2019 IL App (5th) 180485-U

NO. 5-18-0485

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13-JA-153
	)	
Michael T.,	)	Honorable
	)	Janet Heflin,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court's orders finding that Michael T. was an unfit parent and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence, we affirm the orders.

¶ 2 Michael T. appeals the trial court's October 17, 2017, order finding that he was an unfit parent. He also appeals from the trial court's May 24, 2018, finding that the best interests of the minor child would be served by terminating his parental rights. For the reasons that follow in this order, we affirm the trial court's orders finding that Michael was an unfit parent and that his parental rights were properly terminated.

¶ 3 BACKGROUND

¶ 4 M.T., Lacey R., and the Shelter Care Hearing

¶ 5 M.T. was born on September 15, 2013. His mother is Lacey R. and his father is Michael T.

¶ 6 M.T. was born at Alton Memorial Hospital. Testing contemporaneous with his birth revealed that M.T. was positive for methamphetamine, opiates, and THC. Samples were sent to the Mayo Clinic, and those tests confirmed the positive findings of opiates and THC. At birth, M.T. exhibited substance exposure symptoms including tremors, being jittery, and high-pitched crying. M.T. treats with Dr. Himanshu Kaulas, a pediatric neurologist at Cardinal Glennon Children's Medical Center in St. Louis, Missouri. Dr. Kaulas diagnosed M.T. with spastic hemiplegic cerebral palsy resulting in the lack of full muscular use of the left side of his body, static encephalopathy, and global developmental delay. Due to pronounced physical motor delays, M.T. requires the use of therapeutic leg braces. M.T. began working with physical, developmental, speech, and occupational therapists.

¶ 7 Although Lacey is not a party in this appeal, we must provide some background on her case in order to understand how M.T. came into shelter care with the Illinois Department of Children and Family Services (DCFS). Immediately after M.T.'s birth, DCFS received a "hotline" report on September 16, 2013, about M.T. and Lacey. Tawnya Hooper, an employee of DCFS as a child protection advanced specialist, located Lacey and M.T. in Wood River and determined that the child was safe as of that date. Hooper had been involved with Lacey in the past and testified at the shelter care hearing that

M.T. was her fifth child. Lacey's other four children had been taken into care as abused children. The court found that Lacey was an unfit parent and the children presently live with their biological father. Because of this past DCFS history, Hooper referred Lacey to a high risk family intact caseworker in order to ensure that M.T.'s needs were met.

¶ 8 After the first two medical appointments that were part of an intact family case, DCFS could not locate Lacey. Hooper spoke with Lacey's family and friends, who had become concerned that Lacey had resumed her use of drugs. With the information provided by Lacey's family and friends, Hooper tracked her and M.T. to a home in Granite City. On November 14, 2013, Hooper went to this residence and found Lacey, a male friend, and M.T. living in an attached garage. The only baby supplies in the garage were a car seat and a diaper bag. The male who was also living in the garage was arrested for methamphetamine possession. Hooper intended to take M.T. into DCFS care due to Lacey's past history of substance abuse, her current admitted substance use, the living conditions in the garage, the presence of methamphetamine and drug paraphernalia in the garage, and the lack of baby supplies at the residence. On November 21, 2013, at the conclusion of the shelter care hearing, the trial court ruled that: "The State has established probable cause to believe that the minor may be abused or neglected and that there is an urgent and immediate necessity for the minor to be taken into further custody."

¶ 9 January 2014 Family Service Plan and Permanency Hearing

¶ 10 The first family service plan was dated January 28, 2014. On that date, Michael was incarcerated in the Madison County jail for a methamphetamine conviction. While in jail, a lender foreclosed on Michael's home. Michael's initial action steps included:

completion of DCFS's integrated assessment in order to make referrals for services to aid in reunification, completion of a DNA test in order to establish paternity, and participation in weekly monitored visitation upon establishment of paternity. On March 24, 2014, the trial court entered its order finding that Michael was the biological father of M.T. based upon the DNA test results.

