical records. Lopez also reviewed the parent/child relational problem diagnosis and determined it remained a valid diagnosis. Lopez recommended psychiatric and psychological evaluations.

¶ 33 Lopez had concerns respondent was not open to counseling and described her participation in counseling as follows:

> "[S]he was pretty consistent in expressing that she had never felt any bad emotions, that she had never felt mad or sad or angry. And even when I tried to kind of reframe that to say, you know, absolutely, like everyone feels those emotions and there's good qualities to having those emotions, she was pretty adamant that she did not have any of those emotions. She was very adamant that

she was the perfect mother, that she had a perfect life. And she had never had any kind of stress or trauma in her history."

According to Lopez, respondent's inability to recognize the problems she faced or the reasons for DCFS involvement was detrimental to her primary diagnosis of a parent-child relational problem. Without recognizing the problems, respondent would not be able to move forward or make changes necessary to improve the parent-child relationship. Lopez testified respondent refused to set any measurable clinical goals for counseling.

¶ 34 According to Lopez, attending the counseling sessions could be one goal and respondent consistently attended her counseling sessions. Although she consistently attended, Lopez opined respondent was not making progress in the content of her session conversations. Lopez testified that treating narcissistic personality disorder and factitious disorder by proxy involved behavioral modification. According to Lopez, respondent "never got to a point where [she] could work on any of that because she was so adamant that she didn't need counseling." Lopez further testified that, in her "limited experience," narcissistic personality disorder treatment involved daily group counseling.

¶ 35 In May 2015, Lopez and her clinical supervisor met with respondent to share some of their concerns. Respondent continued to express her belief that she did not need counseling. At a family team meeting that same month, respondent again stated she did not want to do counseling and wanted to go somewhere else for counseling. Lopez determined it would be better if respondent saw another counselor and recommended she go to Primed for Life, Inc. for counseling.

¶ 36 e. Dr. Lori McKenzie

¶ 37 Dr. Lori McKenzie, a licensed clinical psychologist, testified that, in August 2015, she completed respondent's psychological evaluation. During her interview, respondent told McKenzie she was involved with DCFS because a foster child in her care had "scratches" and the foster children and her biological children were removed from her care because of the allegation that she had scratched the child. Respondent presented this information as accurate, but McKenzie noted the information was inconsistent with reports about the injuries to the foster child. A doctor who evaluated the child reported injuries consistent with the child being hit with a belt, one of the children was malnourished, and both of the foster children "had overly developed leg muscles that were consistent with having to crouch in a squat position for an extended period of time." Respondent told McKenzie that doctors in the community were very familiar with her because she was frequently in contact with specialists regarding her children's medical conditions.

¶ 38 After completing the client interview, an I.Q. test, and making sure respondent had an adequate reading level to continue with assessments, McKenzie administered an assessment for personality and emotional functioning. The assessment consisted of 338 true-or-false statements and included validity scales to determine whether the clinical scales were an appropriate representation of functioning. Respondent's validity scales showed she was defensive and not acknowledging that anything was wrong with her, such that the overall profile was invalid and McKenzie could not interpret it.

¶ 39 According to McKenzie, in the absence of a specific assessment device, a psychologist uses a person's background information and information based on direct interaction with the individual to make a diagnostic assessment. McKenzie testified respondent met the criteria for narcissistic personality disorder and factitious disorder directed toward another. The

criteria respondent met for narcissistic personality disorder included acting out of a sense of entitlement (feeling entitled to record meetings without people's knowledge), presenting herself as knowing more than medical professionals, the defensiveness shown in the validity scales of the first assessment administered, a sense of not wanting to be viewed in a negative light, and "wanting to have association with people who she viewed as being high status individuals[,] such as her indications of being well known by many medical specialists in the area."

