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NO. 4-19-0052

FILED
June 4, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Darc. F. and Dar. F., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 16JA6
v.	)	
Nyisha M.,	)	Honorable
Respondent-Appellant).	)	Brian J. Goldrick,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in terminating respondent's parental rights.

¶ 2 In January 2017, the State filed a petition to terminate the parental rights of respondent, Nyisha M., with respect to her minor child, Darc. F. In March 2017, the trial court accepted respondent's admission to the petition and found her unfit. In September 2017, the court started the best-interests hearing but continued it in progress due to the pendency of related proceedings involving respondent's other child, Dar. F., who was born in December 2016. A fitness determination for respondent regarding Dar. F. had not yet taken place, and the court recognized the outcome would be relevant to the proceedings involving Darc. F. In May 2018, the court consolidated the cases. In January 2019, the court found respondent unfit regarding Dar. F. and proceeded to a best-interests hearing. At the best-interests hearing, the court found it was in the best interests of the minors to terminate respondent's parental rights.

¶ 3 On appeal, respondent argues the trial court erred in terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2016, respondent was involved in a domestic-violence incident where she attacked her paramour, Darc. F.'s father, with a knife while intoxicated. Darc. F., born in 2011, was present during the altercation. According to the police reports, the minor observed his parents spitting at each other. The police were called, and respondent was arrested and charged with aggravated assault with a deadly weapon and domestic battery. The Department of Children and Family Services (DCFS) was contacted after respondent's arrest when her paramour stated he was feeling suicidal and was taken to the hospital for a psychological evaluation. DCFS took protective custody of the minor at that time, since there was no responsible relative immediately available.

¶ 6 On February 1, 2016, the State filed a petition for adjudication of wardship, alleging Darc. F. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016)). The State alleged the minor was living in an injurious environment due to (1) respondent's unresolved issues with domestic violence/anger management, (2) respondent's unresolved issues with substance abuse, (3) her paramour's unresolved issues with domestic violence, (4) his unresolved issues with substance abuse, and (5) his unresolved issues with mental health. At the shelter-care hearing, respondent admitted her child was neglected based on placing him in an injurious environment due to her unresolved issues with domestic violence/anger management.

¶ 7 The dispositional report noted respondent's acknowledgment of a problem with alcohol, that she was highly intoxicated on the night of the incident, and that she has a prior

driving-under-the-influence conviction and was previously ordered to attend treatment for it. She told the caseworker she would participate in a substance-abuse evaluation and was scheduled for February 18, 2016. However, she subsequently declined it on February 19, stating her public defender in her pending criminal case told her to deny substance-abuse treatment as it would be admitting guilt in her criminal case. On April 11, 2016, respondent also informed the caseworker she missed her appointment for a domestic-violence assessment on March 29, 2016, alleging it was due to being called in to work. With regard to her living arrangements, she acknowledged having moved a number of times, both to and from Chicago, as well as elsewhere in the area. At the time of the interview, respondent had recently obtained employment; however, she was kicked out of the Salvation Army facility where she was residing due to a verbal altercation with one of the staff members. She did not have stable housing at the time of the dispositional report, which was 2½ months after the shelter-care hearing and 2 months after adjudication. After being kicked out of the Salvation Army facility, she was referred to Project Oz, another residential assistance program, but angrily walked out of a meeting with a representative on March 7, 2016, because he "did not have the answers she was looking for." By the time of the dispositional report, it was noted respondent had a tendency to lose her temper when she did not get her way, including during telephone calls with her caseworker.

¶ 8 The dispositional order placed custody and guardianship with DCFS. DCFS placed the minor in a traditional foster home for two days before placing him with a relative, the minor's paternal grandmother.

¶ 9 Respondent's service plan required her to complete a domestic-violence course, establish stable housing for six months, complete a substance-abuse course, participate in therapy, complete a parenting course, cooperate with the Center for Youth and Family Solutions

(CYFS), and participate in weekly visits. By January 2017, almost a year after the case opening, respondent had failed to complete any of her services except a parenting class in December 2016 and had started only one other service. By the time of the August 2016 permanency report, she had only attended 5 out of 10 parenting education classes and was terminated from the program. The parenting education coordinator even offered to conduct one-on-one parenting classes with her if they could schedule a specific day per week but was unable to make contact with respondent. While she was referred for other domestic-violence assessments in August, she did not start domestic-violence classes until November 2016. In the same August 2016 permanency report, it noted she missed five visits in the previous six months without calling or canceling in advance. Her caseworker viewed respondent as "not compliant with CYFS on most occasions." Her September 2016 court-ordered drug screen tested positive for cannabis.

