

NOTICE

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FILED
May 30, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 180841-U
NOS. 4-18-0841, 4-18-0843 cons.

**IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT**

<i>In re J.C., a Minor,</i>)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Sangamon County
Petitioner-Appellee,)	No. 16JA59
v. (No. 4-18-0841))	
Byron C.,)	
Respondent-Appellant).)	
_____)	
<i>In re R.C., a Minor,</i>)	No. 16JA58
)	
(The People of the State of Illinois,)	
Petitioner-Appellee,)	
v. (No. 4-18-0843))	Honorable
Byron C.,)	Karen S. Tharp,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s fitness and best-interest findings were not against the manifest weight of the evidence and the court did not abuse its discretion in refusing to allow respondent’s counsel to withdraw or be substituted.

¶ 2 In June 2018, the State filed a petition to terminate the parental rights of respondent, Byron C., as to his minor children, R.C. (born March 27, 2007) and J.C. (born February 16, 2008). Following a fitness hearing, the trial court found respondent unfit. In

December 2018, the court found it was in R.C.'s and J.C.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting (1) the trial court's best-interest findings were against the manifest weight of the evidence, (2) the State failed to prove respondent unfit by clear and convincing evidence, and (3) the court abused its discretion by refusing to allow respondent's attorney to either withdraw or be substituted. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In May 2016, the State filed a petition for adjudication of wardship, alleging R.C. and J.C. were neglected, pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1) (West 2014)), in that (1) their environment was injurious to their welfare as evidenced by respondent's drug use, and (2) they were not receiving the care or supervision necessary for their well-being in that respondent failed to make a proper care plan. Following an October 2016 adjudicatory hearing, the trial court found the State proved R.C. and J.C. neglected as alleged in the petition. In November 2016, the court entered a dispositional order (1) finding respondent unfit and unable to care for R.C. and J.C., (2) making the minors wards of the court, and (3) placing custody and guardianship of the minors with the Department of Children and Family Services (DCFS).

¶ 7 B. Termination Proceedings

¶ 8 In June 2018, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare; (2) make reasonable efforts to correct the conditions that

were the basis of removal within nine months of an adjudication of neglect, specifically October 12, 2016, to July 12, 2017; (3) make reasonable efforts to correct the conditions that were the basis of removal during any nine month period following the adjudication of neglect, specifically July 12, 2017, to April 12, 2018; (4) make reasonable progress toward the return of the minors within nine months after an adjudication of neglect, specifically October 12, 2016, to July 12, 2017; and (5) make reasonable progress toward the return of the minors during any nine month period following the adjudication of neglect, specifically July 12, 2017, to April 12, 2018.

¶ 9 *1. Fitness Hearing*

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

¶ 11 a. Brittany Foster

¶ 12 Brittany Foster, previously a caseworker with the Center for Youth and Family Solutions (CYFS), testified she became R.C.'s and J.C.'s caseworker in October 2016.

According to Foster, the minors' mother was deceased and respondent had an established service plan with the necessary referrals in place. Foster testified, "The services that were offered to [respondent] were substance abuse, parenting, cooperation, PAR [(Preventing Abusive Relationships)], domestic violence, and mental health." The plan required substance-abuse treatment because respondent overdosed in front of his children, which is what led to DCFS involvement. Parenting classes were required to help respondent learn to cope with being a single parent. Domestic-violence services were required because respondent "had several incidents of domestic violence in the past with prior paramours and spouses." The mental-health services provided respondent with medication management and counseling. The agency required

counseling services because respondent “had just been through an immense amount of loss and [was] dealing with trying to take over the children.”

¶ 13 In November 2016, an administrative case review rated respondent unsatisfactory for substance-abuse services because he did not complete the required random drug tests. Respondent received a satisfactory review for parenting services because he completed his parenting classes. The review rated respondent unsatisfactory for domestic-violence services because he “started the PAR classes on four different occasions but did not complete them.” With respect to the mental-health services, respondent had an appointment with SIU Healthcare but Foster never received proof that he followed through.

¶ 14 Initially, respondent did not have housing and “bounc[ed] around” after being asked to leave a friend’s house. Respondent’s employment varied and he held “quite a few different jobs” while Foster was the caseworker. Prior to the November 2016 case review, respondent was very cooperative with Foster and CYFS.

¶ 15 Respondent’s mother supervised respondent’s visits with the minors in her home. Respondent never received permission to take the children from his mother’s home for unsupervised visits. Foster testified she received a police report documenting an incident that occurred in March 2017. According to Foster, respondent had the minors in his home without permission and R.C. was injured in a domestic-violence incident. Following this incident, CYFS removed the minors from their grandmother’s home and placed them in a new foster home. Thereafter, respondent had supervised visits with the minors at the CYFS office.

¶ 16 Between November 2016 and March 2017, respondent completed the parenting services, but did not cooperate with mental-health treatment or domestic-violence classes. Respondent completed some random drug tests but indicated he was still currently using

marijuana. Although respondent completed parenting classes, CYFS continued to require supervised visitation due to his outbursts. According to Foster, respondent was very volatile during interactions with supervisors, the domestic-violence class staff, and her. Foster testified there were incidents where respondent entered the CYFS office “screaming, yelling, [and] threatening.” Foster received calls from respondent on her personal cellular telephone between 1 and 4 a.m. On at least one occasion, Foster answered respondent’s late-night call and she testified, “he was under the influence of something. It was a lot the [sic] muttering, didn’t make a lot of sense, a lot of yelling, and I ended the call.”