¶ 40 McKenzie testified one of the questions posed to her in the DCFS referral was whether respondent could adequately parent in the short or long term. McKenzie stated her biggest concern was the diagnosis of factitious disorder imposed on another because, if a medical provider does not give what the individual feels is sufficient attention to the child, "parents often will continue on in their behaviors and do things to the child so that the child actually has a medical condition." McKenzie noted respondent denied all the information presented from various sources as having sought needless medical care for her children, and she denied having any kind of minor personality or emotional issues. McKenzie expressed concern that respondent was not aware that she could, in fact, be a danger to her children. According to McKenzie's report, respondent needed to acknowledge her diagnoses and engage in therapy to address underlying issues. The report noted respondent was "extremely resistant to doing this type of work in therapy," and it further noted, "until [respondent] can fully participate in therapy and address/resolve the problems that have caused her children to be removed from her custody, there is no guarantee that her children will be safe in her care."

¶ 41 f. Nicole List

¶ 42 Nicole List, an outpatient therapist at Locust Street Resource Center, testified she was respondent's therapist from August 2016 to September 2017. When respondent first began

counseling at Locust Street Resource Center, an intake worker diagnosed her with adjustment disorder with depressed mood. According to List, respondent disagreed with this diagnosis and, at a yearly reassessment, denied having any depressive symptoms. List reviewed the intake report, McKenzie's psychological evaluation, and respondent's service plan prior to meeting with respondent.

¶ 43 List testified respondent wanted to work on learning more appropriate discipline tactics, and she wanted to address the adjustment to having her children removed from her care. With regard to discipline, respondent was able to identify discipline tactics she wanted to use, including time-out, taking away privileges, and redirecting behaviors. According to List, respondent seemed to understand the difference between appropriate discipline techniques and her previous tactics.

¶ 44 List opined respondent had difficulty addressing the reasons for DCFS involvement. According to List, "[respondent] was able to talk about what was currently going on with the case in regards to the visitations and her relationship with her son, but she had a more difficult time talking about why DCFS came into her life and kind of reflecting on that process." List testified respondent made some progress with her ability to discuss different discipline tactics, but she did not make significant progress in understanding and having insight into what led to DCFS's involvement in her life. According to List, respondent opened up in small increments over time, which showed slight progress. List testified respondent admitted to spanking the foster child one time.

¶ 45 In May 2017, List submitted a letter to DCFS summarizing respondent's treatment. According to List, respondent was able to open up more than when she first started counseling but she remained guarded when it came to discussing the events that led to the

treatment. List testified she, "[a]ttempted to discuss responsibility, but [respondent] seemed to have a hard time accepting responsibility for the case." According to List, respondent's inability to accept responsibility hindered any progress she could make in counseling. List acknowledged that some of the characteristics of narcissistic personality disorder could prevent the development of therapy goals because the person may have a hard time understanding or even recognizing problems. List tried to motivate respondent by suggesting different ways for her to gain insight into her current situation, including talk therapy, journaling, and bringing spirituality into therapy sessions.

¶ 46 List observed "two or three" traits for narcissism, including lack of empathy and arrogance. However, two or three traits were insufficient to diagnose narcissism. List testified, "I did see evidence of traits for personality disorder outside of Narcissistic Personality Disorder which is why I did not make a diagnosis specifically because there were traits that also could have been Histrionic Personality Disorder. Um, just Cluster B traits in general were evident." On cross-examination, counsel asked List if she felt the narcissistic personality disorder and the factitious disorder by proxy diagnoses were inaccurate. List responded, "Well, considering that I didn't observe the symptoms of those disorders, yes."

¶ 47 Respondent's counseling sessions ended in September 2017, following a reassessment that determined further services were not needed based on respondent's denial of having any depressive symptoms.

¶ 48 g. Dr. Seleena Shrestha

¶ 49 The parties stipulated to the admission of Dr. Seleena Shrestha's affidavit and psychiatric evaluation report. Shrestha concluded the diagnosis of factitious disorder by proxy was incorrect for the following reasons:

> "Factitious Disorder by Proxy is only diagnosed following an evaluation of the 'victim,' which is the child in this case, as well as the individual suspected of inflicting the symptoms, the 'caregiver.' The diagnosis is considered if the physician evaluating the child thinks the symptoms and/or signs of the presented problem do not appropriately fit any medical disease (i.e., several tests and procedures fail to give any specific diagnosis). There was no physician's report suggesting the same."