¶ 11 DCFS caseworker, Carrie Carpenter, prepared reports to the court in advance of the court's permanency hearing that was held on October 7, 2014. Michael was released from jail on June 20, 2014, and had been consistently meeting with Carpenter. DCFS referred Michael for substance abuse treatment with Chestnut Health Systems, but he had been inconsistent with treatment. DCFS later learned that Michael was not consistent with Chestnut Health's substance abuse treatment meetings because he had to leave early in order to have scheduled visitation with M.T. DCFS changed the visitation times in order to avoid the substance abuse treatment conflict. Michael had been meeting with a parenting coach and had been consistently attending weekly parent-child visits. The permanency goal was to return M.T. home within 12 months. The court found that Michael had made reasonable efforts toward reunification, but had not made reasonable and substantial progress toward reunification because he had not yet successfully completed all service plan tasks.

¶ 12 February 2015 Family Service Plan and Permanency Hearing

¶ 13 The court's findings in its February 5, 2015, permanency order mirrored that of the previous permanency order. The original caseworker, Carpenter, moved out of the area and was replaced by caseworker Randy E. Kuehn.

¶ 14 DCFS updated the action steps needed for Michael. He was told that he needed to refrain from all illegal activity. That action step was added because caseworker Kuehn learned that Michael had been arrested on August 15, 2014, for domestic battery of Lacey, and DCFS also noted that he had a pending criminal charge for manufacturing methamphetamine dating from 2013. His progress on this action step was evaluated on May 11, 2015, as unsatisfactory. He was also rated unsatisfactory for attendance at court hearings because he missed the February 2015 permanency hearing. Michael had not yet found an acceptable housing option suitable for M.T. Although he had recently become employed, he was rated unsatisfactory in the goal of maintaining gainful employment because his work hours were inconsistent. Michael continued to work with the parenting coaches. With respect to substance abuse care, he was rated satisfactory because he had completed services and was discharged from Chestnut Health Systems on October 16, 2014. Kuehn added two additional action steps to the service plan. The first involved anger management because of the domestic violence arrest. The second required that Michael learn and utilize effective therapeutic skills at parent-child visits to address M.T.'s developmental delays.

¶ 15 October 2015 Service Plan Evaluation

¶ 16 DCFS next evaluated Michael's progress on October 27, 2015. Michael was rated unsatisfactory on his anger management action step. DCFS had referred Michael for anger management/domestic violence perpetrators intervention counseling beginning on September 29, 2015. Michael's unsatisfactory rating was based on his therapist's report to DCFS that he had been negatively discharged from treatment because he had not

cooperated with scheduled sessions. Michael had not completed the anger management evaluation and had therefore not started therapy to address the problems that may have been detected in the evaluation. The goal of obtaining housing was also rated unsatisfactory, with the caseworker noting that to that date in 2015, Michael had had five short-term residences and had been homeless three times. While Michael was then employed as a carpet installer, he did not work enough in order to adequately support household expenses or to satisfy child care needs. Michael also had not progressed with working with M.T.'s numerous therapists in helping M.T. to reduce his various delays. Until this report, Michael had always been rated as satisfactory with parent-child visits, but because of the added need to learn and work with the therapists and to interact with his son as was suggested, Michael had regressed. The caseworker reported that on June 8, 2015, Michael pled guilty to attempted unlawful possession of methamphetamine and received 18 months of probation. Kuehn sent Michael to Chestnut Health for an assessment in late June 2015 in order to begin substance abuse rehabilitation services, but on August 14, 2015, the Chestnut Health employee stated that Michael did not meet sufficient criteria for substance abuse treatment.

¶ 17 January 2016 Permanency Hearing and Motion for Unsupervised Visitation

¶ 18 The trial court held a contested permanency hearing on January 7, 2016, and January 11, 2016, and heard testimony on Michael's request to be allowed unsupervised visitation. Caseworker Kuehn and Michael both testified. Kuehn's testimony essentially mirrored his October 2015 service plan evaluation report.

