SIXTH DIVISION
August 23, 2019

No. 1-18-1025

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

IN RE. L.M.D., a minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 14 JA 371
v.	)	
	)	
LATASHA O.,	)	Honorable
	)	Richard A. Stevens,
Respondent-Appellant.)	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The order terminating respondent's parental rights is affirmed. Sufficient evidence supported the finding of her unfitness, and she was not denied due process during her termination of parental rights hearing.

¶ 2 Respondent Latasha O. appeals from orders of the circuit court finding her an unfit parent to the minor L.M.D., finding that it was in the best interest of the minor to terminate respondent's parental rights, terminating said rights, and appointing a guardian for the minor with right to consent to adoption. On appeal, respondent contends that the finding of unfitness

was against the manifest weight of the evidence. She also contends that she was denied due process during her termination of parental rights hearing. We affirm.

¶ 3 I. JURISDICTION

¶ 4 On April 12, 2018, the circuit court entered an order terminating respondent's parental rights and appointing a guardian for the minor with the right to consent to adoption. Respondent filed a notice of appeal on May 11, 2018. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017) allowing interlocutory appeals from orders terminating parental rights.

¶ 5 II. BACKGROUND

¶ 6 Respondent is the biological mother of the minor L.M.D., who was born in April 2014. That same month, the State filed a petition for adjudication of wardship. It alleged that the minor was neglected based on being (1) in an environment injurious to his welfare, and (2) born with a controlled substance in his system not due to medical treatment ("drug exposure"). It also alleged that he was abused based on substantial risk of physical injury. The injurious environment and substantial risk of physical injury claims were based on allegations that (1) in Texas, respondent had four prior indicated reports of "neglectful supervision and physical abuse" and had six other minors in foster care, (2) respondent admitted using illegal substances while pregnant with L.M.D., (3) both respondent and L.M.D. tested positive for illegal substances when he was born, and (4) respondent admitted having another child born exposed to illegal substances.

¶ 7 In April 2014, based on the factual allegations in the petition, the court found probable cause to believe the minor was abused or neglected and placed the minor in the temporary custody of the Department of Children and Family Services (Department) in April 2014. Respondent received day visitation with the minor, to be supervised by the Department or its designee.

¶ 8 In January 2015, following an evidentiary hearing, the court entered an adjudication order finding that the minor was neglected by a parent on the grounds of injurious environment and drug

exposure. In April 2015, following an evidentiary hearing, the court entered a disposition order finding respondent unable to care for the minor, adjudging the minor a ward of the court, and placing the minor in the Department's guardianship.

¶ 9 In December 2016, the State filed a motion to appoint a guardian for the minor with the right to consent to his adoption, seeking termination of respondent's parental rights. The motion alleged that respondent was unfit to parent the minor pursuant to paragraphs (b) and (m) of section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2016). Respondent allegedly failed to, respectively, (1) maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare, and (2) make reasonable efforts to correct the conditions that were the basis for the minor's removal, and make reasonable progress towards the minor's return. The State alleged that respondent failed to make reasonable efforts or progress under paragraph (m) in the nine-month periods of January 26 to October 26, 2015; October 26, 2015, to August 26, 2016; and June 14, 2016, to March 14, 2017. The State alleged that the minor resided with his foster parents since June 2015, the foster parents desired to adopt him, and that adoption was in the minor's best interest.

¶ 10 A. Fitness Hearing

¶ 11 The court held a fitness hearing in March, June, and November of 2017, after taking judicial notice of its prior findings of neglect and adjudication of wardship. The State entered into evidence service plans from June 2014, March 2016, and April 2016, and a report from May 2016.

¶ 12 1. Tina Wright

¶ 13 At the hearing, Tina Wright testified that she was the minor's caseworker from July 2014 to January 2016 and that the minor came to the Department's attention due to his drug exposure at birth. An integrated assessment had been performed in June 2014 to determine the proper services for respondent, and she was recommended for substance abuse assessment, inpatient substance abuse treatment, therapy for substance abuse and "to address her child coming into care," and "random urine drops."

¶ 14 Respondent was referred for inpatient substance abuse treatment in April 2014, and then intensive outpatient treatment in October 2014, because she had drug-exposed children and "expressed that she did not know the consequences of cocaine and PCP." After completing both, she was doing random urine tests or "drops" twice a month for "TASC" and Wright's agency. Wright personally asked her to perform drops three times in December 2015 but she did not. When Wright had the case, respondent was not consistent in her drops. Reports from TASC to that effect from April, July, and October 2015 were entered into evidence.