According to Shrestha's affidavit, she found no evidence that respondent falsified any illness in her children. Shrestha also saw no evidence that respondent was motivated to assume a sick role. According to the affidavit, both traits are necessary for a diagnosis of factitious disorder by proxy. Finally, Shrestha's affidavit and the psychiatric evaluation both indicated that a diagnosis of any personality disorder could not be ruled in or ruled out based on her short interaction with respondent.

¶ 50 h. Respondent

¶ 51 Respondent testified her service plan called for the following tasks: parenting, counseling, "psyche" evaluation, visits, and attending A.D.'s medical appointments. Respondent completed a parenting class through the Family Service Center and a second class through The Parent Place that was not required by her service plan. According to respondent, she learned various discipline techniques through her parenting classes, including redirecting, time-out, taking privileges away, not yelling at the child, and talking to children in a soft voice.

¶ 52 Respondent testified that visits with A.D. were excellent and she made A.D. meals, played games, and watched movies. Initially, visits were only one hour a week, but were

increased to two hours, twice a week. At a 2015 visit, respondent noticed burn marks on A.D.'s neck and back. Respondent reported the marks to the police and, at the same time, reported her daughter also told respondent she was being abused by her stepmother. According to respondent, Collins "knocked down" her visits because she made these reports.

¶ 53 Respondent detailed A.D.'s medical history, including an allergy to regular baby formula; an enlarged tongue, which caused him difficulty in swallowing; enlarged adenoids and tonsils; and "a hole that was in his throat so the liquids would get in there and cause problems." A.D. saw an occupational therapist, an ear, nose, and throat (ENT) specialist, and a geneticist. According to respondent, A.D. saw fewer doctors as he got older because the foster parents did not want to take A.D. to the appointments and did not want respondent to make any decisions about A.D.'s medical care.

¶ 54 Respondent testified she saw at least four different therapists. According to respondent, Palmatier was hostile and tried to force her to say untrue things during counseling. Respondent testified she met with Palmatier, Palmatier's supervisor, and respondent's parenting coach. Respondent testified,

> "[T]hey all put me in a room and said: 'You're not going to get your child back if you don't say this or say that.' And it was like, we don't believe that you, due to your background, your heritage, your race, that you didn't have any negativity growing up in your life. And [Palmatier] put on one of the papers that I have that she said that I wasn't cooperating because I wouldn't admit to the dysfunction in my family. I never had any dysfunction in my family, so I feel that was racial profiling and racist."

Respondent's next counselor, Lopez, told respondent she needed to say certain things for Lopez to keep her license. This made respondent uncomfortable and she did not want to continue counseling. In respondent's opinion, she fully participated in counseling.

¶ 55 Respondent's next counselor, List, was aware of Dr. McKenzie's diagnoses and Dr. Shrestha's evaluation. According to respondent, she and List discussed visits with her children, how she missed her children, how the case affected her, and the discipline of the foster child and alternative discipline techniques. Respondent also independently sought counseling at Central Counties Health Centers to show her cooperation and determination to get A.D. back in her care.

¶ 56 Respondent testified she refused to participate in a sex offender risk evaluation because she was innocent of the sexual abuse allegations. Respondent testified the sexual abuse allegations were never proved and there was no evidence to corroborate the allegations from doctor records or video or audio tape. Although respondent was informed multiple times that the sex offender risk assessment was essential for any progress to be made toward returning A.D. to her care, she refused to complete it. Respondent testified, "After I went to Lori McKenzie and DCFS and I feel like she falsely accused me of something I don't have, I felt like if doing the sex offender risk assessment that the same thing is going to happen, it's going to say I did something that I did not do and it's going to try to twist my words around."