¶ 19 Kuehn explained that the reason why Chestnut Health had no substance abuse services available for Michael was because Michael had not tested positive for drugs and because he claimed that he was not using drugs. Although Chestnut Health could not offer services, the evaluator reported that he advised Michael to regularly attend Alcoholics Anonymous (AA) and/or Narcotics Anonymous (NA) meetings to prevent future usage. Kuehn testified that he had not received any documentation that Michael had been attending meetings. Then, on December 11, 2015, Michael tested positive for methamphetamine. Michael's probation officer referred him to TASC, Inc. for a substance abuse evaluation. Kuehn spoke to Michael, who claimed that he could handle the problem on his own. Kuehn had not received confirmation that Michael followed through on his TASC referral. Kuehn rated Michael unsatisfactory for "maintaining a criminal free lifestyle," because of the positive drug test in December 2015.

¶ 20 In December 2015, Michael moved into a trailer in Granite City. Kuehn made a visit to this trailer and testified that the condition was deplorable–untidy, trash littered throughout the rooms, a noxious odor, and limited furniture. Overall, he determined that the living and sleeping accommodations were inadequate. Although Michael claimed that he was renovating the trailer, as of the hearing dates, DCFS rated the housing requirement as inadequate. Kuehn also was concerned about Michael's employment status because he had never received any employment verification.

¶ 21 Kuehn rated Michael unsatisfactory with respect to visitation and working with M.T. using the various approaches suggested by M.T.'s therapists. Kuehn testified that he had been informed by other DCFS workers who supervised the parent-child visits that

sometimes Michael appeared to be exhausted and acted as if his mind was elsewhere. He was reportedly spending quite a bit of time on his cell phone. While Kuehn described Michael's overall progress in terms of a "regression," the therapists did not use those exact terms, but had other important concerns regarding stability. Kuehn and the therapists noted that Michael attended most visitations, but overall, given his lack of housing and steady employment, they had concerns about Michael's desired goal of returning M.T. to his home.

¶ 22 Kuehn recommended that visitation continue to be supervised because of Michael's illegal drug activity and anger control issues, both of which could have presented a risk of harm to the child.

¶ 23 Michael testified that he was working very hard to complete parenting classes and to get his housing in order so that visitation could take place in his home. He acknowledged that he had not yet had a TASC evaluation, but that his probation officer was going to set up that appointment for him.

¶ 24 At the conclusion of the hearing, the trial court stated that visits would remain supervised. The court entered its permanency order on January 13, 2016, finding that the father had not made reasonable efforts and had not made reasonable and substantial progress towards the goal of returning M.T. home. The court also ordered Michael to complete the anger management assessment.

¶ 25 Petition for Termination of Parental Rights

¶ 26 The State filed its petition for termination of parental rights and for appointment of guardian with power to consent to adoption on April 25, 2016. The State alleged that

Michael was an unfit parent on three bases: (1) that he had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor during any nine-month period following the original adjudication, (2) that he had failed to make reasonable progress toward the return of M.T. during any nine-month period following the adjudication of neglect, and (3) that he was depraved because he had three felony convictions with one conviction occurring within five years of the filing date of the petition for termination.

¶ 27 Family Service Plan Dated April 28, 2016

¶ 28 Michael was rated unsatisfactory on the following action steps: substance abuse treatment, anger management therapy, criminal charges, housing, income, M.T.'s therapeutic needs, and parenting training. Michael's status on each action step was essentially unchanged. Michael had not gotten his TASC evaluation. Michael had not complied with the court's January 2016 order that he finish the anger management evaluation. As of April 8, 2016, the trailer in which Michael was living was not safe for a child as renovations were ongoing and construction materials and tools were unsecured. DCFS caseworker Kuehn noted that it was highly probable that Michael would not have the ability to accommodate M.T.'s ongoing therapeutic needs in an unsupervised setting because progress had not been adequately demonstrated.

¶ 29 Fitness Hearing

¶ 30 The trial court held the fitness hearing on three days in September 2016, October 2016, and July 2017. Testimony was heard from anger management counselor George Ferguson, DCFS caseworker Kuehn, Michael, and DCFS supervisor Nancy Dodson.

¶ 31 George Ferguson testified that he was the counselor to whom Michael was referred for anger management counseling. The original assessment in 2015 was not completed because Michael failed to show for appointments. Michael was re-referred in February 2016 but missed the second session of the assessment. Ferguson heard from Michael in April 2016 when he called to schedule this second session, but he failed to show. While Ferguson was not able to formalize the assessment since it was never completed, he was able to provide a report based upon the appointment Michael attended. Ferguson testified that Michael was not able to take responsibility for the violent interaction he had with Lacey, and that he blamed her for what happened.

