2019 IL App (2d) 180798-U
No. 2-18-0798
Order filed January 7, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re D.R., D.R., Z.R., and K.R., Minors	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 13-JA-211,
	)	13-JA-212,
	)	13-JA-210,
	)	13-JA-127
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Jennifer R.,	)	Mary L. Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), is granted, and the trial court's judgment terminating respondent's parental rights is affirmed, where an examination of the record reveals no issues of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Jennifer R., to be an unfit parent and determined that it was in the best interests of her four minor children to terminate her parental rights. Respondent appealed, and the trial court appointed counsel on her behalf. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967).

¶ 3 In his motion, counsel states that he has reviewed the record on appeal, is thoroughly familiar with the case, and has, in the exercise of his professional judgment, determined that there are no non-frivolous issues for appeal. Counsel submitted a memorandum of law outlining proposed issues that he determined lack merit. He further states that he served Jennifer with a copy of the motion by certified mail at her last known address and informed Jennifer of her opportunity to present additional material to this court within 30 days. This court also advised Jennifer that she had 30 days to respond to the motion, which she failed to do. For the following reasons, we grant counsel's motion to withdraw and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 This case involves four children born to Jennifer (age 27 in 2013) and Frederick R. (age 29): D.R. (male; born April 27, 2013); D.R. (male; born May 8, 2010); Z.R. (female; born May 23, 2007); and K.R. (female; born March 26, 2014). Three were born before the commencement of the case, and one was born during the pendency of the first three cases and was added to these proceedings. The original neglect petitions were filed in 2013. From that time to January 2017, Jennifer progressed such that the children were returned to her custody and guardianship. (Her mother and stepfather were the foster parents for the eldest three children and her grandmother was foster parent to the fourth child.) Beginning in February 2017, however, circumstances changed for the worse for Jennifer and she lost guardianship and custody.

¶ 6 A. 2013 to January 2017

¶ 7 On May 10, 2013, the State filed a neglect petition as to D.R., who was 13 days old, and alleged that he was a neglected minor under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2016)), in that: (1) he was born with marijuana and opiates or a metabolite of that substance in his urine, blood, or meconium that was not the result of medical treatment

administered to him (705 ILCS 405/2-3(1)(c) (West 2016)) (count I); and (2) his environment was injurious to his welfare in that his mother had a substance abuse problem that prevented her from properly parenting, thereby placing him at risk of harm (705 ILCS 405/2-3(1)(b) (West 2016)) (count II). On the same day, the trial court appointed Lori Peacock as the guardian *ad litem* (GAL).

¶ 8 The State subsequently alleged as to the second and third cases that the minors were neglected in that their environment was injurious to their welfare: (1) where the meconium of their sibling tested positive for marijuana and opiates, thereby placing them at risk of harm (count I); and (2) where their mother had a substance abuse problem that prevented her from properly parenting, thereby placing them at risk of harm (count II). 705 ILCS 405/2-3(1)(b) (West 2016). In the fourth case, the State alleged that K.R. was a neglected minor in that her environment was injurious to her welfare: (1) where she resided in a hazardous environment, thereby placing her at risk of harm (count I); and (2) where her siblings were adjudicated neglected and the parents had failed to correct the conditions to allow the siblings to return to their care and where the minor's home was observed to have safety concerns, including, but not limited to: no working water, no working smoke detectors, bare floors that were in poor condition, a broken window in a bedroom, a falling ceiling with exposed wet insulation, and mold, thereby placing the minor at risk of harm (count II). 705 ILCS 405/2-3(1)(b) (West 2016).

¶ 9 In a statement of facts DCFS submitted with the May 2013 neglect petitions, the agency related that, on May 7, 2013, it received a report of substance misuse by neglect after D.R.'s meconium returned positive for marijuana and opiates. The following day, Jennifer admitted that she used Vicodin from her sixth month of pregnancy until delivery, stating that she purchased the drug from an unknown person within a two-minute walk from her home. She also