¶ 57 Respondent disagreed with Dr. McKenzie's diagnoses of narcissistic personality disorder and factitious disorder by proxy. Respondent's service plan called for counseling to address these diagnoses, but respondent maintained she did not have a mental illness and refused to address those diagnoses. Although respondent disagreed with Dr. McKenzie, she agreed with Dr. Shrestha's evaluation that the factitious disorder by proxy was misdiagnosed. Respondent

acknowledged that Dr. Shrestha's evaluation did not reach any conclusion as to whether respondent had narcissistic personality disorder.

¶ 58 According to respondent she successfully completed the following services: counseling, parenting, visitation, cooperation with DCFS, and probation. Respondent felt the services related to the sex offender risk assessment and mental health were unnecessary. In respondent's opinion, Collins testified respondent did not successfully complete all of her services because Collins disliked respondent and acted hostile toward her.

¶ 59 i. Trial Court's Findings

¶ 60 After hearing the evidence, the trial court found, by clear and convincing evidence, respondent unfit on three separate grounds. The court found respondent failed to (1) maintain a reasonable degree of responsibility as to A.D.; (2) make reasonable efforts to correct the conditions that were the basis of removal; and (3) make reasonable progress toward the return of A.D. within the nine month period from June 2016 to March 2017. In making its ruling, the court specifically noted it was not considering whether or not respondent had a diagnosis for narcissistic personality disorder or factitious disorder by proxy. The court stated it did not necessarily disagree with Palmatier or Dr. McKenzie, but it found consideration of those diagnoses unnecessary where the State's petition did not contain an allegation of respondent's unfitness based on those diagnoses.

¶ 61 The trial court noted A.D. was adjudicated abused and neglected based on the alleged abuse of the foster sibling, who had multiple bruises. Respondent was later convicted of aggravated battery to a child based on the physical harm she caused the foster child. The court determined it was reasonable for DCFS to ask respondent to accept responsibility for the abuse and how it might affect her children because, as the counselors testified, "you can't change what

you don't acknowledge." While respondent "minimally" acknowledged the abuse, she always phrased it as "she spanked the child one time. She was harsh on the child. Or she scratched the child, again, always one time, one day and that was it."

¶ 62 The trial court also addressed respondent's refusal to complete the sex offender risk assessment. The court noted a distinction between the physical abuse and the sexual abuse—specifically that DCFS did not ask respondent to accept responsibility for the sexual abuse, but merely asked her to complete a risk assessment.

¶ 63 The trial court acknowledged respondent showed a reasonable degree of interest and concern for A.D., but she failed to show a reasonable degree of responsibility as to A.D.'s welfare. The court found respondent also failed to make reasonable efforts to correct the conditions that led to removal, noting respondent chose not to engage in treatment and therapy. Finally, the court found respondent failed to make reasonable progress toward having A.D. returned to her care. The court noted the caseworkers testified "they were not close at any time to being able to return the child to her care." There was no guarantee the child would be safe in respondent's care until she fully participated in therapy to address and resolve the problems that caused DCFS involvement. The court could not adequately assess respondent's risk because she never showed remorse for her actions or empathy for her children. The court acknowledged respondent could "parrot" appropriate discipline techniques. However, the judge went on to say, "I don't find that sufficient towards making reasonable efforts or progress by never truly acknowledging what happened to that foster child, at the very very least. That making only slight progress in counseling prevents me from being able to say certainly in March of 2017 that I was anywhere close to being able to place this child back in [respondent's] care."

¶ 64 2. *Best-Interest Hearing*

¶ 65 Immediately following the fitness hearing, the trial court held a separate best-interest hearing. The trial court heard the following evidence.

¶ 66 a. Elizabeth Collins

¶ 67 Collins testified that, at the opening of the case, A.D. was 2 1/2 years old and he was placed in a traditional, specialized foster home, where he remained when Collins left the Family Service Center in February 2017. The placement attended to A.D.'s educational, medical, religious, and social needs. A.D. called his foster parents "mom" and "dad" and referred to his foster siblings as his brothers. As the case progressed, Collins asked the foster parents if they would be an adoptive resource and they said yes. According to Collins, A.D. was bonded to the entire foster family and looked to them for support, structure, and discipline. The foster family struggled with potty training A.D., but eventually they worked through A.D.'s behavioral issues and successfully potty trained him.