¶ 17 Foster testified she needed to have someone present with her during child and family team meetings with respondent. During a court hearing, respondent accused Foster of having “other feelings besides professional feelings for [respondent]” and wanting “to be the mother to his children.” Respondent made this accusation after the children were removed from his mother’s home. Foster asked to be removed from the case because she no longer felt safe.

¶ 18 At the time Foster left the case, respondent was not participating in mental-health counseling and Foster did not know if respondent was “medication compliant.” There were times Foster could not contact respondent because he did not have a working phone number. Foster testified there was no point at which the agency was close to returning R.C. or J.C. to respondent’s care because he did not have stable housing, he did not fulfill the requirements of his service plan, he “was not coming up clean on his drugs drops,” and he did not have full-time employment. Respondent’s failure to complete the service plan requirements aside, Foster did not feel the children would be safe in respondent’s home due to the reports of domestic violence and 19 orders of protection filed against respondent.

¶ 19 b. Emily Roberts

¶ 20 Emily Roberts, previously a caseworker at CYFS, testified she was assigned the case for approximately one month from March to April 2017. Roberts referred respondent “for Primed for Life advocate and for the parent coaching at The Parent Place.” The parent coaching was “a one-on-one kind of thing” in addition to the parenting classes respondent already completed. During the month Roberts had the case, respondent made no further progress with substance-abuse treatment or PAR classes. Respondent completed an assessment with a counselor but did not attend any mental-health counseling sessions.

¶ 21 c. Martha Dufner

¶ 22 Martha Dufner, a foster care supervisor with CYFS, testified she was the supervisor for the case from October 2016 to August of 2018. In March 2017, Dufner took over as the primary caseworker. At a May 2017 administrative case review, respondent was rated satisfactory for cooperating with the agency, mental-health treatment, and parenting classes. However, respondent still needed to complete the parent-coaching portion of the service plan. Between March and July 2017, respondent participated in counseling services through SIU. CYFS eventually received reports regarding respondent’s counseling but they contained minimal information. Although respondent was prescribed medication for anxiety and depression, he reported self-medicating with marijuana. CYFS did not receive any information about respondent’s prescribed medication and had only verbal confirmation he was attending counseling. Although he was rated satisfactory for mental-health treatment at the March 2017 case review, Dufner would have rated it differently given the information she knew at the time of the hearing. Dufner testified respondent had an “incredible need for services.”

¶ 23 Respondent’s domestic-violence services were rated unsatisfactory because he completed an assessment in October 2016 but failed to complete the recommended 26 weeks of

PAR services. Additionally, there were further incidents of domestic violence between respondent and his girlfriend. Respondent was also rated unsatisfactory for substance-abuse treatment. The agency requested 11 drug tests from November 2016 through May 2017 and respondent completed 2 of the 11, both of which were positive for marijuana. Dufner testified respondent tested positive for cocaine during the beginning of the case. Respondent completed substance-abuse treatment in November 2016 but he subsequently relapsed and “was urged to go back to treatment.” In May 2017, respondent was rated unsatisfactory for the overall case review because there were still issues with the very reasons the case was opened—namely, substance abuse and domestic violence.

¶ 24 In May 2017, a new investigation involving the children occurred. Dufner received a call reporting that respondent entered the foster parent’s house while quite upset and aggressive. The foster parent called respondent and told him R.C. was upset and rode off on her bicycle and the foster parent did not know where R.C. was. Respondent went to the foster parent’s home and got into an altercation with the foster parent’s paramour that resulted in damage to property. Based on this call, Dufner went to the foster parent’s house and found respondent “very upset, screaming[,] and detailing what had happened.” The foster parent told Dufner respondent threatened her. According to Dufner, both the minor children were at the scene.

¶ 25 After this incident, the children were relocated to separate temporary foster placements. The children were reunited approximately one week later in another temporary placement. During that time, R.C. was unstable and, from May 25, 2017, to June 18, 2017, she was psychiatrically hospitalized at Lincoln Prairie Behavioral Health. CYFS eventually placed the children with respondent’s father and his wife.

¶ 26 According to Dufner, respondent's relationship with his father was very strained. The relationship was tumultuous and communication between respondent and his father was poor. At the February 3, 2018, visit, respondent indicated the children told him something was happening in the foster home that led to the children having bruises.

¶ 27 On February 5, 2018, Dufner received information that respondent was on Facebook Live, appeared to be intoxicated, and was making threatening statements about the foster parents and DCFS. A person in the video appeared to be unconscious and Dufner had a caseworker contact police to conduct a wellness check. Dufner testified she and another caseworker went to respondent's residence and waited for police to come check on him. As police knocked on respondent's door, Dufner watched the Facebook Live video. According to Dufner, respondent was sweating profusely, rapping, and appeared to be under the influence. Respondent refused to open the door, but his girlfriend eventually arrived and unlocked the front door, allowing police to make contact with respondent.