stated that Frederick was home caring for D.R. and was aware when she went to buy the Vicodin. Jennifer admitted to using marijuana during the pregnancy, stating that she tested positive for illicit drug use in March 2013. She explained that she was in physical pain during the pregnancy and could not tolerate it. She denied seeking medical treatment for the pain during the pregnancy, explaining that she had been denied pain medication in the past from several physicians. The pain led her to purchase Vicadin and marijuana from an unknown person on the streets during her pregnancy. According to DCFS, Jennifer did not demonstrate an understanding of the risk of harm she placed herself, her unborn child, and her children at home during the time she purchased illicit drugs on the streets from an unknown drug dealer near her home. Jennifer admitted to being inpatient for marijuana use and unsuccessfully discharged from substance abuse rehabilitation in Waconda when she was 16 or 17 years old for being aggressive toward staff. She also admitted that her last use of marijuana prior to her pregnancy was in August 2012. Jennifer had about five psychiatric hospitalizations in the past and admitted to not following discharge recommendations of continuing counseling and psychiatric medications for her bipolar disorder, borderline personality disorder, and major depression. (The maternal grandparents—Sheila and William Files—confirmed the treatment center and hospitalization history.) She also related that she was diagnosed with borderline mental retardation. Jennifer stated that she had an MRI three years earlier, which revealed a slipped disc at L1-L2, but this was not confirmed. Jennifer claimed that she was denied pain management because her physician did not believe she was in severe pain because she drove herself to her appointment. She denied any known injury.

¶ 10 On May 9, 2013, the three children were taken into protective custody. They were placed in relative foster care. On May 10, 2013, a temporary custody order placed temporary guardianship and custody with DCFS.

¶ 11 A July 9, 2013, DCFS report to the court related that Jennifer had cooperated with recommendations and completed an assessment at Rosecrance for drug treatment, but was slow to start and engage in services, having cancelled numerous times. As of July 3, 2013, she had not been attending daily and did not believe that she had a problem with pain killers. She reported that she was so nauseated during the pregnancy that she smoked marijuana to get hungry so as to supply her baby and herself with needed nutrients. DCFS also had reports that Jennifer was still going to various emergency rooms, reporting pain and receiving narcotics via prescription. "Jennifer reports to her counselor that if the doctor prescribes the medication she has a right to take it." Jennifer had expressed initial interest in engaging in family drug court; however, she had not cooperated with the initial assessments to begin services. She and Frederick recently relocated, explaining that their previous home had water damage. However, an anonymous report stated that they were evicted for failing to pay rent.

¶ 12 DCFS further reported that the three children were in the Files' home. In May 2013, Jennifer and Frederick had requested that the children be moved to another relative's home. However, in June, Jennifer called and stated that she was going to work with her mother to salvage their relationship and wanted the children to stay there. Jennifer and her mother were again not getting along. Conflicting reports stated that Jennifer was upset when her mother refused to give the newborn cereal in his bottle and her mother stating that Jennifer arrived to a visit angry, intoxicated, and picking a fight. As a result, the visits were moved out of the foster parents' home.

¶ 13 On August 28, 2013, an order of adjudication was entered in the original three cases. Jennifer stipulated to count I, and count II was dismissed on the State's motion. Also, an order of disposition was entered, placing guardianship in DCFS. A DCFS report related that, as of August 6, 2013, Jennifer's attendance at Rosecrance had improved, but she was out again that week. She went to the emergency room for a swollen knee and had a doctor's note excusing her that day. Rosecrance approved her to take the Tylenol 3 with codeine that was prescribed for her knee. At the August 9, 2013, Jennifer reported that she was pregnant again and due on April 17, 2013. She also reported that she had completed her first step of drug treatment and was attending Rosecrance as scheduled. Jennifer and Frederick visited the children twice per week for two hours each, supervised by Help at Home in their home. Jennifer also visited the foster parents' home.

¶ 14 At a December 3, 2013, permanency hearing, a Children's Home and Aid Society report related that Jennifer had been cooperative with the case worker and the agency. During the review period, she had initially engaged in substance abuse treatment but was discharged due to attendance problems. She explained that she was unable to attend sessions due to being pregnant. " 'It is not my fault I am sick.' " Jennifer completed a second assessment with Rosecrance on November 5, 2013, and needed to engage in dual-diagnosis group counseling. She had issued several drug drops during the review period and all but one (in October) were negative for illegal substances. The positive drop was positive for cocaine and Benzoylecgonine. Jennifer denied illegal substance use. The agency ran a second test, and it confirmed both substances in her system. The case worker stated that this was a concern because Jennifer was pregnant and had recently delivered a substance-exposed baby. During an October 30, 2013, meeting with the case worker and the supervisor, Jennifer insisted that she needed to engage only

in substance abuse treatment. They reviewed her integrated assessment and discussed each recommendation. Jennifer was aware that she needed to engage in a dual-diagnosis program to address her mental health diagnosis and substance abuse issues. However, to date, she had not made progress in the treatment program. The agency was going to refer her for a parenting class upon stabilization of her dual-diagnosis program. Despite prior issues, the agency stated, "[t]here have been no concerns in her ability to parent her children."