¶ 68 According to Collins, respondent was very good about asking A.D. about school and his life at visits. Respondent also tried to potty train A.D. during visits. Collins testified respondent would tell A.D. she loved him, but A.D. "never really reciprocated." However, A.D. would run to respondent and hug her when she arrived for a visit.

¶ 69 Collins testified there would be no harm to A.D. if respondent's parental rights were terminated. Collins stated, "[A.D.]'s very stable. He's very established where he is. He's loved. He's nurtured. Although I do obviously think there is a bond between [respondent] and [A.D.], right now we cannot even determine her safety at this point. And as well as he's been in the same home for three years. He's developed an entirely new family at this point where he is stable and he is safe." Collins opined terminating respondent's parental rights was in A.D.'s best interest.

¶ 70 b. Rachael Fornoff

¶ 71 Fornoff testified A.D.'s foster parents were willing to adopt him. There was an attachment between A.D. and his foster parents, and he sought comfort and affection from them. For the previous six or seven months, Fornoff attended the monthly visits between respondent and A.D., and the visits went well. Respondent would bring snacks and toys for A.D., and they would play games. Fornoff heard A.D. call respondent "mom" a couple of times, and he was happy to see her at visits. However, because A.D. had been in his foster placement for so long, Fornoff expressed doubt as to whether he understood that respondent was his biological mother. A.D. never asked about respondent between visits. Fornoff opined there would not be any harm to A.D. if respondent's parental rights were terminated.

¶ 72 According to Fornoff, A.D. had some behavioral problems at school the week following a monthly visit. In Fornoff's opinion, A.D.'s behavioral problems were attributable to the visits and would likely decrease if visitations were stopped.

¶ 73 Fornoff testified that the foster parents attended to A.D.'s educational, medical, and emotional needs. A.D. enjoyed playing games and reading books with his foster siblings, and he shared a bedroom with his older foster brother. Although the foster family was Caucasian and A.D. was African American, Fornoff did not have any concerns that A.D.'s cultural and identity needs would not be met. According to Fornoff, A.D. never expressed any confusion over or asked about why he did not look like his foster family. Fornoff admitted she had not talked to the foster parents about how they would address the issue in the future.

¶ 74 c. Carolyn Morgan

¶ 75 Carolyn Morgan testified she worked for the Springfield Urban League Early Head Start program (EHS). In 2012, respondent enrolled A.D. in the EHS program. According

to Morgan, her job was to spend approximately an hour and a half each week going into a client's home and presenting activities for the parent to do with the child. Morgan testified she saw respondent and A.D. once a week for two or three years. The program involved activities designed to help with a child's development, including cognitive, social, emotional, fine motor, and gross motor development.

¶ 76 When Morgan first began working with A.D., she noticed his tongue was too large for his mouth and he had problems with eating. At Morgan's suggestion, respondent took A.D. to the doctor, got a diagnosis, and took steps to assist him in eating and drinking. Despite some "slight complications," A.D. did very well with the EHS program. Morgan recalled one particular instance where she observed A.D.'s matching shoes at only 18 months old.

¶ 77 According to Morgan, respondent and A.D. had a wonderful bond and A.D. appeared to be a very happy child. Morgan testified she never got the sense that A.D. was abused. Respondent's home was always clean and the children were always well behaved and looked nice. When A.D. was disobedient, respondent would tell him, "you shouldn't be doing that," and would put him in time-out. If respondent had some extra money, she would always spend it on something special for her children. Morgan recalled A.D.'s birthday party at Chuck E. Cheese's, where respondent engaged in activities with the children.

¶ 78 In Morgan's opinion, it was not in A.D.'s best interest to have respondent's parental rights terminated. According to Morgan, respondent was a good mother who would do everything she could for her children. Morgan acknowledged she had not observed any interaction between respondent and A.D. since June 2015.