¶ 28 Dufner testified the agency made a critical decision to suspend visits. That decision was based on respondent's behavior during the February 3, 2018, visit as well as the February 5, 2018, incident. According to Dufner, CYFS wanted to ensure respondent was sober for visits and the children were safe during the visits.

¶ 29 Respondent indicated the February 3, 2018, visit led to his relapse and the incident that occurred on February 5, 2018. Respondent re-engaged with substance-abuse counseling at the request of the agency. Although respondent eventually completed the PAR classes in July 2018, Dufner would not have changed the domestic-violence service rating to satisfactory in light of ongoing domestic violence in his relationship.

¶ 30 d. Lisa Bracco-Tabora

¶ 31 Lisa Bracco-Tabora testified she was previously a family worker with CYFS and she took over the case from July 2017 to June 2018. Between July 2017 and a November 2017 administrative case review, respondent's domestic-violence services were rated satisfactory and he was attending his PAR classes. Respondent's substance-abuse services were rated unsatisfactory because he tested positive for marijuana and failed to appear for other drug tests. However, respondent re-engaged in substance-abuse counseling by November 2017. Respondent was rated satisfactory for mental-health counseling. However, respondent stopped taking his medication and admitted to using marijuana to help with his anxiety and depression. Respondent also completed the parent-coaching service. Although respondent complied with some of the service plan, other services were still required.

¶ 32 Bracco-Tabora testified she received police reports documenting a December 2017 altercation with respondent's neighbor and a January 2018 altercation with his girlfriend's ex-boyfriend. On February 3, 2018, Bracco-Tabora brought the minors for a visit with respondent, which went well for the first hour. However, respondent suddenly began questioning the minors as to whether the foster parent was hitting them. According to Bracco-Tabora, respondent "kept asking them over and over and over and becoming more and more agitated and becoming more loud about that." Although Bracco-Tabora witnessed respondent become agitated and aggressive in meetings and during phone calls, she had not previously witnessed aggression and escalating behavior towards the children. Respondent repeatedly asked the children to tell the truth and J.C. eventually said the foster parent was hitting the children. DCFS opened an investigation and determined the allegations to be unfounded. Respondent repeatedly called the DCFS hotline to report the foster father for physical abuse. DCFS investigated the allegations and determined them to be unfounded.

¶ 33 Prior to the February 3, 2018, visit, respondent regularly attended the visits but did cancel three visits from October 2017 to December 2017. Respondent said he bought the children birthday and Christmas gifts that he kept at his house for the children to have when they would come home. Respondent brought food and drinks to the visits and was allowed to have supervised visits in the community from July 2017 to January 2018. Bracco-Tabora testified she did not see any problems during visits until the visit on February 3, 2018.

¶ 34 Following the February 3, 2018, visit, CYFS suspended visits between respondent and the minors due to his aggressive behavior and a request from R.C.'s counselor. Bracco-Tabora testified, "I guess [respondent] was telling the kids to act up quite a bit and if they acted up in school and with their foster parents and different things, that he—they would be able to basically blow the placement and they can return home." R.C.'s therapist asked that visitation be stopped to address R.C.'s anxieties about visiting with respondent. In April 2018, monthly supervised visitation began.

¶ 35 On February 5, 2018, Bracco-Tabora received a phone call from the foster father reporting respondent "was ranting and raving and he was under the influence and, you know, cussing and just going on a rampage on Facebook live." Bracco-Tabora's supervisor and another coworker went to respondent's home during the incident on February 5. After that incident, Bracco-Tabora asked respondent about any intoxicating substances he had taken recently, but respondent refused to answer her questions. Bracco-Tabora asked respondent to complete a drug test, which tested positive for cocaine. Respondent occasionally complied with subsequent requests for random drug tests.

¶ 36 With respect to his domestic-violence services, respondent had not yet completed the PAR class before a May 2018 administrative case review. Bracco-Tabora testified

respondent successfully completed the PAR classes at some point but another incident of domestic violence required him to re-engage in the domestic-violence services. In May 2018, respondent was compliant with his mental-health counseling, but at some point between November 2017 and May 2018, Bracco-Tabora requested that he re-do a mental-health assessment. Bracco-Tabora made the request because “he still had a lot of anger issues, and he was very much aggressive, and just due to his other outbursts.”

¶ 37 According to Bracco-Tabora, CYFS and the caseworker need to know a parent’s relationship status to better help with their services. While Bracco-Tabora was the caseworker, there was always a question as to whether respondent was in a relationship with his girlfriend. Respondent told Bracco-Tabora he and his girlfriend broke up several times and he eventually admitted she was living with him.

¶ 38 After his February 2018 relapse, Bracco-Tabora asked respondent to re-engage with substance-abuse services. As of May 2018, respondent was not taking his prescribed medication but was instead using marijuana. Respondent did have satisfactory housing and income in May 2018. However, at no point was Bracco-Tabora close to returning the minors to respondent’s care based on his drug test results, his aggressive behavior, and his overall mental-health capacity.