¶ 10 At the conclusion of the September 2016 permanency hearing, the goal was changed to return home pending status, and at the January 2017 permanency hearing, the goal was changed again to substitute care pending court determination of termination of parental rights for Darc. F.

¶ 11 In early December 2016, she and Darc. F.'s father had another son, Dar. F., who was taken by DCFS two days after his birth because respondent still had not corrected the conditions that led Darc. F. into the care of DCFS. Based on the previous positive drug screen only three months before, it was evident respondent had been smoking marijuana during her pregnancy. DCFS placed Dar. F. in a traditional placement because Darc. F.'s foster parent, his paternal grandmother, said she would be unable to take care of two children. After several weeks, an issue arose regarding what appeared to be an unexplained fracture of Dar. F.'s leg, which was brought to the attention of DCFS by both the foster parent and respondent. After an

investigation, it was determined by an examining physician the level of healing present at the time of examination was consistent with the injury occurring at birth.

¶ 12 In January 2017, the State filed a petition to terminate respondent's parental rights to Darc. F., alleging respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to Darc. F.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor during the nine-month period from March 9, 2016, through December 9, 2016, following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of the minor to respondent during the nine-month period of March 9, 2016, through December 9, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 13 In February 2017, Dar. F. was adjudicated neglected by way of an admission by the father.

¶ 14 In March 2017, respondent admitted she failed to make reasonable progress during the nine-month period from March to December 2016 in Darc. F.'s case, and the trial court found her unfit based on her admission. At hearings conducted in March, June, and September 2017, respondent continued to be found unfit due to failures to complete required services. The best-interests hearing began on September 29, 2017, and was continued until November 30, 2017, when it was converted into a permanency hearing. The court allowed the best-interests hearing to be continued in an effort to permit respondent and her paramour to participate in and complete services, as well as to investigate the possible placement of the children with a relative in the Chicago area.

¶ 15 Prior to the September best-interests hearing, respondent had tested positive for cannabis on June 1, 2017, June 9, 2017, June 13, 2017, June 28, 2017, July 7, 2017, July 12,

2017, and August 2, 2017. She failed to call in daily and missed scheduled drug screens on June 12, 2017, June 23, 2017, July 28, 2017, and August 7, 2017. As a result, she was not considered to be in compliance with her services for the permanency hearing in November 2017 and was still found to be unfit.

¶ 16 At the September best-interests hearing, Rachel Evans, Darc. F.'s caseworker, stated the minor had been in five different foster placements but eventually both children were placed together in the same foster home around June 20, 2017. At the hearing, Evans testified CYFS was looking into the minors' paternal aunt, Thorlan Buchanan, as a possible placement. While CYFS completed a background check, a home visit was not yet conducted. Buchanan testified she resided in Calumet Park, Illinois, and had a relationship with Darc. F. When Buchanan's mother had custody of Darc. F., respondent would visit him every other weekend. Buchanan contacted Evans about obtaining custody of the minors when she discovered the biological parents' parental rights were about to be terminated. She also stated she had contact with Dar. F. through the Facetime cell-phone application. The hearing was continued until November 2017. Evans testified, in that hearing, since the minors started living together, Darc. F. had become closer to his little brother. Evans, as well as the foster parents, believed it was not in Dar. F.'s best interests to be separated from his brother and believed Darc. F. would respond negatively if separated. The possibility of separation existed because respondent was beginning to perform satisfactorily with regard to her required services in Dar. F.'s case and she had not been found unfit in Dar. F.'s case. The trial court, after talking to the parties off the record, determined it would be premature to attempt to ascertain what was in Darc. F.'s best interests without a resolution in Dar. F.'s case, since all parties involved appeared to agree the children should remain together. The court entered a permanency order, stating respondent was unfit and

the goal was to return home pending status. At the November 2017 permanency hearing, the court found respondent to have made reasonable progress but not reasonable efforts toward return home.

¶ 17 In December 2017, the State filed a petition to terminate respondent's parental rights as to Dar. F., alleging respondent was unfit due to habitual drunkenness or addiction to drugs for at least one year immediately prior to commencement of the unfitness proceeding (750 ILCS 50/1(D)(k) (West 2016)) and she failed to make reasonable progress toward the return of the minor following the adjudication of neglect during the nine-month period from March 1, 2017, through December 1, 2017 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 18 After the September 2017 best-interests hearing, respondent had not missed one visit, completed all of her courses, and was progressing well on her counseling treatment plan. Respondent was working at McDonald's, signed a lease for a new apartment, and claimed to have discontinued a romantic relationship with her paramour, the minors' father. However, on November 7, 2017, she was involved in a domestic-violence incident with her paramour at her home, and an inspection of the lease by the responding officers also showed her paramour's name. This was long after respondent had been informed by both the caseworker and the court that her parental rights would likely be terminated if she continued a relationship with the minors' father because of his failure to complete services. Respondent missed a drug screening on December 6, 2017, but her screen on December 11, 2017, was negative.