¶ 32 Kuehn testified that Michael was not present when M.T. was brought into DCFS custody because he was then in jail on charges of manufacturing methamphetamine in his home. Kuehn testified about each of Michael's service plans and his progress. Kuehn testified that in 2015, Michael lived at five different addresses for short periods and was homeless three times, during which times he lived out of his vehicle. In December 2015, he finally managed to settle into the trailer that he was rehabbing. Kuehn and his supervisor visited the trailer to see if the repairs had been made and whether the trailer was compliant with the home safety checklist. They were not able to do a complete assessment, because Michael would not allow access to the master bedroom. In October 2016, Michael informed Kuehn that the power had been shut off and that he was being evicted. Regarding visitation with M.T., Kuehn testified that on many occasions, Michael was fatigued and/or drowsy. While in that fatigued state, his ability to interact appropriately with M.T. was negatively impacted. While Michael was being taught

various therapeutic skills for M.T., he was not applying the skills at visitation. Overall, Kuehn stated that Michael had never been rated satisfactory on a service plan and had not corrected the conditions that brought M.T. into DCFS care.

¶ 33 Michael testified about the difficulties he had with progress after his original caseworker, Carpenter, left and Kuehn took over his case. He acknowledged that he had not completed the anger management evaluation requested but testified that he completed an anger management course through Chestnut Health and that he provided his certificate of completion to Kuehn. Michael testified that he did not get help from Kuehn on finding adequate housing. He explained that Kuehn seemed to be "against" him and was always negative about his attempts to complete the service plans. He stated that he did not believe that Kuehn was working to reunite him with M.T. As an example, Michael testified that he had not had any run-ins with the law during the last service plan, yet Kuehn rated him unsatisfactory for maintaining a crime-free lifestyle. He testified that he had new housing as of December 2016, was employed, was no longer on probation, and was not engaged in any substance abuse services because he did not currently have substance abuse problems.

¶ 34 Nancy Dodson testified that she was Kuehn's immediate supervisor at DCFS. She was questioned about whether she was aware that Kuehn's cases resulted in more terminations than reunifications. She explained that she had only been his supervisor for about one year and that she did not have any impression about the outcomes of his cases. She admitted that she had heard that Kuehn was referred to as "the terminator" but

testified that she believed he was thorough and made sure that parents did what they were supposed to do in order to achieve reunification.

¶ 35 September 2017 Permanency Hearing Report

¶ 36 This report contained a housing update for Michael. On August 10, 2017, the Granite City Police Department impounded Michael's vehicle. Lacey was asleep in the vehicle, and Michael was sleeping in a tent in the backyard of a residence. Michael apparently informed the police officer that he was homeless.

¶ 37 In visits in late August and early September 2017, M.T. had become traumatized from having visits with Michael, according to a report from the Help at Home visitation specialist, Shirley Smith.

¶ 38 On March 14, 2017, M.T.'s permanency goal was changed to substitute care pending court determination of the termination of parental rights.

¶ 39 Fitness Order

¶ 40 On October 17, 2017, the trial court entered its order ruling that the State met its burden of proof against Michael on two bases: that he had failed to make reasonable progress toward M.T.'s return to him during any nine-month period following the adjudication of neglect; and that Michael met the statutory definition of being "depraved," and that he had not overcome that presumption. The court found by clear and convincing evidence that Michael was unfit.

¶ 41 Best-Interests Hearing and Order

¶ 42 The trial court held the best interests hearing on February 26, 2018. DCFS caseworker Kuehn and Michael were the only witnesses who testified. On the date of the

hearing, M.T. was four years and five months of age. M.T. had lived in his foster placement for four years and three months. The following information is from DCFS's best interest report and the testimony at the hearing.