¶ 15 As to Z.R., age 6, she was doing well in the foster home and participated in Girl Scouts and after-school programs. An issue with another girl who was bullying her was resolved by Jennifer and Sheila Files. Sheila had related that Z.R. performed excellently in school and worked hard on homework. D.R., age 3, was energetic and not doing well when he first arrived in foster care. However, he had shown improvement. He had an IEP at school (speech therapy). D.R., age 7 months, was teething, crawling, and trying to stand. He was a healthy and happy baby, and there were no concerns. A July 2013 developmental screening showed no concerns.

¶ 16 Patti Lawrence, a supervisor at Children's Home and Aid testified that she was recommending that Jennifer had not made reasonable efforts during the period due to the fact that she tested positive for cocaine and because she was discharged from Rosecrance for attendance issues. Jennifer had just re-engaged in that program and also needed to engage in a dual-diagnosis program. She had refused to sign an attendance form at Rosecrance in July or August because she was experiencing morning sickness.

¶ 17 The State requested, and was granted, leave to file a petition for indirect criminal contempt against Jennifer for continued drug use.

¶ 18 On December 3, 2013, following the permanency hearing, the trial court found that Jennifer had not made reasonable efforts. The arraignment on the contempt petition was

continued after Jennifer did not appear. On February 26, 2014, Jennifer and the State agreed that Jennifer would plead to the only count and that the court would sentence her to 14 days in jail to be stayed as long as she continued to be illegal drug and alcohol free.

¶ 19 A May 27, 2014, Children's Home and Aid Society report included a DCFS family service plan that related as follows. K.R. had been born since the last report. Jennifer was cooperative with the agency. She was allowed to keep her daughter in her care due to participation and cooperation in services. Jennifer was participating in substance abuse treatment with Rosecrance Project Safe and was planning to step down to continuing care when she started back; she was on hold with Project Safe because she had just given birth. Jennifer completed a second assessment on November 5, 2013 with Rosecrance. All of her drug drops after the October 29, 2013, positive drop were negative and occurred weekly. Jennifer reported that she was no longer in a relationship with Frederick because he had failed to engage in services. The agency had referred her to Mother House for parenting classes, and Jennifer successfully completed them on March 6, 2014. She was consistent with her visits with her children and had progressed to unsupervised visits on March 20, 2014. There were no concerns about her ability to parent her children, and the agency approved overnight visits. The plan further related that K.R., age two months, was a happy and healthy baby girl. Jennifer reported that she was told that there were no drugs found in her umbilical cord.

¶ 20 On June 18, 2014, the trial court found that it was in the children's best interests that the goal be set at return home within five months and that Jennifer had made reasonable efforts and reasonable progress. It granted discretion to place the three children with Jennifer as long as Frederick was not residing with her. On December 6, 2014, the court found, after a permanency hearing, that Jennifer had made reasonable efforts and reasonable progress.

¶ 21 In a June 9, 2015, permanency order, the trial court found that Jennifer had not made reasonable efforts or reasonable progress. (On September 15, 2015, K.R. was adjudicated neglected.) However, on November 23, 2015, and March 14, 2016, the court found that she had made reasonable efforts and reasonable progress. In the March 14, 2016 order, the court also ordered that custody and guardianship of the children return to Jennifer. On October 27, 2015, the trial court had appointed Danica Ford as GAL.

¶ 22 B. February 2017 and Subsequent Proceedings

¶ 23 On February 13, 2017, the State moved to modify the order granting guardianship and custody, alleging that, since March 14, 2016, there had been a substantial change in circumstances in that: (1) Jennifer had not been cooperating with CASA by not allowing CASA access to the minors when requested; (2) she had not remained alcohol free as previously ordered; and (3) she had used cocaine in the presence of the minors. The State requested that DCFS be granted guardianship and custody.

¶ 24 A DCFS report stated that, on January 8, 2017, a report was generated to its hotline that alleged the great-grandmother, Betty Corey, walked in on Jennifer, who was on the floor snorting a white substance through a straw. The three minors, K.R., D.R., and D.R., were in the room. When Corey asked Jennifer what it was, she replied " 'coke,' " but that it was her first time. Corey told Jennifer to get out of her home and called the police. Corey reported to DCFS that she had never previously observed Jennifer using cocaine. Corey also reported that things had gone missing from the garage, and she believed that Frederick had stolen them. He had a heroin addiction and had visited the home several times. Corey believed that Jennifer did not have stability in her life. She reported that Jennifer had not returned to the residence since the previous night.