¶ 19 The trial court conducted a fitness hearing in May 2018. At the hearing, respondent's psychologist, Dr. Jason Woodford, testified. He stated he met with her once per week and she had been consistently coming every week until April 18, 2018, which was about when she became homeless. Her last visit with him was May 16. Woodford had no concerns if

respondent discontinued counseling at that time, nor was he concerned about the fact respondent was not currently medicated for a previously diagnosed bipolar disorder. On cross-examination, he said respondent reported she was no longer having contact with her paramour and if that proved not to be true, he considered it to be "potentially" a problem.

¶ 20 During their counseling relationship, Dr. Woodford referred respondent to a psychiatrist for a medication evaluation. As of the May 2018 court hearing, she had not seen a psychiatrist, which Dr. Woodford said was not unusual because appointments were taking a long time to secure due to the State's financial situation. However, to the best of his knowledge, she had called to schedule an appointment.

¶ 21 Evans, the caseworker for Darc. F. and Dar. F., testified that during her June 2017 review, she rated respondent satisfactory on domestic violence, parenting, housing, counseling, visitation, cooperation with CYFS, and employment. However, she was rated unsatisfactory for substance abuse. Though she was engaged in substance-abuse treatment, she had not yet completed it and missed screens on April 3, April 14, April 26, May 12, May 24, and June 23, 2017. Respondent received positive drug screen results for cannabis on June 9, 2017, and her last positive screen for cannabis was in July 2017. Evans testified, since then, respondent received negative drug screen results for about the 9 to 10 months prior to the hearing. Respondent also did not miss any other drug screens unless she provided a reason and was excused. Her last screen prior to the hearing was in April 2018 and was negative. She acknowledged respondent was found to have been using cannabis while pregnant with Dar. F. because of a drug screen conducted after a court hearing.

¶ 22 Evans described an incident, which occurred at a supervised visit, where respondent refused to give Dar. F. to the supervising intern because he was crying. She then

made threats to the intern, saying things such as, “you’ll pay for this,” and threatening to put “trackers” on CYFS staff’s cars. As a result, CYFS moved the visits back to the office. During the reporting period between June 2017 and December 2017, CYFS was made aware of the domestic dispute where police were called to respondent’s apartment because she was having an argument with her paramour, with whom she was not supposed to be having contact. CYFS did not learn of the incident from respondent and only became aware of it after receiving a copy of the police report.

¶ 23 Since January 2017, respondent moved a number of times. In January 2017, she was living with her paramour at 1020 Valley View Circle in Bloomington until she was evicted around September or October 2017. Afterwards, she moved into her own apartment at 1005 Sheryl Lane in Bloomington or Normal. Around April or May 2018, she was evicted from that apartment because, according to Evans, respondent stated the apartment was uninhabitable and everyone was being evicted. Evans stated she only learned the previous week that respondent moved to Chicago in May 2018 and was living with a family friend while searching for her own place. The caseworker expressed her concern that respondent and her paramour continued to live together or at least maintained a relationship during the pendency of the case. There were also unsubstantiated concerns respondent was again pregnant as of the date of the hearing.

¶ 24 Evans said that at no time between March and December 2017 did she believe respondent made sufficient progress for her to recommend a finding of fitness to the trial court because services were not yet completed. She also noted respondent was arrested and charged with making a false police report during that same time frame.

¶ 25 Although respondent started counseling in September 2017 as a result of the recommendation made in July 2017, her attendance became “somewhat sporadic lately.”

¶ 26 During closing remarks, the State conceded the lack of evidence regarding the allegation of unfitness due to addiction to drugs or alcohol. After reviewing the evidence, the trial court found the State did not prove respondent unfit by clear and convincing evidence. The court noted respondent was rated satisfactory on all of her service goals by the time her case was reviewed in November 2017 The only question was counseling, and the court found Dr. Woodford's response dispositive when he said he had no concern if respondent was to stop counseling immediately. While she had yet to obtain a psychiatric evaluation, the court relied on the fact she had no psychiatric episodes as an indication she "probably" did not need medication. The court reserved ruling on the fitness of respondent and declared respondent was unable to care for her minor children. The court also consolidated the cases for all further proceedings.

¶ 27 In the trial court's June 2018 permanency order, it found respondent had made reasonable and substantial progress and reasonable efforts toward returning the minors home. It found respondent was fit but unable to care for Darc. F. and Dar. F and established a permanency goal of "return home within twelve months."