¶ 15 Respondent was referred to individual therapy in September or October of 2014. The sessions were to occur in her home. However, she did not complete therapy with the first therapist, at the therapist's request with respondent's agreement due to allegations of impropriety, and was referred to a different therapist. The first therapist's progress report from January 2015 was entered into evidence. From March 2015 onward, respondent was to attend therapy weekly.

¶ 16 A short time later, respondent was referred for a psychological evaluation due to "inconsistency of visits" and "feeding the child adult food." The evaluation was performed, and the May 2015 evaluation report was entered into evidence. On several occasions after the evaluation, Wright discussed respondent's inconsistent therapy attendance with her, but she had attributed the inconsistency to the therapist rescheduling appointments. On August 31, 2015, Wright discussed with respondent being consistent in attending therapy and TASC, because "she was somewhat inconsistent at that point." In September 2015, respondent told Wright again that any inconsistency was due to the therapist rescheduling appointments.

¶ 17 Respondent initially had twice-weekly supervised visitation in her home, and she merely had to be home when Wright brought the minor there. Respondent was initially consistent in visitation but became inconsistent after about two months. By July 2015, she was allowed weekly visits in Wright's office but attended only one of four possible visits in July 2015. She attended only two visits in October 2015, and was late for both. Specifically, she was about a half-hour late

for one two-hour visit, and arrived for the other with only 15 minutes of the two hours remaining. In November 2015, she was allowed four visits but attended only two, and left one of those two early without giving Wright a reason. In December 2015, she was allowed four visits but attended only two. Thus, from October 2015 until Wright no longer had the case in January 2016, respondent's visitation was inconsistent. Wright never offered her unsupervised visitation or supervised overnight visitation because she "had not completed services and wasn't consistent with services," specifically individual therapy and TASC drops.

¶ 18 On the minor's examination, Wright testified that, before she received the case in July 2014, respondent had completed inpatient substance abuse treatment and had been referred for intensive outpatient treatment. However, respondent tested positive for opiates in August 2014, and Wright discussed the test results with her in September 2014. When respondent did not complete therapy with her first therapist, she was assigned a new therapist because she still needed therapy. She completed parenting classes in February 2015 and intensive outpatient treatment in March 2015.

¶ 19 On cross-examination, Wright testified that she prepared two service plans while she was caseworker from July 2014 to January 2016. One of those plans, the March 2015 plan, indicated that respondent completed inpatient treatment and parenting classes, was participating in therapy with "satisfactory progress," and was undergoing random toxicology screening by TASC twice monthly. The plan also indicated that she had frequent visitation with the minor. TASC's February 2016 report did not indicate any positive test results. Wright recalled that respondent tested positive on some unrecalled day, which respondent had attributed to taking medication. Wright could not recall if that test result was in a TASC report as Wright was having respondent tested in addition to TASC testing. Wright admitted that the non-TASC test result for October 2015 tendered by respondent was negative, and that Wright could not find any positive test result reports

"in the files." Wright believed that respondent failed to make "progress in maintaining sobriety," which was "the issued that brought her son in care," because she was inconsistent in TASC testing.

¶ 20 On the minor's re-examination, Wright testified that she asked respondent to submit to random drops. In particular, Wright asked her to be tested on December 4, 2015, after Wright received a telephone call from respondent's therapist and based on the information in that call. Respondent did not submit to that request. On redirect examination, Wright testified that she asked respondent to submit to additional drops after the December refusal, but respondent did not submit to those requests. On respondent's re-examination, Wright could not recall if she asked respondent to submit to drops when TASC had already asked her to do so.

¶ 21 2. Dr. Torrey Wilson

¶ 22 Dr. Torrey Wilson, a psychologist, testified to being respondent's therapist from March to December of 2015. His goal was that respondent understand her role in the abuse and neglect of her children in Texas, and the role that her behavior and drug use had on the minor L.M.D. resulting in this case. Their sessions were scheduled to be weekly, and each session was scheduled at the end of the previous session, but respondent's attendance was inconsistent. She often failed to attend without cancelling by telephone. He cancelled appointments only for emergencies and always called her to cancel. He had "much difficulty" rescheduling with her, as she infrequently provided follow-up and he or his office would have to contact her to reschedule. Sometimes, after missing "a series of sessions then she would show up when I wasn't in office just assuming that I was there and that time is dedicated to her."