¶ 25 On January 9, 2017, DCFS interviewed D.R., who reported that "mommy had coke and she told grandma that she had it. Mommy said she had it all day and afternoon, not at night. Mommy and daddy hide it from us and tell us not to look. We are in the same room when mommy does the coke, but not my grandma." D.R. denied that he had seen the " 'coke.' " He reported that the police came and took Jennifer away and that he had not seen his mother since the previous night. All four minors were taken into protective custody on February 15, 2017. During a February 16, 2017, visit to DCFS, Jennifer denied using cocaine and claimed that Sheila was mistaken. A DCFS report also noted that, during the course of the case, Jennifer's home environment was observed to be unsanitary and unsafe, including no running water, mold, no smoke detectors, and a hole in the ceiling from which water was leaking.

¶ 26 On February 17, 2017, a temporary custody order placed guardianship and custody of the minors with DCFS. On April 5, 2017, the State filed an amended motion to modify order granting guardianship and custody, alleging that, since March 14, 2016, there had been a substantial change in circumstances, in that: (1) Jennifer was not cooperating with CASA by not allowing the agency access to the minor; (2) she had not remained alcohol free as previously ordered; (3) she had used cocaine in the minor's presence; and (4) she tested positive for marijuana. The State asked that DCFS be granted custody and guardianship. At a hearing on the State's motion, Jennifer's counsel stipulated that there had been a substantial change in circumstances. On April 24, 2017, the court entered a dispositional order, adjudicating the minors to be neglected.

¶ 27 During a November 7, 2017, permanency review hearing, Jennifer's counsel moved for a continuance, asserting that Jennifer was undergoing surgery (resulting from a car accident in which she was allegedly intoxicated), was hospitalized, and was unable to attend the hearing.

Counsel also noted that she had not had contact with Jennifer since the last court date in October. The trial court denied the motion to continue, noting that it had previously granted a continuance. The State noted that Jennifer had failed to submit drug drops on June 2, August 19, September 27 and October 3, 2017, failed to complete a substance abuse assessment, and missed a visit on October 9, 2017. Noting that Jennifer had driven while intoxicated with the children in her vehicle and not in proper child restraints (on the day she was allegedly using cocaine), the State recommended that the goal be changed to substitute care pending termination of parental rights. CASA agreed, adding that the agency asked to meet with Jennifer in May 2017 to address visitation concerns, but Jennifer did not contact it until August 18, 2017. Visits resumed on September 4, 2014 but, within one month, she was missing visits. The trial court found that the goal remained to return home within 12 months and that Jennifer had not made reasonable efforts or reasonable progress. "I'm very sorry about the mother's injuries. I hope that she is going to recover. Uh, I can't put children's lives on hold." The court sought agency feedback regarding "adoption versus guardianship."

¶ 28 Another permanency review hearing occurred on February 13, 2018. Z.R. testified (after having asked to speak to the court) outside the presence of anyone other than the judge, a comfort dog, the dog's handler, and a court reporter. The attorneys provided the court with suggested questions.

¶ 29 Z.R., age 10, testified that she was in fifth grade and lived with her grandparents, D.R., and D.R. Her sister, K.R., lived in another home, but Z.R. saw her every weekend. Z.R. asked the judge if she and her siblings would still be able to see Jennifer and Frederick if they were to be adopted. She understood that her grandparents would probably adopt her and her siblings "because our mom isn't doing the right thing." The judge asked Z.R. where she wanted to live

long term, and she replied that she wanted to live with her grandparents. She wanted to live with them because they loved her, she loved them "and because I know I am safe there." When asked what made her feel safe there, she replied, "I've just been there all my life and nothing has ever happened to me there. And I just really feel safe and good there." She felt loved, too. She had lived with her grandparents for one year. Z.R. attended the same school; she did not have to change schools when she went to live with her grandparents. Z.R. last saw Jennifer before Halloween. She wanted to see her mother, and her brothers and sisters wanted to see her. Z.R. wanted to see Jennifer "[b]ecause I mess [*sic*] her." She wanted to see Jennifer "three times a month" and believed that her grandmother would allow her to do so, even if she were adopted.

¶ 30 Following a May 5, 2018, permanency hearing, the trial court entered an order, on May 8, 2018, finding that Jennifer had not made reasonable efforts or reasonable progress. (No testimony was taken at this hearing.) The goal was changed to substitute care pending court determination of termination of parental rights.