¶ 28 In the October 2018 permanency hearing, respondent's paramour's sister, Buchanan, acknowledged there was suspicion among the minors' father's own family members that respondent and the minors' father were still in a relationship. She noted they both moved to Chicago at the same time and they were both failing to appear for the hearing in which Buchanan was testifying because both said their train had problems and made them late.

¶ 29 Buchanan testified she has been granted the right to visit the children and supervise visits for respondent and the minors' father. It was her expressed opinion they had not taken advantage of multiple opportunities to see the children while they were with her. She testified she told respondent and her brother they could see the children "anytime they like when

they're in the Chicagoland area." However, even when she has the children for extended periods of time, respondent would see them once during that period regardless of whether it is a three-day weekend or an entire week. She said this was true even though respondent was not employed, had her days free, and had public transportation available to her. Buchanan described negative behaviors exhibited by Darc. F. after a particular telephone conversation he had with respondent, where it was suspected she was telling Darc. F. he was coming home. She indicated Darc. F. previously told other family members respondent was telling him that.

¶ 30 Evans testified respondent was unfit due to job and housing instability. Normally, she likes to see six months of stable housing before returning a child, and although she had been in Chicago for four months, respondent still did not have stable housing and had only recently obtained a job. However, if the court set a specific return home date, respondent would be eligible for the Housing Advocacy Program, or "Norman," funds, which could help her pay for housing. Evans was not sure what agencies in the Chicagoland area helped with getting housing. She was not aware of respondent's residence because respondent would not tell her. She said respondent missed her previous week's visit and failed to call. Later, she said her phone was out of minutes and she had drafted an e-mail telling Evans she had been sent home from work sick, but she forgot to send it. During the time the parents have been in Chicago, CYFS had been providing them train tickets and bus passes to facilitate their attendance at visits. Both parents arrived for the hearing approximately an hour late.

¶ 31 When asked about both parents' failure to appear for the hearing, Evans advised CYFS had made arrangements for respondent and her paramour to take a train the night before and stay at a hotel in Bloomington in order to get to court. Instead, neither took the train the previous night, reporting an unexplained problem occurred with the train.

¶ 32 The trial court noted the case had been ongoing for two years. When questioned by the court, the foster parents said they have had Dar. F. since he was two days old and Darc. F. for the past 14 to 15 months. The court also noted the absence of reports regarding respondent's progress in counseling, as well as respondent's choice to remove herself from the vicinity of her children and failure to take advantage of visitation opportunities. The court found respondent was still fit but unable. The court ordered respondent not to contact the minors' father. It stated respondent needed to look at different social service agencies to find funds to obtain housing and Evans should be helping her do that as well. It expected respondent to make all of her visits with her children and engage in counseling. She was also to keep her caseworker advised of her residence and workplace and provide evidence of such to her as well.

¶ 33 According to the December 2018 permanency report, respondent's attendance in counseling had been sporadic since her move to Chicago, as she was supposed to attend when she came to Bloomington on visits with her children. It was also confirmed in December 2018 that she was no longer a client at the counseling agency, and respondent provided no paperwork or information regarding any counseling she was attending in Chicago. The report also noted she attended only one visit since the October 3, 2018, hearing, although she was offered weekly visits of two hours every Friday. As a result, she missed visits on October 5, October 12, October 19, October 26, November 9, November 16, and November 30, 2018. Although she reported being employed, there was no further verification other than respondent providing the caseworker with photographs of documents she said were evidence of employment. She also missed her four drug screenings in the month of October.

¶ 34 At the December 2018 permanency hearing, which both parents failed to attend due to "missing their train," the trial court found respondent had failed to make reasonable

efforts and reasonable progress, was unfit, and had made her choice to "not engage in services, not communicate, [and] not visit." The guardian *ad litem*, in an effort to provide a thumbnail sketch of the proceedings to the judge who was taking over the case, explained, in 2017, the court held up completing termination on the other child because of the possibility respondent was going to be found fit after the birth of Dar. F. Instead, the guardian *ad litem* said, the parents inexplicably moved to Chicago, away from the children, their services, employment, and residences. Since that time they have failed to participate, have been unemployed, and without a stable home.

¶ 35 On December 26, 2018, the State filed a supplemental petition to terminate respondent's parental rights to Dar. F., alleging respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to Dar. F.'s welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor during the nine-month period from March 21, 2018, through December 21, 2018, following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2016)); and (3) make reasonable progress toward the return of the minor to respondent during the nine-month period of March 21, 2018, through December 21, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 36 A. Fitness Hearing

¶ 37 The trial court conducted a fitness hearing on the petition to terminate parental rights in January 2019. Three witnesses testified at this hearing: Rachel Evans, Brittany Barth, and respondent.