¶ 23 Dr. Wilson believed that respondent "wasn't invested in therapy in general." She spent much time in the early sessions "focused on the various conflicts she had had with folks in her life," with "very little focus on the substantive issues related to her referral." Thus, while her attendance was more consistent earlier on, her productive participation in the sessions was not. When he "attempted to focus her on the specific events she typically did not take responsibility."

She attributed various issues with others to misunderstandings, with "never a sense of how she contributed to the problems." In their last two sessions in December 2015, she "appeared to be under the influence of substances" from her dilated pupils, slurred speech, and "inability to really attend to the conversation." He reported this to respondent's caseworker.

¶ 24 Therapy sessions were supposed to be suspended for a few weeks after December 2015 due to her scheduled surgery, resuming when she was physically fit to attend, but she did not contact him again. Respondent had not discussed being unable to attend therapy in the future, nor had they discussed moving the location of the sessions. A therapy session was scheduled for March 2016, after Dr. Wilson was able to contact respondent indirectly, but respondent did not attend and he had no further contact with her. Thus, Dr. Wilson terminated respondent's therapy as unsuccessful in March 2016.

¶ 25 Upon the minor's examination, Dr. Wilson testified that respondent missed all of her scheduled sessions in August and September of 2015. Dr. Wilson received a psychological evaluation of respondent in May 2015, which he reviewed in the course of treating her. The evaluation stated that respondent did "not understand the numerous decisions she's made in the past that have placed her previous children at risk," and Dr. Wilson agreed with that assessment. He also agreed with the evaluation's statements that she did "not connect the emotional ramifications of not having her previous children returned to her care" and "that lack of emotional connectedness *** then leads to question as to whether or not she was committed to" the minor L.M.D. None of those assessments changed throughout her treatment by Dr. Wilson.

¶ 26 On cross-examination, Dr. Wilson testified that his goal throughout therapy was to help respondent "address the factors that contributed to the loss of her – the psychological emotional factors that affected the loss of her first kid and then how her drug use and the circumstances of her current case with" the minor here, including "[h]ow her history had been a factor in her life in terms of her understanding of what factors contributed to her losing her kids in Texas." He

wanted respondent to "reflect upon what were the circumstances in terms of how she got to that situation, what caused the lost of her kids, what was her understanding of how she contributed to the loss of her kids." He could not list in his reports the specific issues he was addressing with respondent because she never addressed them.

¶ 27 Dr. Wilson's May 2016 report recommended "more intense treatment" including substance abuse counseling, random drops, and a drug/alcohol assessment. He was not "aware of what [respondent] had been doing in drug treatment." When asked if he sought such information, he explained that he was not treating her for drug abuse specifically but "her understanding of how her use affected her parenting and the loss of her child" and thus did not seek such information from the caseworker or other treatment providers.

¶ 28 When Dr. Wilson opined that respondent was "under the influence of a substance" in December 2015, he did not speculate whether the substance was alcohol, a prescription drug, or something else. He did not ask her at the time if she was taking any medication, and he was aware that she had surgery recently. He was never asked after her surgery to provide therapy in her home, as he almost never provided services to anyone outside his office. Dr. Wilson was aware of the issues respondent had with her previous therapist, as she mentioned them to him, but Dr. Wilson did not believe she had any objection to himself. Her therapy attendance was very consistent in the beginning but became mostly inconsistent towards the time of her surgery.

¶ 29 3. Jeffrey Brown

¶ 30 Jeffrey Brown testified to being the caseworker since February 2016. Respondent had surgery in January 2016, and she had several services outstanding at the time, including individual therapy, visitation, and random drops through TASC. As best as he knew, she last went to therapy in December 2015. During visitation with the minor in her home in March 2016, Brown discussed her failure to attend therapy. He provided her a transit pass to enable her to attend scheduled therapy in March 2016, and she expressed willingness to attend. However, she

did not attend. When respondent indicated that her physician found her unable to use transit, Brown sent respondent a letter in April 2016 authorizing her to use "additional services that would provide her transportation" directly to therapy and other outstanding services.

¶ 31 In May 2016, respondent told Brown for the first time that she wanted a woman therapist. Brown referred her at the time to a new therapist, and she acknowledged that she would resume attending therapy weekly in June 2016. However, she did not attend therapy that month because she was in jail that month. Though she was released before July began, she did not attend therapy until July 21, and then did not attend the next session on July 28. She missed one more session in late August and another in early September. When Brown saw respondent during visitation in early September 2016, she admitted forgetting one appointment and provided no explanation for missing the other. Shortly thereafter, the permanency goal of this case was changed to substitute care pending termination of parental rights. Brown acknowledged service plans for March, April, and October of 2016 and April of 2017, and a May 2016 report to the court. Brown also acknowledged a September 2016 report from TASC. Brown found respondent's progress unsatisfactory for not attending therapy, submitting to drops, or attending visitation.