¶ 31 On May 22, 2018, the State moved to terminate Jennifer's parental rights, alleging that she was unfit to have a child in that: (1) she had failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2016)) (count I); (2) she had failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minors during a nine-month period after adjudication of neglected or abused or dependent minors for the period(s) April 27, 2017, to January 27, 2018, and/or August 20, 2017, to May 20, 2018 (750 ILCS 50/1(D)(m)(i) (West 2016)) (count II); (3) she had failed to make reasonable progress toward the return of the minors to her during a nine-month period after adjudication of neglected or abused minors (same period(s)) (count III); and (4) she failed

to protect the minors from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2016)) (count IV).

¶ 32 A DCFS report filed June 19, 2018, stated that Jennifer continued to have minimal contact with the agency. She attended the May 8, 2018, permanency hearing, met with a caseworker afterwards to arrange a meeting, and attended a May 16, 2018, meeting at the agency. However, Jennifer failed to complete a requested drug drop, which was considered positive. Jennifer had informed the agency that she had been attending group sessions at Remedies since September 2017, and provided an attendance verification form from May 11, 2018. The caseworker requested that Jennifer sign new consents with Remedies for further communication, and Jennifer agreed to do so. However, the worker was unable to confirm that Jennifer was receiving services from Remedies. As to the minors, the caseworker reported that Z.R. had completed fifth grade and that there were no concerns at that time. D.R. had completed second grade, was attending counseling, and continued to display some disruptive behavior in school and in the foster home, but the issues were being addressed and there were no concerns. D.R. had finished preschool, was attending counseling, displayed some disruptive behavior in the foster home that was being addressed in counseling, and there were no concerns at the time. K.R., who was placed with her maternal great-grandmother, had completed her first year of preschool, was attending counseling, was having some behavior issues in the foster home, but they were being addressed at counseling and there were no concerns at that time. DCFS recommended that the court proceed with termination.

¶ 33 An arraignment and pretrial conference was held on June 19, 2018. Jennifer did not appear. Her counsel stated:

> "I am in communication with my client. I am not sure why she was unable to make it here today, but I am in ongoing communication with her. So she is aware of the status of the case. As I said as, I acknowledge receipt of the State's response—or response to motion for discovery and also the termination motions for each of the minors."

¶ 34 (1) Unfitness Hearing

¶ 35 On August 1, 2018, a hearing was held on the termination petition. Jennifer did not appear. Molley Giese, the case manager for Children's Home and Aid, testified that, at one time, the children were returned to Jennifer's care. However, they were removed from her care in February 2017 after Jennifer had become non-compliant with services (including domestic violence counseling) and she tested positive, in January 2017, for substances after a hotline call that there were substances in the home. A July 2013 integrated assessment for the family was admitted into evidence, as was an August 2017 assessment. The recommendations in the assessment, Giese explained, filter into a service plan, which lists the goals of each case and the services and tasks to be completed by the parents and children. Plans are graded every six months and submitted to DCFS in an administrative case review. Services plans dated July 18, 2017, February 19, 2018, and May 8, 2018, were admitted into evidence.

¶ 36 After February 2017, when the children were placed back into care, there was no visitation for Jennifer because she was not in contact with the agency. However, visits, which were weekly and supervised, started in late April 2017. They lasted about 1 to 1½ hours. In May 2017, there was an incident during a supervised visit, where Jennifer discussed aspects of the case with the children. She was asked to stop and became "combative." The agency instructed Jennifer to meet with a caseworker to discuss visitation rules, but she did not do so.

Jennifer remained out of contact with the agency until August 2017. In August 2017, Jennifer met with agency staff and visits began again until October 2017. Jennifer did not consistently attend visits between August and October 2017. "She would sometimes show up late. There was [*sic*] a couple where she didn't show up at all. So the visits then turned into sibling visitation." Beginning in October 2017, Corey, the foster parent, started supervising the weekly visits. However, also at this time, on October 25, 2017, Jennifer was involved in an automobile accident. She was in the hospital and was not in contact with the agency. After discharge from the hospital, Jennifer did not maintain consistent contact with the agency. Thus, visits did not resume after her last visit on October 23, 2017. Jennifer had been asked to meet with agency personnel to discuss services and visits, but she did not do so until after the court hearing in May 2018.