¶ 38 1. *Rachel Evans*

¶ 39 Rachel Evans testified she worked at CYFS from December 2015 to October 2018 and was the caseworker for both minors, Darc. F. and Dar. F., until she left. She said she explained the service plan to respondent and told her about the possible consequences of failing to follow her service plan. Services included within the plan were domestic violence, substance abuse, and mental health assessments. She was required to follow through with any recommendations from each assessment. In addition, she was to participate in counseling, parenting classes, visitation, cooperate with CYFS, and obtain stable housing.

¶ 40 With regard to the housing component in the service plan, respondent was expected to maintain stable housing for six months. Respondent was essentially homeless at case opening, and Evans explored with her the various options available to her in the community that might enable her to obtain suitable housing. During the duration of the case, respondent was inconsistent with housing. In January 2018, she was evicted for nonpayment of rent. Prior to her eviction, she did not tell Evans she was behind on rent or ask for any assistance. Once respondent moved to the Chicago area in May 2018, all of her housing was temporary, so Evans was never in a position to do a safety check to determine the suitability of the residences for a return home goal. Respondent stated she was trying to find employment before finding alternative permanent housing. Respondent had six different jobs since her case opened with Darc. F. When she left Bloomington, she moved to Bartlett, Illinois, where she said it was hard to get a job because of a lack of good public transportation. Evans noted respondent was employed until her move to Bartlett. In August 2018, respondent told Evans she was working for a temp agency but never provided Evans with a payment stub or confirmation other than a picture of an identification badge.

¶ 41 After her move to Chicago in May 2018, respondent also became inconsistent with visitation. Between July and October 2018, she missed seven of her weekly visits. She also stopped regularly bringing food to the visits, telling Evans she could not afford it and that the agency should provide food for her as well as her children. After Evans spoke with respondent about it, she consistently brought food to visits. While respondent was living in the Chicago area, the minors' paternal aunt, Buchanan, established visitation with the minors. The foster parents allowed her to have the children for a week at a time at her Calumet Park residence. While the children were there, Buchanan said she told respondent she would transport the children to visit as much as respondent desired but respondent rarely took the opportunity except maybe once a week. While Buchanan did not allow respondent in her home, she was willing to meet her at the park or other similar locations. Her willingness to be that flexible waned after a while because she felt if respondent wanted to see her children, she should make the effort because she lived close enough. At this point, respondent was either living in Bartlett or the west side of Chicago.

¶ 42 Respondent also became more inconsistent with counseling in Chicago. Her counselor in Bloomington attributed this to her move to Chicago, indicating that while he was counseling respondent, she was "cooperative and ready to engage." Ultimately, she stopped counseling in Bloomington and did not inform Evans she had done so.

¶ 43 Evans rated respondent overall as unsatisfactory despite all her individual services being satisfactory because Evans believed respondent was still living with the minors' father despite the fact he had substance-abuse issues. While Evans did not have proof respondent and the minor's father were living together, she suspected it because of the circumstances surrounding the move to Chicago. Although they were supposedly no longer together, they both moved to Chicago at the same time.

¶ 44 Ultimately, when Evans left the case, she believed respondent needed to show she could maintain stable housing and employment.

¶ 45 2. *Brittany Barth*

¶ 46 Brittany Barth was originally an intern in this case before replacing Evans in October when she left the agency. While an intern, on two occasions respondent either would not let Barth leave with the children or would threaten her. Following the October 2018 permanency hearing, respondent missed three visits in October and all visits in November. This occurred despite CYFS providing train and bus tickets to respondent in order for her to attend her visits. After the December 2018 permanency hearing, the visits were reduced to once a month following the goal change and her lack of consistency in visits.

¶ 47 On visit days, respondent was supposed to call CYFS to see if she had to complete a random drug screening. However, even when she was visiting, she was not calling. The procedure for calling in to check if CYFS wanted respondent to do a drug screening had not changed after the move from Bloomington. Barth indicated respondent's last random drug screening was in April 2018.

¶ 48 In regard to housing, respondent told Barth she was still looking for housing but was currently behind on rent and unsure if she would pass a background check.

¶ 49 During the December 7, 2018, visit, respondent was wearing a splint on her pinky finger and informed Barth by e-mail she was not working due to a sprained pinky finger. The email also contained a pay stub from November 12 to November 18, 2018, which indicated respondent made no money during that period. Barth did not have any pay stubs showing respondent had worked since May 2018 when she moved from Bloomington.