¶ 79 d. Respondent

¶ 80 Respondent testified A.D. enjoyed playing games and watching movies with her. Since A.D. was removed from her care, respondent never missed an opportunity to give A.D. gifts, particularly for holidays like Easter, Valentine's Day, and Christmas. According to respondent, when A.D. was first taken from her care he would scream and cry when it came time to leave visits or doctor's appointments. Gradually, A.D. adapted to the situation, but respondent testified he still was sad when he left visits. Respondent testified she and A.D. had a strong mother-son bond and he would be harmed if her parental rights were terminated.

¶ 81 According to respondent, A.D. never talked about his foster parents, but he asked about his father. Respondent testified she would establish a relationship with A.D.'s father as well as his other biological siblings. In respondent's opinion, she knew how to take better care of A.D. than the foster parents because she knew his medical needs, his allergies, and the types of soap he could use. Respondent had concerns that the foster family did not know how to properly care for African American hair or skin and that terminating her parental rights would deprive A.D. of his heritage and background.

¶ 82 Respondent acknowledged A.D. had been with his foster family for three years and would probably miss them if he were returned to her care. Respondent testified she loved A.D. and terminating her parental rights would rob him of his identity and his family. If A.D. were returned to her care, respondent would keep A.D. in touch with his family, take him to church every Sunday, and help prepare him for school.

¶ 83 e. Trial Court's Findings

¶ 84 The trial court noted A.D. was placed with his foster family at age 2 1/2 and had lived with them for a little more than three years. The court further noted respondent had not made any progress outside of the nine-month window alleged in the petition to terminate her

rights, and the court was unwilling to risk placing A.D. in her care. The court considered the best-interest factors, and it emphasized A.D.'s need for permanence and respondent's failure to make sufficient progress in the three years DCFS had been involved. The court noted the potential for permanence in the foster family's home through adoption was greater in the near future than being returned to respondent's care in the near future. The court found, by a preponderance of the evidence, it was in A.D.'s best interest to terminate respondent's parental rights. Accordingly, the court entered an order terminating respondent's parental rights.

¶ 85 This appeal followed.

¶ 86 II. ANALYSIS

¶ 87 On appeal, respondent argues the trial court erred in finding her unfit and determining it was in A.D.'s best interest to terminate her parental rights. We address these arguments in turn, but we first turn to the timeliness of our disposition in this matter.

¶ 88 Illinois Supreme Court Rule 311 (eff. July 1, 2018) requires accelerated dispositions in appeals involving child custody or allocation of parental responsibilities cases. Rule 311(a)(5) provides: "Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal or granting of leave to appeal pursuant to Rule 306(a)(5)." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). August 4, 2018, marked the 150th day following the filing of the notice of appeal in this case. This case was originally set for oral argument on the court's July 2018 oral argument calendar. Counsel filed a motion to continue oral argument due to an urgent family matter. In her motion, counsel stated she contacted respondent and explained the situation. Counsel gave respondent the option of waiving oral argument or proceeding with oral argument at a time after the 150-day period allowed for under Rule 311. Respondent advised counsel she understood the delay associated

with oral argument, but she wanted this court to hear oral argument. This court granted counsel's motion to continue oral argument to the September term, in accordance with respondent's wishes. Accordingly, we find good cause for issuing our disposition after the 150-day deadline.