¶ 39 e. Jeffrey Morris

¶ 40 Jeffrey Morris, a clinical child and adolescent counselor at Chestnut Health, testified he worked with J.C. and R.C. R.C.’s concerns included “[e]verything from heightened energy, problems with attention and focus, to emotional reactions to things happening at school and at home.” According to Morris, R.C. made some progress while maintaining visits with respondent. However, in early 2018 the minors’ grandfather approached Morris about R.C.’s

behavior problems. Morris spoke with a caseworker and “determined that the behaviors changed after visits were increasing or conversations were increasing.” Morris “was made aware of alleged comments made to [R.C.]” and he had concerns about how R.C. responded to unfulfilled promises. Morris testified R.C. told him about comments respondent made “along the lines of, [‘]you’re going to be coming home soon, you don’t need to pay attention to what you’re being told, it’s okay to act up.[’]” Accordingly, Morris suggested halting visits to stabilize R.C.’s behaviors. After the visits were suspended, R.C. no longer had problems at school and was not as energetic or out of focus at home.

¶ 41 f. Jennifer Wallace

¶ 42 Jennifer Wallace, a patrol officer with the Springfield Police Department, testified that, on February 5, 2018, at approximately 9:30 a.m., two DCFS caseworkers called for a welfare check at respondent’s residence. When Wallace arrived on the scene, the DCFS caseworkers showed her a live-stream video on Facebook that they said was respondent in the home. Wallace testified the video showed respondent with two men and one of the men appeared to be unconscious. The caseworkers told Wallace they did not know if the unconscious man was alive and asked her to check on his welfare. According to Wallace, the video depicted respondent and another man “tapping [the unconscious man], smacking him, trying to wake him up, and laughing that he wasn’t moving or waking up.”

¶ 43 Wallace knocked on the door and could hear loud music and singing. Respondent spoke to Wallace through the door and told her he was alone in the house, drunk, and did not need assistance. Respondent refused to allow Wallace into the house, but eventually opened the blinds on a window so she could see the unconscious man. Respondent and the other man were able to wake the unconscious man, who waved at Wallace and said he was fine.

¶ 44 A few weeks before the February 2018 incident, Wallace responded to a disturbance involving respondent, his girlfriend, and their rear neighbors. Respondent's girlfriend attempted to intervene in a fight between the neighbors and the male neighbor pushed her. Respondent's girlfriend called respondent, who returned home and confronted the male neighbor. When Wallace arrived, she observed respondent and the neighbor yelling and screaming. According to Wallace, she stepped between the men to prevent a fight and had to "threaten to tase [respondent] just to get him to back up off of me to stop the heated disturbance."

¶ 45 g. Christopher Vollmer

¶ 46 Christopher Vollmer, a Springfield police officer, testified that, in June 2018, he responded to a disturbance between respondent and his girlfriend. According to Vollmer, loud music was playing, respondent appeared intoxicated, and Vollmer had to shout to get respondent to turn down the music. Respondent's girlfriend had a "slight scratch" on her neck because she tried to turn down the music and respondent shoved her. After waiting for back-up to arrive, Vollmer placed respondent under arrest. Vollmer did not know if charges were ever filed against respondent.

¶ 47 h. Respondent

¶ 48 Respondent testified the DCFS case had been open for approximately two years. According to respondent, DCFS required him to complete substance-abuse, domestic-violence, and parenting classes as well as mental-health treatment. At the beginning of the case, respondent "went through a rough patch" but eventually got stable housing and employment. Respondent testified he had maintained stable housing for just under two years.

¶ 49 Respondent stated he had a good relationship with Foster at first but the relationship deteriorated toward the end. According to respondent, Roberts was “awesome.” However, respondent testified his communication with Bracco-Tabora was “rough” and she had “an attitude.”

¶ 50 Respondent testified he completed mental-health services through Memorial Behavioral Health and had a certificate showing his successful discharge. According to respondent, Foster was not being truthful when she stated she had no proof of mental-health counseling by March 2017. Respondent completed parenting classes, which “taught [him] to be a better parent.” According to respondent, he successfully completed substance-abuse classes twice. After the February 5, 2018, Facebook Live incident, respondent testified, “I immediately went and seek *[sic]* the help that I know I needed. You know, just—I—I made a mistake, and I knew I was just wanting to pick up my own mistake and fix it on my own.” Respondent entered into outpatient treatment through the Family Guidance Center.

¶ 51 Respondent testified the initial focus of the services was on mental health and substance abuse but the agency told him he might need domestic-violence classes eventually based on a history of domestic-violence incidents. According to respondent, he had verbal permission from Foster to take the children to church and then to his house for a one-hour, unsupervised visit in March 2017. While respondent was at his house with the children, his girlfriend came over and broke a window trying to get into the home. Respondent testified he immediately called the police, who informed him he was not allowed to have unsupervised visits with his children. The children were removed from respondent’s mother’s care and placed with their maternal aunt, Angela.

¶ 52 In May 2017, Angela called respondent and told him R.C. had run away. Respondent rushed to Angela's house and called the police, the caseworker, and the CYFS supervisor. According to respondent, Angela opened the door for respondent and told him R.C. had returned. Respondent testified, "I went in, and I did grab my daughter to take her out of the situation. I told Angela I wasn't taking her, the police was [sic] on their way here and the supervisors, I just want to sit out in the driveway because she was crying."