¶ 50 When respondent started looking for counseling in Chicago, Barth did not attempt to arrange any counseling there since respondent voluntarily moved out of the service area. It was Barth's understanding it was the parent's job to do so. Respondent found counseling and started on December 6, 2018. In a discussion with respondent's new counselor, Barth stated respondent met with the counselor four to five times. Her counselor described respondent as "logically inconsistent and slippery," as well as stating he did not think "she will make much progress in counseling with him."

¶ 51 3. *Respondent*

¶ 52 The guardian *ad litem* called respondent to testify. Respondent stated she was from Chicago and had been living in Bloomington for a month prior to the domestic-violence incident that started the proceedings for Darc. F. Prior to that, she was living in Chicago and did not have any relatives in Bloomington.

¶ 53 In January 2018, respondent lived with a friend on Sheryl Lane in Bloomington. At some point, she obtained her own place in the same apartment complex before being evicted for nonpayment of rent, after she started withholding rent once she received notice the whole complex would be evicted due to some defect in the property. She then moved into her sister's home with her sister's children in Bartlett. Once she found a job in Itasca, she moved to Chicago to be closer to her job in August 2018. She stated this placement with her friend was a place her children could reside; however, no safety check was ever completed. The apartment had 2½ bedrooms. She explained that her friend was planning to move out soon to be closer to her husband and respondent planned to assume the lease. She stated her friend's husband had his own place and thus her friend could move out at any time. At the time of the hearing, respondent had not spoken with the landlord about assuming the lease.

¶ 54 On cross-examination, respondent said she moved in with her friend around October and started paying her $200 per month starting in November. She also indicated she had not fallen behind on rent at this location and it was a miscommunication with Barth. Respondent stated it was her friend who was behind on rent and that she asked her mother and her friend's husband for $50 each so she could give her friend $300.

¶ 55 As to employment, while living at Sheryl Lane, respondent worked at McDonald's for five to six months before moving to Chicago. At the same time, in February or March 2018, she started working at Midwest Fiber, where she worked Monday through Friday in the evenings from 7 to 11 p.m. At McDonald's, she would normally open the store around 4:30 or 5 a.m. and work anywhere from four to eight hours. She believed altogether the jobs provided almost a full-time work schedule. Once she moved to Bartlett, she did not work, despite finding three or four jobs, as public transportation was 35 to 40 minutes away. Her sister also worked midday, so that often left her with her sister's children. Transportation, which was not an issue in Bloomington, became one once she moved to Bartlett. Around August 2018, she obtained a job with Elite Staffing in Itasca, which prompted her to move in with one of her friends in Chicago because she could not stay with her mother or aunt. She said she worked there for about three months until around the first week of October 2018 when she sprained her finger and was required to wear a splint for six weeks. In mid-December 2018, she also obtained a job working for Hospitality Services Group.

¶ 56 Respondent admitted the move to Bartlett delayed her case because she did not have employment for an extended period of time while living there. After the move from Bartlett, she was able to use public transportation and be less reliant on her sister. The move also put her closer to her counselor.

¶ 57 Respondent's explanation for the comments made in her Chicago counselor's report was that she had not been around him long enough to feel as comfortable as she was with her last counselor. She believed the sessions were too short, as 30-minute sessions were not long enough to "explain everything to him." Although her caseworkers had not been able to verify whether respondent was prescribed medication, respondent acknowledged at the termination hearing she previously had prescriptions for what she described as "bipolar depression," which she had not taken since 2011.

¶ 58 The trial court, after a lengthy and detailed recitation of both the legal standards applicable to termination proceedings as well as the evidence presented, found respondent unfit and found the State had proven by clear and convincing evidence she failed to make reasonable progress and maintain a reasonable degree of interest or responsibility. The court found respondent made a number of decisions that ultimately resulted in worse circumstances for her and detrimentally affected any likelihood of reunification with her children. Although she talked about the various moves she made while still in Bloomington, it ultimately became apparent she failed to make any significant rent payments at any of the residences from which she was evicted. This occurred even though she was gainfully employed. The court questioned why she voluntarily left her various places of employment, further complicating her ability to pay for housing and questioned, when gainfully employed, where her income was going since it was not being used toward rent. In each instance, she never informed her caseworkers of the circumstances until after she was evicted or after she left her employment. The court noted she chose to move to Chicago, further exacerbating her problems with housing and employment, as well as interfering with the long-term counseling she clearly needed and making visitation with her children more difficult. It was noted, in spite of the transportation assistance and

accommodations offered, respondent missed 6 and made 15 of the visits offered between May and October of 2018 and missed all of the November visits leading up to the termination hearing. Further, although Buchanan offered extended visits while respondent was in Chicago, respondent rarely took advantage of them. The court also noted a significant factor contributing to respondent's poor performance of service plan objectives centered around a general "lack of communication, lack of cooperation with the agency," which the court characterized as "impediments that were put in place by [respondent]."