¶ 37 In May 2018, the caseworker asked Jennifer to complete a drug drop and obtain documentation from Remedies that she was attending services there. Jennifer did not complete either task. The caseworker did not have a consent form from Jennifer that allowed the agency to obtain information from Remedies. Thus, Giese was unable to confirm that Jennifer was attending services. During the timeframes April 27, 2017, to January 27, 2018, and August 20, 2017, to May 20, 2018, the primary services that Jennifer needed to complete were: domestic violence services, counseling, drug drops, and a substance abuse assessment. Jennifer never completed domestic violence counseling and never completed the drug drops. As to the substance abuse assessment, Jennifer never met with Giese to sign the consent necessary to complete an assessment. Giese also testified that Jennifer never attended any of the administrative case reviews in 2017 or 2018. Jennifer's service plan also recommended that she attend AA/NA meetings, but she never provided documentation that she completed this service,

nor did she engage in substance abuse treatment with Project Safe. Jennifer has not been involved in the children's educational needs or medical appointments.

¶ 38 The trial court took judicial notice of various motions and orders entered in the case and, pursuant to the State's request, dismissed count IV of its motion. The court denied Jennifer's counsel's request for a continuance.

¶ 39 On August 31, 2018, the trial court found Jennifer unfit (counts I, II, and III) and that it was in the children's best interests to terminate Jennifer's parental rights.[1] The court noted that, after the children were returned to Jennifer, she became noncompliant with services, and, in January 2017, tested positive for substances. The minors were removed again in February 2017. Initially, there were no visits with Jennifer. However, in April 2017, Jennifer contacted the agency and weekly supervised visits were arranged. In May 2017, the court further noted, Jennifer discussed the case with the minors during visitation and became combative when asked to stop. Between May and August 2017, Jennifer had no visits with her children and no contact with DCFS. She did meet with the agency in August 2017, and, between August and October 2017, Jennifer had some visits, but did not regularly attend weekly supervised visits. She was involved in a car accident in October 2017 (for which she received a DUI), visits ceased, and there was no consistent contact with DCFS. Jennifer's last visit with the children was on October 23, 2017. In May 2018, the court noted, Jennifer met with agency staff, and, when they requested documentation to commence visitation, Jennifer did not follow through; thus, no visits began. The court found that Jennifer never completed domestic violence services, substance abuse services, or assessment and drug drops. Nor did she sign a consent or referral for the services. Jennifer did not attend administrative case reviews in 2017 and 2018, she did not

[1] The court also found Frederick unfit.

attend meetings with DCFS between April and August 2017, and she was convicted of a DUI and never underwent treatment. The children, the trial court further found, have been in school, going to medical appointments, and receiving counseling, and Jennifer has not been involved in any of these aspects of the children's lives. As to Jennifer's failure to maintain a reasonable degree of interest, concern, or responsibility, the court cited the fact that the children were removed for a second time from her care. As to counts II and III, the court cited the April 27, 2017, to January 27, 2018, period's permanency review finding of lack of reasonable efforts or reasonable progress, along with the same finding for the period August 20, 2017, to May 20, 2018. The court also noted that, on November 7, 2017, it had found that Jennifer had made no reasonable efforts and no reasonable progress and that a similar finding was entered on May 8, 2018.

¶ 40 (2) Best-Interests Hearing

¶ 41 The case proceeded to the best interests hearing. Giese testified that all four children were in counseling. D.R., D.R., and Z.R. were placed with William and Sheila Files (their grandparents), and K.R. was placed with Betty Corey (her great-grandmother). The children visit "very frequently and have an open relationship for visitation." The foster parents are willing to continue to encourage the sibling relationships and bonds if parental rights were terminated and adoption proceeded. D.R., D.R., and Z.R. feel most comfortable with the Files and identify the Files' residence as their home. The Files desire to provide them permanency through adoption. K.R., in turn, is most comfortable with Corey and identifies Corey's residence as her home. Corey desires to adopt K.R. The foster parents did not feel that, given Jennifer's lifestyle and behavior, it would be appropriate to maintain parental relationship, but are open to it in the future if there is a change in Jennifer's lifestyle and behavior.

¶ 42 DCFS, according to Giese, believes that it is in the children's best interests to terminate Jennifer's parental rights so that they could be free for adoption. The trial court took judicial notice of Giese's reports to the court and a CASA report prepared that month, as well as Z.R.'s February 13, 2018, testimony. The court also took judicial notice of the testimony from the unfitness hearing. Also, Giese identified the children's treatment plans, which were admitted into evidence.

¶ 43 The trial court found that it would be in the minors' best interests to terminate Jennifer's parental rights.[2] It set the goal at adoption. Jennifer appealed.