¶ 53 Respondent completed PAR classes in July or August 2018, although he acknowledged he unsuccessfully attempted to complete PAR previously. In July 2017, respondent reported he was no longer in a relationship with his girlfriend and did not need to complete PAR classes. Respondent testified he told CYFS when he got back together with his girlfriend. Respondent testified the relationship ended permanently in June or July 2018 and a June 2018 domestic-violence incident had nothing to do with the relationship ending. Respondent acknowledged his girlfriend called the police and reported he was high on cocaine, drunk, and refused to turn down his music. Respondent denied scratching his girlfriend during the June 2018 incident and testified he was only arrested that day because of his negative history. According to respondent, the June 2018 incident was the last time he used drugs and alcohol.

¶ 54 According to respondent, he currently visited with his children and he denied ever telling the children to act out. Respondent testified his relationship with his father improved and he spent time with his father and his children. Respondent spoke to his children on the telephone every day or every other day and visited them at his father's house whenever he was able. Visits were not coordinated by the agency because respondent thought it would be easier for everybody if he just visited the children at his father's house.

¶ 55 i. Trial Court's Findings

¶ 56 After hearing the evidence, the trial court found, by clear and convincing evidence, respondent unfit on three separate grounds. The court found respondent failed to (1) show a reasonable degree of interest, concern, or responsibility as to the minors; (2) make reasonable efforts to correct the conditions that were the basis of removal; and (3) make reasonable progress toward the return of the minors within the nine-month period from October 2016 to July 2017 or the nine-month period from July 2017 to April 2018.

¶ 57 The trial court found respondent completed the PAR assessment in October 2016 but he never completed the classes and was referred four different times due to ongoing domestic-violence incidents. In March 2017, respondent called the caseworker at inappropriate hours and made the caseworker so uncomfortable she asked to be removed from the case. That same month, there was a domestic-violence incident during which R.C. was pushed and police were called. Respondent also reported to the caseworker he was prescribed medication but he disliked it and was self-medicating with marijuana.

¶ 58 The trial court noted that, in May 2017, respondent was rated unsatisfactory overall, based on his unsatisfactory ratings for domestic-violence and substance-abuse services. The court found respondent completed only two of the requested drug tests and he tested positive for marijuana. Also in May 2017, another incident involving the police occurred when R.C. ran away from her foster home and “it was reported as just being chaos, dad upset and screaming.” The court noted the end of the first nine-month period was July 2017.

¶ 59 In December 2017 and January 2018, there were police reports regarding respondent’s behavior. In February 2018, respondent repeatedly asked the children if their foster parent was hitting them and he was loud and intimidating during the visit. Respondent made a hotline report of the alleged abuse. A few days later, the “Facebook Live incident” occurred, and

the police officer reported respondent was highly intoxicated. The court noted respondent later admitted to using cocaine on that occasion. Respondent's reaction to the alleged abuse was to use cocaine and alcohol and rant on Facebook Live. There was also an earlier incident where police responded to a disturbance between respondent and his neighbor where respondent chest bumped the officer while trying to get to his neighbor. The court noted the second nine-month period ended in April 2018.

¶ 60 The trial court noted, after the end of the second nine-month period, respondent completed the PAR classes. There was another incident in June 2018 where police responded to a call and respondent appeared intoxicated.

¶ 61 The trial court found the testimony established respondent routinely presented an angry, volatile demeanor. The court noted "that all of the workers that were asked, and certainly by the time it was last reported, June of 2018, none of the caseworkers were close to being able to return the children to [respondent]." The court found respondent had time to complete his services but was unable to do so within the two nine-month periods the State alleged in its petition to terminate his parental rights. Accordingly, the court concluded the State met its burden of proving respondent unfit.

¶ 62 *2. Respondent's Request for New Counsel*

¶ 63 As noted above, the trial court held the fitness hearing over the course of four nonconsecutive days. The first day of the hearing, the State presented testimony from Wallace, Vollmer, Foster, Roberts, and Bracco-Tabora. At the start of the second day of testimony, respondent informed the court he wanted to hire another attorney. Respondent asserted he had the right to hire an attorney in the middle of the case and stated he did not feel as though his appointed attorney was properly representing him.

¶ 64 The trial court noted that respondent had the right to be represented by an attorney and pointed out respondent did, in fact, have an attorney and the matter was in the middle of trial. Respondent replied, “She’s fired.” Respondent requested a continuance to allow his new attorney to familiarize himself with the case. The court noted respondent’s current attorney was appointed by the court and it stated, “Your motion is noted and denied. We are in the middle of trial. We’ve had five witnesses. We are set today for a trial. Your motion to continue or your motion to fire your attorney that you didn’t hire is denied.” Respondent continued to insist he had the right to fire his attorney and hire new counsel in the middle of trial. The court reiterated its ruling denying respondent’s request to hire new counsel and proceeded with the trial.