¶ 59 B. Best-Interests Hearing

¶ 60 The foster parents, Jennifer and Ray G., testified they have stable employment and provided a loving environment for the children since coming into their care. They said Darc. F. would often act out when he was first brought into their care but has not had significant behavioral issues since then. He excels in school and is a "straight A student" who engages in extracurricular activities such as Cub Scouts and basketball. The parents have stated their willingness to adopt and believe they have a bond with both children. They also intend to maintain relationships with the biological family, facilitated primarily through Buchanan.

¶ 61 Respondent testified Darc. F. has stated he wants to live with her but if that is not possible he would like to live with Jennifer and Ray G. She worried she would not have consistent lines of communication with her children if her parental rights were terminated because Buchanan does not tell her immediately when her children are in the Chicago area and Buchanan is in places where respondent cannot meet her. She also indicated the bond with her children is "irreplaceable."

¶ 62 The trial court, analyzing the statutory factors, found it was in the minors' best interests to terminate respondent's parental rights. The court found physical safety and welfare

favors termination because Dar. F. has lived with Jennifer and Ray G. his whole life and while respondent had taken care of Darc. F. for the first five years of his life, she had not been taking care of his daily needs for the better part of three years. Development of the child's identity was neutral for Darc. F. and favored termination for Dar. F. The court found the same as to backgrounds and ties, including familial, cultural, and religious. The children's sense of attachments including where they feel love, attachment, a sense of familiarity, and continuity of affection, favored termination. The court said this particular factor is not just based on whether respondent loves her children, something the court did not doubt, but "where the child actually feels that love and attachment and sense of being valued." The court found the wishes and long-term goals factor was neutral as to both minors. Noting Dar. F. was too young to express his opinion, the court recognized the difficult position in which Darc. F., a seven-year-old child, was placed. The court believed it was reasonable to conclude Darc. F. probably did not want to disappoint either respondent or his foster parents and does tell both parties he wants to stay with them. The community ties factor was neutral for Darc. F. With regard to risks associated with entering and being in substitute care, the court found it favored termination. The case had been open for a "long time[,]" and, though "on the brink of termination," respondent was given an additional opportunity when the previous judge, in spite of entering a finding of unfitness, allowed respondent additional time to complete services, in part due to the birth of the second child. The court stated it could not continue to wait for respondent to provide a home for these children, one of whom had been in foster care his entire life and the other who had spent almost 40% of his life in foster care. Lastly, the court found permanence favored termination as the siblings would be together in Jennifer and Ray G.'s household, who were also willing to adopt. The court terminated respondent's parental rights.

¶ 63 This appeal followed.

¶ 64 II. ANALYSIS

¶ 65 A. Unfitness Findings

¶ 66 Respondent argues the trial court's finding of unfitness as to maintaining a reasonable degree of interest or responsibility was against the manifest weight of the evidence. We disagree.

¶ 67 Respondent challenges only one of the grounds on which the trial court found her unfit, which concedes respondent is unfit on the uncontested basis for failing to make reasonable progress. *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001). That concession renders this issue moot. *D.L.*, 326 Ill. App. 3d at 268. Despite that concession, the challenged ground of reasonable degree of interest or responsibility was not against the manifest weight of the evidence. As respondent admitted failing to make reasonable progress in exchange for the State dropping the other allegations in the petition for Darc. F., we will assume respondent's challenge is solely as to reasonable degree of interest or responsibility for Dar. F.

¶ 68 In a fitness hearing, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where

the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

> "[I]n determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, we have to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred. Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence [citation], the parent's poverty [citation], the actions and statements of others that hinder or discourage visitation [citation], and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child [citation]. If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances." *In re Adoption of Syck*, 138 Ill. 2d 255, 278-79, 562 N.E.2d 174, 185 (1990).

¶ 69 Respondent's inexplicable move to Chicago completely derailed her case. According to respondent, she moved to Chicago because her family was there and it offered her

a means of support when she was homeless. However, moving there merely transmuted her homelessness problem into a lack of stable residence. It also created an employment problem that did not exist prior to the move. At some point, respondent recognized the move to live with her sister was simply a temporary housing arrangement, which was not suitable for her children. She was aware in May 2018 she was approximately six months of stable housing away from having her children returned to her care. She had completed all other services but counseling, which was recognized as something that could continue even after the return of her children. She had a counselor who she appeared to like and who was very supportive of her. His testimony revealed an obvious bias in her favor, and he appeared capable of both counseling and directing her to the appropriate psychiatric care necessary to accommodate any medication needs. She should have realized any time spent in Bartlett was wasted time, especially in light of the obvious problems it created with employment and counseling. Around October 2018, her visitation became problematic. It is unclear why, and respondent never was asked or attempted to explain. In spite of free transportation, both by train and bus, accommodations for when, where, and how frequently she might engage in visitation and with whom, either CYFS staff or her sister-in-law, respondent chose not to take advantage of it. One of the main problems throughout the case was respondent's lack of communication until it was too late. This all factors into the evaluation of respondent's degree of interest or responsibility.