¶ 44 II. ANALYSIS

¶ 45 In his motion to withdraw, counsel argues that the State proved, by at least clear and convincing evidence, that Jennifer was unfit and that termination of her parental rights was in the children's best interests. Thus, counsel asserts, because there are no non-frivolous issues that can be raised on Jennifer's behalf, we should grant his motion to withdraw. For the following reasons, we agree.

¶ 46 "A parent's right to raise his or her biological child is a fundamental liberty interest, and the involuntary termination of such right is a drastic measure." *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 28. Accordingly, the Juvenile Court Act of 1987 provides a two-stage process for involuntary termination of parental rights. *Id.*; 705 ILCS 405/2-29(2) (West 2016). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re C.W.*, 199 Ill. 2d 198, 210 (2002). If the trial court finds that a parent is unfit, the matter proceeds to a second

[2] The court also terminated Frederick's parental rights.

hearing at which the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80.

¶ 47 A. Unfitness

¶ 48 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) lists various grounds under which a parent may be found unfit. *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). As the grounds for finding unfitness are independent, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2016); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. As such, a trial court's determination of a parent's unfitness will not be reversed unless it is against the manifest weight of the evidence. *Id.* A trial court's decision is against the manifest weight of the evidence only if the decision is unreasonable. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 49 The State alleged four grounds of unfitness in its motion to terminate Jennifer's parental rights, and the trial court found that the State had proven unfitness under counts I, II, and III. In the memorandum of law appellate counsel filed in support of his motion to withdraw, he focuses on the grounds that respondent failed to make reasonable *efforts* to correct the conditions that were the basis of removal during a nine-month period after adjudication of neglected or abused or dependent minors (count II) and that respondent failed to make reasonable *progress* toward the return of the minors to her within either of the two nine-month periods alleged in the State's

motions (count III)—April 27, 2017, to January 27, 2018, and/or August 20, 2017, to May 20, 2018.

¶ 50 Whether a parent has made reasonable *efforts* to correct the conditions that were the basis for the child's removal is judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 21; see also *In re H.S.*, 2016 IL App (1st) 161589, ¶ 28 (stating that a determination of reasonable efforts requires a subjective review of the parent's achievements). "The court must assess whether the parent has made 'earnest and conscientious strides' toward correcting the conditions which led to the child's removal." *Id.* (quoting *In re B.S.*, 317 Ill. App. 3d 650, 658 (2000)). "Parental deficiencies collateral to the conditions that were the basis for the child's removal, even if serious enough to prevent the return of the child, are outside the scope of this inquiry and are therefore not relevant." *In re L.J.S.*, 2018 IL App (3d) 180218, ¶ 24 (quoting *In re C.M.*, 305 Ill. App. 3d 154, 164 (1999).

¶ 51 Turning to reasonable *progress*, under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)), a parent is unfit where he or she fails to make reasonable progress toward the return of a child to him or her during any nine-month period following the adjudication of abuse or neglect. When proceeding on an allegation under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2016)), the State is required to give notice to the parent of the nine-month periods it intends to rely on at trial. 750 ILCS 50/1(D)(m) (West 2016). The court may only consider evidence of the parent's conduct during the relevant nine-month time period identified by the State. *In re R.L.*, 352 Ill. App. 3d 985, 999 (2004). In the context of section 1(D)(m)(ii), "reasonable progress" means "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill. 2d 181, 211 (2001). "[T]he benchmark for measuring a

parent's 'progress toward the return of the child' *** encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17. The question of reasonable progress is an objective one, which requires the court to consider whether the parent's actions reflect that the court will be able to return the child home in the near future. *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 7.

¶ 52 The trial court found that, after the children were returned to Jennifer in late 2015, she became non-compliant with services and tested positive for substances. During one visit with the children, Jennifer discussed the case with them and became combative when asked to stop. The court also noted that, between May and August 2017, Jennifer had no visits with her children and had no contact with the agency. Even after she made contact with DCFS in August 2017, Jennifer had some visits between August and October 2017, but did not regularly attend them. Her October 2017 car accident, for which she received a DUI, resulted in cessation of visitation, and, the court further noted, afterwards, Jennifer made no consistent contact with DCFS. In May 2018, when Jennifer met with the agency and it requested documentation to commence visitation, she did not follow through. The court also found that Jennifer never completed domestic violence services, substance abuse services, or assessments and drug drops. She also did not attend administrative case reviews in 2017 and 2018, did not attend DCFS meetings between April and August 2017, and did not undergo treatment after being convicted of DUI.