¶ 32 Respondent had no visits between Christmas 2015 and March 2016 to Brown's knowledge, though she was allowed weekly supervised visits in her home. After the March 2016 visit, Brown moved the visits because respondent dressed inappropriately at home. She then missed various visits: two out of four in April 2016, two out of four in June, two out of four in July, and one out of four in August. In September 2016, she attended one visit before the goal changed and she was allowed only monthly visits. She attended from October to December 2016 but was late about a half-hour for each of the hour-long visits. This occurred despite her visits being rescheduled in October, due to her changing shelters several times since August, "to give her enough time to get to the office." In January 2017, respondent essentially missed a visit by arriving after the time it was scheduled to end, and she asked for a letter from Brown's agency

"to justify her missing court." Brown refused. When respondent attended visits, she spent more time discussing issues with Brown than visiting the minor. She brought the minor food, fed him, and "tried to engage him" but simultaneously discussed herself. She had been inappropriate during visits. Specifically, in October 2016 she "had a fit about [the minor's] hair cut" and used "a curse word" in the minor's presence. She never received unsupervised visitation because she never completed services or had stable housing.

¶ 33 Upon the minor's examination, Brown testified that respondent's physician sent him a letter in March 2016 stating that she could not ride public transit due to acute back pain. Brown had not been told so earlier, and respondent accepted a transit pass earlier in March without mentioning that she could not use transit. Nonetheless, he sent her the aforementioned April 2016 letter offering her other transportation options to attend therapy. The inappropriate clothing that prompted Brown to move visitation from respondent's home was "night wear;" that is, a robe over a camisole and short shorts. Brown moved the visits because he was concerned that respondent would accuse him of impropriety while supervising the visits in her home as she had accused her first therapist. When the minor was brought to visit respondent, he showed "no emotion, no affect or anything," and he did not speak to respondent or anyone else during visits.

¶ 34 On cross-examination, Brown testified that the minor's case arose because respondent tested positive for PCP. As far as Brown was aware, the case did not arise from respondent having any psychiatric issues, nor from any physical abuse of the minor, nor from a "dirty house accusation." Respondent did not have a positive test result from a drop while Brown was the caseworker, though she missed some drops. When Brown asked her to submit to a drop in May 2016, she tested negative. Respondent completed parent classes. She attended some therapy sessions once she was assigned a woman therapist in May 2016, and she was still in therapy at the end of March 2017 despite the permanency goal changing. Parent-child psychotherapy was recommended but never began. Brown was aware in early January 2017 that respondent had

lumbar disc surgery, and was aware since mid-2016 that she was taking medication for her back, he did not "know how long [she] was to be incapacitated" or in recovery. He had supervised visitation at respondent's home because she was recovering from her back surgery. Brown never checked if the transit pass he gave respondent was used.

¶ 35 Upon the court's examination, Brown testified that respondent never said she could not travel to therapy sessions. Upon the minor's re-examination, Brown testified that he asked respondent to submit to random drops because she "had not been complying with her TASC recovery coach" and she refused his September 2016 request. Thus, respondent had no positive drops in part because she was unavailable for drops since March 2016.

¶ 36 4. Respondent

¶ 37 Respondent testified that she was under medical care from around December 2015 for a fractured disc from a work-related injury. She had back surgery in January 2016, was in severe pain before the surgery, and was taking prescribed pain medication before and after the surgery. She recovered from the surgery at home with home nursing visits, and her weekly visitation with the minor was at home. Her physician told her not to ride transit due to her acute back pain, and she attended appointments by private transport paid by insurance. Her appointments included weekly therapy sessions beginning in May 2016, and she attended consistently until December 2016, when the September 2016 change of permanency goal resulted in the Department no longer paying for therapy. Thereafter, she continued attending therapy covered by her insurance, and she was still doing so as of the November 2017 hearing. In therapy, she was addressing the issues underlying "why my other children were put into the system" as well as the minor L.M.D.

¶ 38 5. Unfitness Decision

¶ 39 On November 16, 2017, following arguments by the parties, the court found respondent unfit under paragraph (b) lack of reasonable degree of interest and paragraph (m) lack of

reasonable progress and reasonable efforts. The court expressly found that the State's witnesses were credible, including that Dr. Wilson was credible and professional.