¶ 70 At any point, respondent could have moved back to Bloomington and obtained housing and afterwards returned her children to Chicago. The decision to move in May 2018 was irresponsible. Her issue of housing while in Bloomington was seemingly a financial one, which the court must consider in a fitness hearing. See *Syck*, 138 Ill. 2d at 278-79 ("Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child

establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include *** the parent's poverty."). However, as the trial court noted, even though gainfully employed at several jobs that gave her the intended equivalent of "full-time" employment, she failed to pay any of her monthly rental payments at the residences from which she was ultimately evicted. After she moved, the problem became one of choices and motivation. Her failure to follow through with regular visits and counseling reveals that when some amount of effort and planning was required, she chose not to engage. Counseling and visits were easy in Bloomington; she had public transportation and caseworkers readily available to assist. However, once she moved to the Chicago area, significantly more planning and preparation was needed. She had managed full-time employment while attending and completing all her services when she lived in Bloomington. In Chicago, with only sporadic and part-time employment, she was not sufficiently motivated to manage the logistics necessary to see her children, even though the means to do so were provided to her free of charge. Respondent was well aware of the requirements necessary to be reunited with her children, namely consistent counseling, visitation, housing, and employment. However, by the end of this case, she was not truly consistent in any of these areas.

¶ 71 The trial court found respondent's move to Chicago adversely impacted her ability to maintain a reasonable degree of interest or responsibility as to the minors' welfare. Respondent had housing and employment issues in Bloomington/Normal, and her move to Chicago did nothing but create new impediments to visitation and counseling. Respondent's lack of communication with her caseworker and irresponsible decisions have shown a lack of interest or responsibility as to the minors' welfare, and we find the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. See *In re Janira T.*, 368 Ill.

App. 3d 883, 893, 859 N.E.2d 1046, 1055 (2006) (noting "noncompliance with an imposed service plan and infrequent or irregular visitation is sufficient evidence warranting a finding of unfitness" for failure to maintain a reasonable degree of interest, concern, or responsibility).

¶ 72 B. Best-Interests Finding

¶ 73 Respondent argues the trial court's finding that it was in the best interests of the minors to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 74 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2016). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of

every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006). See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2016).

¶ 75 A trial court's finding termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 76 Here, the trial court analyzed the applicable statutory factors. While respondent had taken care of Darc. F.'s needs prior to coming into care, she had not done so for years, and the foster parents provided for his needs. As to Dar. F., the only parents he ever knew were Jennifer and Ray G., so they were the ones to whom he was bonded and who primarily shaped his identity. Jennifer G. testified about the strong bond between the siblings and the bond the minors had with them. Ray G. stated in his testimony Darc. F. started calling Jennifer and Ray G. "mom" and "dad" and that Dar. F. had always done that. The court noted these cases had been ongoing for years with significant efforts made to allow reunification of respondent and her children. However, respondent, who by all appearances was a few months of stable housing away from the return of her children, failed. Here, DCFS and the service providers gave respondent every opportunity and assistance to accomplish her service goals. The court stepped back from the "brink of termination" to allow her additional time to do so. This outcome falls squarely on the shoulders of respondent. When looking at the children's need for permanence,

the court found Jennifer and Ray G. established permanency for the minors as the siblings could live together, and Jennifer and Ray G. were willing to adopt. The trial court was in the best position to listen to the State's witnesses as well as respondent and make credibility determinations regarding their testimony. See *In re Jay. H.*, 395 Ill. App. 3d 1063, 1070, 918 N.E.2d 284, 290 (2009) ("[T]he court is in the best position to observe the demeanor of the witnesses and the parties, assess credibility, and weigh the evidence presented."). The State's burden was to establish termination was in the best interests of the children by a preponderance of the evidence, and it did so. See *In re M.R.*, 393 Ill. App. 3d 609, 617, 912 N.E.2d 337, 345 (2009) ("The State must prove that termination is in the child's best interests by a preponderance of the evidence."). Respondent failed to present any evidence sufficient to mitigate against the court's best-interests finding, and thus, the court's finding was not against the manifest weight of the evidence.

¶ 77 III. CONCLUSION

¶ 78 For the reasons stated, we affirm the trial court's judgment.

¶ 79 Affirmed.