¶ 65 *3. Best-Interest Hearing*

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

¶ 67 a. Lisa Bracco-Tabora

¶ 68 Bracco-Tabora testified that, in July 2017, the minors were placed with their grandparents, Mike C. and Mary C., in Belleville, Illinois. At that time, respondent had supervised visits with the children in Springfield once a week. Bracco-Tabora testified there were no issues with visits until the incident in February 2018, after which visits were suspended until April or May 2018. Respondent had other opportunities to see his children, including attending their extracurricular activities or visiting at his father’s house. However, respondent did not take these opportunities to see his children and said he did not have gas money or his car was not working. Bracco-Tabora spoke with respondent about ways to resolve the transportation issues and informed him the agency would pay for bus passes or train tickets. Respondent did

not make use of those options and did not attend any of the extracurricular activities while Bracco-Tabora was the caseworker.

¶ 69 Bracco-Tabora testified she believed there was a bond between the children and respondent and the children were excited for visits. However, Bracco-Tabora believed it was in the children's best interests to terminate respondent's parental rights. When asked why she held that belief, Bracco-Tabora testified, "Because they are in a home that is very stable, very loving, very secure. They appear, when I was the case manager, to be very happy. Um, less stressed. They were getting everything that they needed." The children displayed signs of stress around some of the visits with respondent and R.C. in particular "was definitely filled with anxiety." Bracco-Tabora attributed that anxiety to having to see respondent and not a desire to return home and live with respondent. Bracco-Tabora saw that anxiety decrease toward the end of her time on the case.

¶ 70 b. Martha Dufner

¶ 71 Dufner testified the children changed placements numerous times in 2017, and in May of the year, R.C. was placed in Lincoln Prairie Behavioral Health for psychiatric hospitalization. In June 2017, the children were placed with Mike C. and Mary C. Following that placement, R.C. was taken off psychotropic medications and her behaviors improved drastically. Mike C. and Mary C. enrolled J.C. in different sports and activities and the children seemed to stabilize after the placement.

¶ 72 According to Dufner, respondent loves his children and his children love him but he was unable to complete the required services to change his lifestyle. Dufner testified she believed it to be in the best interests of the children to terminate respondent's parental rights.

The children were in a stable, loving home with family and there was still an opportunity for respondent to be involved in the children's lives.

¶ 73 c. Courtney Pearson

¶ 74 Courtney Pearson, a caseworker with CYFS, testified she became the caseworker for R.C. and J.C. in July 2018. Since June 2017, R.C. and J.C. lived with Mike C. and Mary C. and made progress in the placement. R.C. was on the honor roll, participated in cheerleading, made friends, and was stable. J.C. was on high honor roll and participated in basketball and band. The placement attended to any educational, medical, religious, or social needs the children had. Mike C. and Mary C. had a teenaged adoptive son and the children had their own rooms.

¶ 75 Mike C. and Mary C. verbally confirmed they were an adoptive resource and regularly discussed their future with the minors. R.C. and J.C. have an attachment to the Mike C. and Mary C. and feel comfortable going to them if they have any issues. The children also expressed excitement about future events with the Mike C. and Mary C. and "are very excited about their future."

¶ 76 Pearson testified the children had a bond with respondent and were excited to visit him. In July 2018, R.C. told Pearson "she was excited to see her dad, and she wanted to be with him and live with him." Pearson observed four visits where respondent and the children would play games, watch movies, and play outside. Pearson believed it to be in the minors' best interest to terminate parental rights because they were doing well in their placement. Given respondent's failure to correct the conditions that led to DCFS involvement, Pearson felt disrupting the children's placement would do more harm than good. There was an open visitation agreement for respondent to visit the children at Mike C. and Mary C.'s home.

¶ 77 d. Respondent

¶ 78 Respondent testified the minors called him “dad” and their foster parents “grandfather” and “grandma.” Respondent testified he attended numerous basketball and football games with the aid of gas cards from the caseworker. Respondent also watched his daughter cheerleading and went to her bowling league. According to respondent, the children also wanted to start baseball or soccer. Respondent testified he also attends events without the agency’s knowledge because, when he could afford it, he would pay for gas. Approximately two weeks before Christmas break, respondent attended J.C.’s basketball game, but respondent missed a visit on Christmas day because the car he was going to use was involved in an accident and respondent had no time to make other arrangements. Respondent testified he was also balancing two jobs and going to school but he was planning to leave one job. At some point respondent moved and he was planning on moving again.

¶ 79 According to respondent, he was aware of R.C.’s behavioral problems after she was placed with Mike C. and Mary C. Respondent told R.C. her behavior just made the situation harder and he gave her advice as to how to correct her behavior. In respondent’s opinion, it was not in the children’s best interest to terminate his parental rights. No one ever discussed the possibility of adoption with the minors and both children have told respondent they cannot wait to return home with him.

¶ 80 Respondent acknowledged the children liked the school they attended and he purchased a Nintendo DS for R.C. to improve her reading and math skills. The sports the children participate in are all in the St. Louis area, so respondent’s father transports the children to their activities. Respondent testified he was on good terms with his father and his father had an “open-door policy” that allowed respondent to visit whenever he wanted. Although there was

this “open-door policy,” respondent had not seen the children since early December and he planned to visit the children to celebrate Christmas as soon as the car was fixed.