¶ 40 The court found that respondent was participating in services and making progress until sometime "well after" January 2015, but then was failing to make reasonable efforts and progress in "at least a nine-month period *** likely well after the fall of 2015." While that period "may have coincided with her illness and surgery," nonetheless "she became essentially a person who wasn't moving forward in the reunification services through most of 2016, or at least up until the Court changed the goal in September." The court found a lack of reasonable progress and efforts under paragraph (m) for the nine-month period from October 26, 2015, to August 26, 2016. The court expressly made no finding for the preceding nine-month period of January to October of 2015, nor for the period from June 2016 to March 2017.

¶ 41 As to paragraph (b), the court noted that respondent was inconsistent in her drops, which was a significant problem because this case arose from her drug use and the minor's drug exposure at birth. The court acknowledged respondent's "serious medical issue" requiring prescription pain medication that "affected her demeanor and her appearance" as well as "her ability to make progress." Nonetheless, the court could not find "that she maintained a reasonable degree of interest or concern and concern or responsibility, when she really didn't for a significant period of time from later in 2015 through at least the first nine months of 2016, wasn't participating in consistent random urine drops, and the Court appreciates that even earlier than that she had not consistently done therapy."

¶ 42 At the end of the fitness hearing, the court expressly acknowledged that a best interest hearing had not yet been held, and scheduled said hearing. However, it entered a written termination hearing order on November 16, 2017, that not only found respondent unfit but purported to find that the minor's best interest was to terminate her parental rights, to order her

parental rights terminated, and to appoint the Department as guardian of the minor with the right to consent to adoption.

¶ 43 B. Best Interest Hearing

¶ 44 On January 3, 2018, the court commenced the best interest hearing. Caseworker Jeffrey Brown testified in relevant part that respondent had no visitation since November 2017 despite requesting it because of the apparent termination hearing order of that month. The court entered orders reiterating its unfitness findings but vacating the purported termination order as issued "in error." The court also told the Department "to make up the missed visits from November and December" due to the erroneous order. It continued the hearing to April 12, 2018. On that day, by agreement of all the parties, the court struck or disregarded Brown's testimony of January 3 so that the best interest hearing commenced *de novo*.

¶ 45 1. Jennifer Young

¶ 46 Jennifer Young, supervisor of the minor's case since August 2014 and caseworker on the case since Brown resigned in March 2018, testified that Brown visited the foster parents' home before resigning and found it to be safe and appropriate with no signs of abuse, neglect, or corporal punishments and no unusual incidents. Young visited the foster home over a year earlier and found no issues. Since Young had been supervisor, there had been no problems with the foster home. Young had observed a bond between the minor and the foster parents, including hugging. The minor was being evaluated for special needs due to his selective mutism and flat affect. Young explained that selective mutism is a failure or refusal to speak under certain circumstances or to certain people due to anxiety, and flat affect means not showing emotions.

¶ 47 Young believed that it was in the minor's best interest to terminate respondent's parental rights and place the minor for adoption. She reached this conclusion from the minor being in his foster home for three years with a demonstrated bond or attachment to his foster parents and the other children in the foster home, which she based in turn on her own observations and caseworker

reports. While Young had not seen the minor speak to respondent, she saw him speak to his foster parents. She also read reports, including caseworker notes on visitation, to the same effect that the minor spoke to the foster parents but not respondent. She had no reports from the minor's daycare that he was not speaking there.

¶ 48 In November 2017, Young's agency had a "staffing" or conference on whether monthly visitation should continue in light of respondent's inconsistent visitation and the minor's selective mutism. When Young briefly observed respondent's October 2017 visit with the minor, respondent spoke to the minor but he did not speak to respondent even to reply to her questions. The minor was brought into the November 2017 staffing in anticipation of respondent appearing for November 2017 visitation, which was going to occur one last time despite the purported termination hearing order. However, the minor's "nonverbal communication, the way he was frowning" and his refusal to speak to Young or anyone else at the agency for about two years led Young and other agency personnel to conclude that continued visitation was not in the minor's best interest because "it was impacting him emotionally." Thus, the "fact that there was this order *** did not affect the critical decision" to not allow visitation. Another staffing in December 2017 reached a similar conclusion that respondent should not have visitation due to the minor's selective mutism. Following the court's January 2018 instruction to allow visitation, the Department held a clinical review meeting in March 2018 to determine whether respondent should have visitation. The meeting included the foster parents and respondent's counsel. However, Young had not received the Department's decision from that review by the time of the April 2018 hearing.