¶ 89 A. Fitness Finding

¶ 90 In a proceeding to terminate parental rights, the State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). In making such a determination, the court considers whether the parent's conduct falls within one or more of the unfitness grounds described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). Evidence of unfitness based on any ground enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) is enough to support a finding of unfitness, even where the evidence may not be sufficient to support another ground. *In re C.W.*, 199 Ill. 2d 198, 210, 766 N.E.2d 1105, 1113 (2002). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Jordan V.*, 347 Ill. App. 3d at 1067. The trial court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 91 The trial court found respondent unfit on three different grounds: (1) respondent failed to maintain a reasonable degree of responsibility as to A.D. (750 ILCS 50/1(D)(b) (West 2016)); (2) respondent failed to make reasonable efforts to correct the conditions that were the basis of removal (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) respondent failed to make reasonable progress toward the return of A.D. within nine months after an adjudication of neglect, specifically June 16, 2016, to March 16, 2017. (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 92 Respondent contends the trial court erred by finding respondent unfit for failing to make reasonable progress toward the return of A.D. within the nine-month period between June 2016 and March 2017. The State contends this claim is moot because respondent failed to address all three grounds the court relied on in making its unfitness determination. In her reply brief, respondent acknowledges she did not separately address all three grounds, but she contends she did challenge all three grounds by discussing them collectively. According to respondent, maintaining a reasonable degree of responsibility, reasonable efforts, and reasonable progress are "inextricably intertwined," and therefore her discussion of reasonable progress in her opening brief sufficiently addressed all three grounds relied on by the court. We disagree.

¶ 93 Respondent's opening brief clearly discusses only the objective standard used to evaluate reasonable progress. Neither the opening brief nor the reply brief address the subjective standard used to evaluate reasonable efforts or the standard used to evaluate whether a parent maintained a reasonable degree of interest, concern, or responsibility for the minor. Although the evidence relevant to the three grounds might be substantially the same, the three grounds are separate and require independent analysis. However, even if we construe respondent's opening brief as adequately addressing all three grounds, we conclude the court did not err by finding respondent failed to make reasonable progress toward the return of A.D. to her care.

¶ 94 The trial court's finding that respondent failed to make reasonable progress toward the return of A.D. within the nine-month period between June 2016 and March 2017 was not against the manifest weight of the evidence. Reasonable progress is measured by an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391, 757 N.E.2d 613, 617 (2001). Specifically, reasonable progress includes a parent's compliance with service plans and court directives, in

light of the condition that gave rise to the removal of the child. *In re C.N.*, 196 Ill. 2d 181, 216, 752 N.E.2d 1030, 1050 (2001).

¶ 95 During the relevant time period (June 2016 through March 2017), the service plan called for (1) visitation, (2) a psychological evaluation, (3) attending A.D.'s medical appointments, (4) counseling, (5) parenting classes, (6) probation, and (7) a sex offender risk assessment. The evidence established respondent was satisfactory on the following tasks: visitation, completing a psychological evaluation, and probation. Respondent was unsatisfactory in attending A.D.'s medical appointments because she was not allowed to attend based on Dr. McKenzie's diagnosis of factitious disorder by proxy. Respondent also failed to fully engage and make progress in counseling. Caseworkers testified respondent had completed parenting classes, but was still rated unsatisfactory for her failure to accept responsibility for the abuse that led to DCFS involvement. Finally, it is undisputed that respondent refused to complete the sex offender risk assessment, even though she was aware it was required and her failure to complete it could lead to the termination of her parental rights.

¶ 96 On appeal, respondent argues there was no consensus among mental-health professionals as to her diagnoses of narcissistic personality disorder and factitious disorder by proxy. Both Dr. McKenzie and Lopez diagnosed respondent with narcissistic personality disorder and factitious disorder by proxy. List acknowledged she observed traits associated with narcissistic personality disorder but did not observe enough traits to make the diagnosis. Dr. Shrestha's evaluation stated a diagnosis of factitious disorder by proxy was only appropriate if the victim had been evaluated, not just the caregiver. Dr. Shrestha's evaluation indicated that a diagnosis of any personality disorder could not be ruled in or ruled out based on her short interaction with respondent. The evidence showed the propriety of the factitious disorder by

proxy diagnosis was in dispute, and there was some dispute as to the nature and extent of the narcissistic personality disorder diagnosis. However, the trial court explicitly declined to consider these diagnoses in making its fitness determination. We agree these specific diagnoses were not relevant to the court's consideration of whether respondent made sufficient progress toward A.D.'s return.