¶ 81 e. Trial Court’s Findings

¶ 82 The trial court noted the children were ages 10 and 11 and had been in DCFS care for just over two years. The court further noted the children had not been in the same placement throughout the case but had been in the same placement for over a year. The children were stable in their placement, doing well in school, and involved in various activities. Additionally, the foster parents verbally stated they would adopt R.C. and J.C. Although respondent had begun to address some issues and benefited from services, there was still instability in his life. The court pointed to the changes in jobs and housing as well as his on-again, off-again relationship, which ended about six months earlier. The court considered the best-interest factors, and it emphasized the children’s need for permanence and stability. The court also noted the placement was with a relative and the situation allowed “the children [to] have permanence in a home where they’ve been for a substantial period of time where they’re doing exceedingly well, where, as far as I know, they would continue to have the contact that they’re having with the father.” The court found, by a preponderance of the evidence, it was in R.C.’s and J.C.’s best interest to terminate respondent’s parental rights. Accordingly, the court entered an order terminating respondent’s parental rights.

¶ 83 This appeal followed. We docketed Sangamon County case No. 16-JA-59 as case No. 4-18-0841 and Sangamon County case No. 16-JA-58 as case No. 4-14-0843. We have consolidated the cases for review.

¶ 84 II. ANALYSIS

¶ 85 On appeal, respondent asserts (1) the trial court’s best-interest findings were against the manifest weight of the evidence, (2) the State failed to prove respondent unfit by clear and convincing evidence, and (3) the court abused its discretion by refusing to allow respondent’s attorney to either withdraw or be substituted. We turn first to the fitness finding.

¶ 86 A. Fitness Finding

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

¶ 88 The trial court found respondent unfit on three different grounds: (1) respondent failed to show a reasonable degree of interest, concern, or responsibility as to the minors; (2) respondent failed to make reasonable efforts to correct the conditions that were the basis of removal; and (3) respondent failed to make reasonable progress toward the return of the minors within the nine-month period from October 2016 to July 2017 or the nine-month period from July 2017 to April 2018. On appeal, respondent contends the trial court’s finding that he failed

to make reasonable efforts was against the manifest weight of the evidence. However we may affirm on any basis in the record and we need not review all the grounds for a finding of unfitness if we uphold the trial court's findings as to one ground of unfitness. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001). As we find the trial court's finding as to reasonable progress dispositive, we begin there.

¶ 89 The trial court's finding that respondent failed to make reasonable progress toward the return of the minors within the two nine-month periods—October 2016 to July 2017 and July 2017 to April 2018—was not against the manifest weight of the evidence. Reasonable progress is measured by an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391, 757 N.E.2d 613, 615 (2001). Specifically, reasonable progress includes a parent's compliance with service plans and court directives, in light of the condition that gave rise to the removal of the child. *In re C.N.*, 196 Ill. 2d 181, 216, 752 N.E.2d 1030, 1050 (2001).

¶ 90 In this case, the children came into DCFS care based on respondent's issues with substance abuse and his history of domestic violence. During the two nine-month periods at issue here, respondent failed to successfully complete domestic-violence services, mental-health counseling, and substance-abuse treatment. Respondent completed the initial domestic-violence assessment, but the agency had to make four referrals for the PAR classes, which respondent never successfully completed during the relevant time. Moreover, there were repeated incidents of domestic violence requiring police involvement, including one incident in March 2017 where respondent had the children for an unauthorized, unsupervised visit and R.C. was injured. Although respondent subsequently completed the PAR classes, the record shows another domestic-violence incident occurred as recently as six months before the termination hearing.

¶ 91 Although the testimony established respondent was rated satisfactory for substance-abuse treatment at certain times, he subsequently relapsed in February 2018 and had to re-engage in that treatment. Moreover, the testimony established that, during the relevant nine-month periods, respondent refused to complete drug tests and those he did take came back positive. Finally, all of the caseworkers testified they were never close to a point where the children could be returned to respondent's care.

¶ 92 As the trial court noted, respondent had the opportunity to complete these services over two nine-month periods and he failed to do so. Although respondent made some progress, he never progressed to a point where the caseworkers were close to returning the children. Given respondent's failure to successfully complete his domestic-violence and substance-abuse services—the primary areas of concern leading to DCFS involvement—we cannot say the trial court's determination respondent failed to make reasonable progress toward having the minors returned to his care was against the manifest weight of the evidence.

¶ 93 B. Best-Interest Finding

¶ 94 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The trial court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62.