¶ 49 On cross-examination, Young testified to visiting the present foster home three or four times. The minor had been placed with another foster parent previously but was with the present foster parents since 2015. Respondent had been visiting the foster home at least three times a week, in addition to visitation at Young's agency, until the agency changed visitation to twice weekly. Young had not observed any of the visitation in respondent's home, and observed visitation at the

agency office "in passing." Respondent's visitation was consistent until October 2015. Young was aware that respondent had back problems and had surgery in January 2016, and that she had a note indicating that she was not allowed to ride public transit. Visitation had moved from respondent's home because the caseworker at the time did not feel comfortable there, and Young's agency did not offer respondent home visitation with a different person supervising. The minor was not formally diagnosed with selective mutism but instead observed by agency personnel to be selectively mute. Specifically, he did not speak to any agency personnel until March 2018, nor was he seen to speak to respondent, but he spoke to his present foster parents and to daycare workers. He was not referred to be evaluated for a diagnosis until the fall of 2017, due to his tender age, and the evaluation had not yet occurred as of the best interest hearing.

¶ 50 2. Denise Lloyd

¶ 51 Denise Lloyd testified to being the minor's foster parent since April 2015, alongside her husband Tony Taylor. Lloyd and Taylor had children from prior relationships, and one together, for a total of four biological children. Lloyd adopted another child and was "fostering [twins for] their return home." Lloyd loves the minor and treats him as her son, and her children treat him as a sibling. Similarly, the minor "views the other children in the home as his brothers and sisters" and addresses Lloyd and Taylor as his parents. He attends all family events including visiting Lloyd's extended family, who he addresses as his family. He shares a room with Lloyd's two sons, and they "are buddies." Both Lloyd and Taylor work outside the home so the minor attends daycare, which reported no problems to Lloyd. Before October 2017, the minor "would get really quiet trying to engage in conversation with anybody," and "would just shut down." Since then, he "talks a whole lot more." She no longer had concerns about his speech, and he was intelligent and inquisitive. Both Lloyd and Taylor "wish to adopt" the minor because they love him and want to provide him a stable home. If they were both unable to raise him, Lloyd's mother would raise him.

¶ 52 On cross-examination, Lloyd testified that she met respondent shortly after she received the minor. Lloyd chose then to not allow respondent to visit the minor in Lloyd's home because she did not know respondent. The agency did not have "anything set up" for Lloyd to know respondent better. Caseworker Brown asked Lloyd once how she felt about having a relationship with respondent. Respondent did not have Lloyd's telephone number because she had not requested it. Lloyd met respondent only twice, at a visit and a screening. The minor was also at the screening, and Lloyd did not see the minor recognize respondent as his mother. He went to her when she called him but said nothing to her though he had spoken to Lloyd and other adults previously and did not seem delayed in his speech. As of the best interest hearing, the minor was scheduled for a review for therapy. Lloyd knew that the minor was considered to have selective mutism but could not recall who at the agency told her so. She was not surprised because the minor "has always been that way with outside people" other than Lloyd's family and daycare staff. At the single visit she attended, Lloyd did not see the minor interact with respondent. Supervisor Young had come to Lloyd's home "many" times.

¶ 53 3. Respondent

¶ 54 Respondent testified that she visited the minor in his first foster home daily from his April 2014 birth until he was removed from the first foster home, and then weekly "at the office" thereafter. Respondent was not told who the second foster parent was, nor given any contact information, and did not met that foster parent until December 2015. During respondent's hour-long visits in the office, the minor "would run to" her, she would feed him lunch and change his diaper, and he talked and played games with her. Wright supervised the visits, and Young attended "selectively" for a few minutes. Nobody stopped any visit due to problems, nor did anyone correct respondent in handling the minor.

¶ 55 When respondent asked for more visits, Wright "lied on me and said *** she just didn't feel comfortable in the home" with respondent and the minor there. Respondent was not allowed

visitation in her home, though she requested it. Respondent's last visit was October 31, 2017, and she was never offered another visit. She brought a civil rights action in federal court and was told that "they will give me proper visitation with my son if I drop my suit." Respondent was not told that the minor had selective mutism or a speech problem. She knew he had a speech therapist at some time but believed he did not still have one as of the hearing.