¶ 53 We agree with counsel that there is no issue of arguable merit with respect to the trial court's unfitness finding, because the court's determination that respondent failed to make

reasonable efforts to correct the conditions that were the basis for the children's removal and failed to make reasonable progress toward the return of her children during either of the two nine-month periods following the neglect adjudication were not against the manifest weight of the evidence. Jennifer's service plans required her to participate in and complete parenting classes, a substance abuse treatment program (including drug drops, 90% attendance at all Project Safe sessions and AA/NA meetings, and to provide documentation of attendance), a psychiatric evaluation, cooperate with Children's Home and Aid, and domestic violence services (including signing consents for the agency to obtain information from Remedies[3]). She was also required to engage in consistent visitation with her children. During the relevant periods, she did not complete her service plans such that the minors could be returned to her care. Giese testified that she was unable to confirm Jennifer's claim that she was engaged in services at Remedies, because Jennifer never signed a consent form for Remedies to release information to Giese. Giese further testified that Jennifer did not complete domestic violence counseling or drug drops. The DUI reflected ongoing issues with substance abuse. Further, the evidence showed that Jennifer did not maintain consistent visitation with the children. As of August 2018, for example, none of the children had had any contact with Jennifer since October 2017.

¶ 54 In sum, the trial court's finding that the State proved by clear and convincing evidence that Jennifer failed to make reasonable efforts or reasonable progress was not against the manifest weight of the evidence.

¶ 55 B. Best Interests

[3] An April 27, 2017, letter from Remedies reflects that Jennifer attended four sessions in February and March 2017. It does not reflect that this constituted a completion of services.

¶ 56 Counsel next argues that the State proved by at least a preponderance of the evidence that termination of Jennifer's parental rights was in the children's best interests and that there is no non-frivolous argument to be made otherwise.

¶ 57 Once a parent is found unfit, the focus shifts to the child, and the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The Juvenile Court Act of 1987 sets forth the factors to be considered whenever a best interests determination is required: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, which includes the need for stability and continuity of relationships; (8) the uniqueness of every family and child; (9) the risks attendant to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016). Also relevant are the nature and length of the minor's relationship with his or her present caretaker and the effect that a change in placement would have upon the child's emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of a minor. *D.T.*, 212 Ill. 2d at 366. "The appellate court will reverse a best-interest finding only where it is against the manifest weight of the evidence or where the trial court abused its discretion." *In re Nevaeh R.*, 2017 IL App (2d) 170229, ¶ 17.

¶ 58 We agree with counsel that Jennifer is unable to raise an issue of arguable merit with respect to the trial court's best-interests findings. The evidence overwhelmingly established that it was in the children's best interests to terminate Jennifer's parental rights. Again, as of August

2018, none of the children had had any contact with Jennifer since October 2017. The August 31, 2018, DCFS report to the court noted that the children are well integrated into their foster homes and that both foster families want to adopt the children. Also, the children expressed their desire to remain with their foster parents.

¶ 59 The GAL's August 31, 2018, report to the court echoed the agency's assessment, stating that Jennifer had time to complete services and make progress, but had not been participating in services or been a consistent presence in the minors' lives. Z.R., age 11, had started middle school, and the foster parents had allowed her to develop her own identity and supported her interest in extracurricular activities. She was observed being loved and cared for by her grandparents and siblings. The foster parents helped with homework and reaffirmed her sense of belonging. D.R.'s (age 8) behavior continued to improve, as did his clarity of speech. He was loved and cared for by his foster parents, who reaffirmed his sense of belonging and provided a consistent routine and daily care. Similarly, the younger D.R., age 5, was well cared for and his behavior issues had improved. K.R., age 4, wished to remain in her great-grandmother's care and was well cared for and developing her own identity. She recently had ear tubes put in, and her night terrors had resolved.

¶ 60 In light of the foregoing, the trial court's finding that it was in the minors' best interests to terminate Jennifer's parental rights so that they can live with and be adopted by their foster parents was not against the manifest weight of the evidence or an abuse of discretion.

¶ 61 III. CONCLUSION

¶ 62 After examining the record, counsel's motion to withdraw, and counsel's memorandum of law in support of his motion to withdraw, we hold that this appeal presents no issue of arguable merit. We grant counsel's motion to withdraw and affirm the judgment of the circuit

court of Winnebago County finding respondent unfit and terminating her parental rights to D.R., D.R., Z.R., and K.R.

¶ 63 Affirmed.