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

- “(a) the physical safety and welfare of the child,
including food, shelter, health, and clothing;
- (b) the development of the child’s identity;
- (c) the child’s background and ties, including familial,
cultural, and religious;
- (d) the child’s sense of attachments ***[;]

* * *

- (e) the child’s wishes and long-term goals;
- (f) the child’s community ties, including church, school,
and friends;
- (g) the child’s need for permanence which includes the
child’s need for stability and continuity of relationships with
parent figures and with siblings and other relatives;
- (h) the uniqueness of every family and child;
- (i) the risks attendant to entering and being in substitute
care; and
- (j) the preferences of the person available to care for the
child.” *Id.*

¶ 96 The trial court in considering the relevant best-interest factors concluded that the evidence showed the minors had been in their current placement for more than a year. The children were thriving in their foster placement, as evidenced by R.C.’s improved behavioral issues, the children’s success in school, and the children’s involvement in various activities. Moreover, the foster father was the children’s paternal grandfather and he and his wife expressed

their willingness to provide permanency for R.C. and J.C. through adoption. Additionally, respondent was allowed to visit the children whenever he wanted and he attended sporting events and other family activities. Nothing in the record indicated that would change if parental rights were terminated and the foster family was allowed to adopt the minors. The evidence established the children were in a stable, loving home with foster parents who were willing to provide the children with permanency.

¶ 97 Conversely, respondent cannot provide stability and permanence for the minors in the near future. Although the evidence showed respondent loved his children, he failed to show he could provide, in the near future, permanency for the children. Respondent failed to make reasonable progress toward the children's return in the two years the case was pending. The trial court noted that, if parental rights were not terminated, there was no indication that respondent would maintain stability. Although respondent made improvements since the summer of 2018, the court worried respondent might react to adversity as he had during the February 5, 2018, Facebook Live incident. The court further noted respondent had other instability in his life, including changing employment and residences. The court determined the children's need for permanence outweighed any harm from terminating respondent's parental rights. Accordingly, the court determined it was in R.C.'s and J.C.'s best interest to terminate respondent's parental rights.

¶ 98 Given the extent to which the children were thriving in their foster placement and the possibility of permanence and stability in the near future through adoption, we conclude the trial court's finding it was in the children's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence. Accordingly, we affirm the judgment of the court.

¶ 99

C. Respondent's Request for Substitute Counsel

¶ 100 Finally, respondent argues the trial court erred in refusing to allow his counsel to withdraw or be substituted. Specifically, respondent contends the court should have allowed the withdrawal or substitution because it would not prejudice any party.

¶ 101 We first note that counsel did not seek to withdraw from representing respondent. Rather, respondent sought to fire his appointed attorney and hire a new attorney in the middle of his fitness hearing. Respondent never argued the substitution of counsel would not prejudice any party. Accordingly, this specific argument is forfeited. *Forest Preserve District v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 28, 961 N.E.2d 775 (“The doctrines of forfeiture and waiver, however, should not be ignored if it is clear that the party claiming forfeiture would have been able to refute or overcome the arguments if it had been given the opportunity to do so in the trial court.”).

¶ 102 In support of his argument, respondent cites *In re Rose Lee Ann L.*, 307 Ill. App. 3d 907, 718 N.E.2d 623 (1999). In *Rose Lee Ann L.*, the appellate court considered whether the circuit court erred by denying an attorney's request to withdraw under Illinois Supreme Court Rule 13(c)(3) (eff. July 1, 1982). The appellate court noted “Illinois courts have determined that Supreme Court Rule 12(c)(3) gives circuit courts the option of denying an attorney's motion to withdraw *only if* the granting of the motion would improperly delay the trial or would otherwise be inequitable.” (Emphasis in original.) *Id.* at 912. As noted above, respondent's counsel did not seek to withdraw. However, even if the principle articulated by the appellate court in *Rose Lee Ann L.* applied to respondent's claim, it supports the trial court's denial of his motion to substitute a new attorney because allowing the motion would have improperly delayed the trial. Respondent made this request in the middle of the fitness hearing after five witnesses had

testified. Substituting counsel at that point would have inevitably caused delay as the new attorney familiarized herself or himself with the case.

¶ 103 Respondent further contends the trial court’s ruling effectively denied him the right to be represented by counsel. In support, respondent relies on *In re W.L.W. III*, 299 Ill. App. 3d 881, 702 N.E.2d 606 (1998). *W.L.W. III* involved a claim of ineffective assistance of counsel in proceedings to terminate parental rights where counsel failed to properly preserve the record for appeal. *Id.* at 884. Respondent apparently cites *W.L.W. III* for the general proposition that “parents are entitled to effective assistance of counsel in proceedings that seek the termination of their parental rights.” *Id.* at 885. We note respondent does not raise a claim of ineffective assistance of counsel on appeal. Respondent also fails to address the fact that he was represented by counsel during proceedings to terminate his parental rights. As such, the trial court denying his motion to substitute counsel in the middle of trial did not deny respondent the right to be represented by counsel. Finally, we note respondent cites no authority to support the proposition that a parent has an absolute right to counsel *of his choice*. Indeed, respondent does not even attempt to argue the point other than to state the trial court’s refusal to allow a substitution of counsel denied him the effective assistance of counsel of his choice. Accordingly, to the extent respondent raised a right to counsel of his choice, we decline to address this claim. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (argument must contain citation of authorities relied on).

¶ 104 We find the trial court did not abuse its discretion in refusing to allow respondent to substitute his counsel in the middle of the fitness hearing in proceedings to terminate his parental rights where five witnesses had already testified and respondent did not argue that no prejudice to any party would result. Accordingly, we affirm the judgment of the trial court.

¶ 105

III. CONCLUSION

¶ 106

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

¶ 107

Affirmed.