¶ 56 4. Best Interest Decision

¶ 57 Following arguments, the court found that it was in the minor's best interest to terminate respondent's parental rights and so ordered. The court expressly found Young and Lloyd credible, finding respondent's testimony to be "self-serving and not quite as credible." Even if it found respondent credible, the minor was in a stable foster home for three years with "significant and noticeable improvements" and bonding with his foster family. The court contrasted the minor's bonds with the foster family, and that family's desire to adopt him, with the risks to the minor of continuing substitute care indefinitely because "the minor could be removed and placed in a series of homes which we unfortunately see all too often."

¶ 58 The court entered a termination hearing order on April 12, 2018, reciting that respondent was found unfit under paragraphs (b) and (m), finding it was in the minor's best interest to terminate respondent's parental rights, terminating said rights, and appointing the Department as the minor's guardian with the right to consent to adoption. Respondent filed her notice of appeal on May 11, 2018.

¶ 59 III. ANALYSIS

¶ 60 A. Unfitness

¶ 61 Respondent first contends that the findings of her unfitness under paragraphs (b) and (m) were against the manifest weight of the evidence.

¶ 62 The Juvenile Court Act provides for the termination of parental rights in a two-step process. First, there must be a showing upon clear and convincing evidence that the parent is

unfit as defined in the Adoption Act. *In re M.I.*, 2016 IL 120232, ¶ 20 (citing 750 ILCS 50/1(D) (West 2016)). Proving any one ground for unfitness is sufficient to find a parent unfit. *Id.* ¶ 45. We will not reverse a finding of unfitness unless it is against the manifest weight of the evidence; that is, only when the opposite conclusion is clearly apparent. *Id.* ¶ 21. Only after finding a parent unfit does the court conduct the second step of considering whether it is in the best interest of the child to terminate parental rights. *Id.* ¶ 20.

¶ 63 One of the grounds for unfitness is "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2016). "The language of subsection (b) is plain and unambiguous. Subsection (b) contains no state of mind requirement, nor does it carve out an exception for faultless failure." *M.I.*, 2016 IL 120232, ¶ 26. Failure is " 'the fact of being cumulatively inadequate or not matching hopes or expectations.' " *Id.* (quoting citing Webster's Third New International Dictionary 815 (2002)). Thus, if a parent's degree of interest, concern or responsibility is inadequate, it is irrelevant whether that inadequacy arises from unwillingness or inability to comply. *Id.* A parent's circumstances, such as an intellectual disability, do not necessarily redeem her failure to demonstrate reasonable interest, concern, or responsibility, nor do such circumstances set a different standard of reasonableness. *Id.* ¶ 29. Instead, the issue is whether a parent's then-existing circumstances provide a valid excuse. *Id.* Thus, "a parent 'is not fit merely because she has demonstrated *some* interest in or affection for her children; her interest, concern, and *responsibility* must be reasonable.' " (Emphases in original.) *Id.* ¶ 30 (quoting *In re E.O.*, 311 Ill. App. 3d 720, 727 (2d Dist. 2000)).

¶ 64 Another ground for unfitness is failure "(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor *** or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m) (West 2016). Reasonable

progress includes compliance with service plans and court directives in light of the conditions that gave rise to the child's removal and other later-known conditions that would prevent the court from returning custody to the parent. *In re C.W.*, 199 Ill. 2d 198, 213-14 (2002).

¶ 65 Here, the trial court found respondent unfit under paragraph (b) for failing to maintain a reasonable degree of interest, concern, or responsibility, and under paragraph (m) for a lack of reasonable progress and efforts in the nine-month period from October 26, 2015, to August 26, 2016. Noting that the same evidence may serve to show lack of reasonable responsibility that has no nine-month periods and lack of reasonable progress and efforts that does, we do not find any of those conclusions to be against the manifest weight of the evidence.

¶ 66 The court found that respondent was inconsistent in her drops, which it found to be a significant problem because this case arose from respondent's drug use and the minor's drug exposure at birth. Caseworkers Wright and Brown testified that respondent missed multiple drops while each was caseworker, including missed drops during the relevant nine-month paragraph (m) period. Her failure to consistently attend drops in 2015 was also shown by TASC reports.