¶ 97 Regardless of the two diagnoses discussed above, respondent does not dispute the diagnosis of parent-child relational problem and she does not dispute the general need for counseling. Here, the evidence showed respondent did not make progress during counseling. List, her counselor during the relevant time period, testified respondent was guarded and refused to discuss certain topics, including the reason for DCFS involvement. We acknowledge List testified respondent did admit to spanking the foster child in her care one time and respondent was able to identify appropriate discipline techniques. However, List testified that, in May 2017, respondent remained guarded when it came to discussing the events that led to the treatment. Specifically, List testified she "[a]ttempted to discuss responsibility, but [respondent] seemed to have a hard time accepting responsibility for the case." This inability to accept responsibility hindered any progress she could make in counseling.

¶ 98 The trial court determined it was reasonable for DCFS to ask respondent to accept responsibility for the abuse to the foster child, because if she did not acknowledge the problem she could not work to address it. The court noted that, when respondent did mention the abuse, she stated she scratched the child or spanked the child only one time. This was inconsistent with the evidence of the abuse that showed multiple marks, made by a belt or cord, all over the foster child's body. The court's determination that this was insufficient to show reasonable progress

toward acknowledging and resolving the problems that led to DCFS involvement was not against the manifest weight of the evidence.

¶ 99 Additionally, it is undisputed that respondent flat out refused to complete the sex offender risk assessment. We note DCFS did not ask respondent to accept responsibility for those allegations, even though respondent appealed the indicated findings to the circuit court, which upheld the indicated findings. DCFS asked only that respondent complete the risk assessment. Respondent acknowledged during her testimony that an assessment could have vindicated her claim of innocence. However, she testified she refused to complete the assessment because she feared her words would be twisted and the assessment would show she committed acts that she claims she did not commit. Regardless of respondent's reasons for refusing to complete the risk assessment, it is undisputed that she knew the importance of completing it and the possible consequences of her failure to do so. Nonetheless, respondent repeatedly refused to complete the assessment.

¶ 100 Given respondent's failure to complete the requirements of the service plan and her failure to make progress during counseling, we cannot say the trial court's determination respondent failed to make reasonable progress toward having A.D. returned to her care was against the manifest weight of the evidence. Because we have upheld the trial court's findings as to one ground of unfitness, we need not review the other grounds. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001).

¶ 101 B. Best-Interest Finding

¶ 102 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the

evidence that termination is in the best interest of the minor. *Id.* The trial court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62.

¶ 103 The focus of the best-interest hearing is to determine the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2014). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments ***[;]
>
> * * *
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) 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;
>
> (h) the uniqueness of every family and child;
>
> (i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." *Id.*

¶ 104 The trial court, in considering the relevant best interest factors, concluded that the evidence showed A.D. was placed in his foster home at the age of 2 1/2 and had remained in that home for more than three years. A.D. demonstrated a close bond with his foster parents, as evidenced by calling them "mom" and "dad" and looking to them when in need of something. A.D. also had a bond with his foster siblings. The foster parents signed permanency commitment forms and indicated their willingness to adopt A.D.

¶ 105 Conversely, respondent cannot provide stability and permanence for A.D. in the near future. Although the evidence showed respondent loved A.D. and had a bond with him, she failed to show she could provide, in the near future, permanency for A.D. Respondent failed to make reasonable progress toward A.D.'s return in the more than three years the case was pending. The trial court noted it could look outside the nine-month window alleged in the petition in considering whether respondent could provide permanency in the near future. The court concluded respondent never got to a point where the court would consider returning A.D. to her care, and he was more likely to obtain permanency in the near future by staying in his foster placement, given their indicated willingness to adopt A.D. The court determined A.D.'s need for permanence outweighed any harm from terminating respondent's parental rights. Accordingly, the court determined it was in A.D.'s best interest to terminate respondent's parental rights.

¶ 106 Given the strong bond between A.D. and his foster siblings and the possibility of permanence and stability for A.D. in the near future, we conclude the trial court's finding it was

in A.D.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the court.

¶ 107 III. CONCLUSION

¶ 108 For the foregoing reasons, we affirm the trial court's judgment.

¶ 109 Affirmed.