¶ 67 In finding respondent unfit, the court also pointed to her inconsistency in therapy, acknowledging her illness and surgery but finding that nonetheless "she became essentially a person who wasn't moving forward in the reunification services through most of 2016, or at least up until the Court changed the goal in September." Caseworkers Wright and Brown and Dr. Wilson testified to respondent's multiple missed therapy sessions before, during, and after the relevant nine-month period. Wright testified that respondent repeatedly attributed that inconsistency to the therapist rather than herself. While respondent notes that she could not ride public transit after her surgery, Brown testified that respondent missed therapy sessions after he sent her a letter in April 2016 authorizing her to use alternate transportation to therapy and other services. Dr. Wilson testified that respondent often did not call to cancel appointments while he called her when cancellation was necessary, and that she infrequently followed up with his office

so that he had to take the initiative to reschedule. Moreover, beyond her inconsistent attendance, Dr. Wilson testified that she was not "invested in therapy" or productively participating in the therapy sessions she did attend, and explained in detail his reasons for so concluding.

¶ 68 Lastly, we note that respondent argues that her visitation was reduced from multiple times weekly to once a week, which "appeared to have been a decision by the agency, for which no valid reason or reasons were given" and "had the effect of ensuring that [she] had as little time as possible with her son to bond or strengthen the mother-son relationship." However, both Wright and Brown established clearly that respondent did not consistently attend even her reduced weekly visitation, so that it was not the Department or its agencies that caused her to have as little time as possible with the minor. Both caseworkers testified that she missed multiple visits, and was significantly late for others, before, during, and after the relevant paragraph (m) period.

¶ 69 In sum, we find that it was not against the manifest weight of the evidence for the trial court to conclude that respondent did not make reasonable progress or efforts towards the minor's return for the period October 26, 2015, to August 26, 2016, nor to conclude that she objectively failed to maintain a reasonable degree of responsibility as to the minor's welfare.

¶ 70 B. Due Process

¶ 71 Respondent also contends that she was denied due process during her termination of parental rights hearing by the purported termination order of November 2017 issued after the fitness hearing, which caused her to lose visitation well before the best interest hearing and rendered the latter hearing a futile gesture.

¶ 72 Parental rights are a fundamental liberty interest. *In re M.C.*, 2018 IL App (4th) 180144, ¶ 29 (citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), and *In re D.W.*, 214 Ill. 2d 289, 310 (2005)). However, the State has a compelling interest in protecting the lives, welfare, and safety of children, and a child's best interest is not balanced or weighed against the interests of his or her parents. *Id.* ¶ 30. At a best interest hearing during termination proceedings, " 'the parent's

interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' " *Id.* ¶ 34 (quoting *In re D.T.*, 212 Ill. 2d 347, 365 (2004)).

¶ 73 Here, the record does not bear out respondent's characterization of the effect of the purported termination order. Caseworker Young testified in the best interest hearing that the agency intended to have a visit between respondent and the minor in November 2017 despite the purported termination order but had a staffing that month, and again in December 2017, in which it was decided that further visitation was not in the minor's best interests due to his selective mutism. Young expressly testified that the end of visitation was due to these staffing, and thus to the minor's selective mutism, rather than the purported termination order. Though the minor was not formally diagnosed with selective mutism before the best interest hearing, we find that the testimony of Young and foster parent Lloyd adequately established the minor's selective mutism.

¶ 74 We note that respondent makes various other characterizations about the decisions of the Department and its agencies that preceded the purported termination order but somehow allegedly show that the best interest hearing was futile. We shall address them briefly. First, she notes that she was never allowed unsupervised visitation. However, caseworkers Wright and Brown both testified in the fitness hearing that they did not allow respondent unsupervised visitation due to her incomplete services, which we find was well-established by the fitness hearing evidence. Second, she characterizes the reduction in visitation to weekly in-office visits thus: "the agency had already made a best interest termination outside of court and was determined to obstruct any type of reunification." However, we do not consider weekly visitation to be an obstruction of unification, especially when the decision to reduce visitation was explained in detail in the fitness hearing, and we reiterate that respondent missed many of those weekly visits and thus significantly obstructed her own unification. Lastly, she claims that the minor's selective mutism was addressed unfairly, asking rhetorically how her addiction caused the minor's selective mutism. However, the testimony of Young and Lloyd established that the

minor would speak to Lloyd and his foster family but not to respondent, nor to agency personnel until after visitation ended, and thus the record supports Young's testimony that visitation "was impacting him emotionally." The Department did not have to establish that the minor's selective mutism resulted directly from respondent's addiction, only that his emotional health was adversely affected by visitation with respondent so that visitation was not in his best interest. We find that this proposition was adequately established.

¶ 75 In sum, we conclude that respondent's due process rights were not infringed and the best interest hearing in her case was not a futile gesture as she claims.

¶ 76 CONCLUSION

¶ 77 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 78 Affirmed.