¶ 43 *M.T.'s Progress*

¶ 44 Kuehn testified that M.T. continued to thrive with his foster family. During visits at the foster family's home, Kuehn noted that M.T. was comfortable and happy. He was attending school and had an established Individualized Education Program to promote his continued need for therapy and special education. M.T. continued to experience developmental delays and required ongoing multidisciplinary therapeutic services. Due to neurological physical motor delays, M.T. continued to utilize custom therapeutic leg braces. Kuehn stated that because of the family's support of M.T.'s therapeutic needs, he had progressed and no longer required developmental or speech therapy.

¶ 45 In Kuehn's opinion, M.T. had never developed a serious bond with his natural parents. Kuehn noted that during many of Michael's visits with M.T., he was not engaged with his son. This was frequently due to Michael's obvious fatigue. With several of the most recent visits, M.T. had begun drawing away from Michael and verbally expressed his wish to forego the visit and to return to his "home" and to his "mommy and daddy." According to his foster parents, after recent visits with Michael, M.T. seemed confused and had begun acting out at home. In addition, M.T. had begun experiencing "night terrors" after these visits.

¶ 46 *Michael's Continued Problems*

¶ 47 Although Michael had already been found to be an unfit parent, Kuehn had updated Michael's progress since that date. Michael had never provided Kuehn with confirmation of his employment. After the August 2017 period of homelessness when Michael and Lacey were living in his vehicle, Michael reported to Kuehn that he now rented a room in an East Alton house. His vehicle had not been retrieved from when it had been impounded in August 2017. Overall, reliable transportation was an issue that impacted Michael's compliance with the service plans.

¶ 48 Michael tested positive for methamphetamine again on June 3, 2016, and had a TASC assessment that found him to have a severe methamphetamine use disorder that warranted residential substance abuse treatment. He admitted to smoking methamphetamine daily. TASC referred Michael to Chestnut Health. Initially, Michael was compliant and attended meetings in July 2016. However, his attendance in classes and meetings significantly decreased over the next three months. He was discharged from Chestnut Health's program in December 2016 and was reported to have never admitted the seriousness of his addiction. During the time that Michael was working with Chestnut Health, and because he had been consistently fatigued at parent-child visits, Kuehn advised Michael that he was going to take him for a drug test prior to a scheduled visit with M.T. Despite warnings that failure to test would be construed as a "positive," Michael opted to go home instead of taking a drug test. Kuehn testified that he had not received documentation to establish that Michael was presently engaged in or had successfully completed substance abuse treatment.

¶ 49 Kuehn also stated that Michael continued to have problems with anger management. He was charged with domestic battery against Lacey again in April 2017. Michael had never completed assessments mandated by DCFS, the trial court in this case, and the trial court in the second domestic battery case. Instead, Michael enrolled himself in anger management classes at Chestnut Health and completed that program. Although he completed those classes, in his November 2016 discharge summary, the Chestnut Health therapist stated that Michael only minimally participated in the anger management classes and denied that he had anger issues. Michael apparently informed the therapist that he had not used the anger management techniques because he was never angry. The therapist concluded the report by indicating that it was doubtful that Michael derived any benefit from the program. Contrary to Michael's assertions that he was never angry, Kuehn and other DCFS employees and agents documented multiple instances during parent-child visits in which Michael displayed anger. Michael was described as having lost control in front of M.T. and being verbally aggressive at various visits in 2016 and 2017. Michael was also unable to work well with his DCFS caseworker, Kuehn, and with Kuehn's supervisor, Dodson, and on occasion became angry and verbally aggressive with both of them.

¶ 50 Finally, M.T. has therapeutic needs that must be met. Michael struggled with use of the techniques and practices throughout his parent-child visits. He agreed to work with the therapists, but he was not able to carry over what he was taught from session to session. In addition, Michael struggled with structured consistency in parenting and seemed to both seek M.T.'s affection, instead of using disciplinary techniques, and bribe

M.T. with food to ensure compliance. M.T.'s foster parents are very supportive of all of his needs–medical, educational, developmental, and therapeutic.

¶ 51 Michael testified on his own behalf at the best interests hearing. He used his time to make supportive statements of his first caseworker, Carpenter, with whom he had a good working relationship. He stated that she was helpful and encouraging. At the beginning he was rated as making good efforts–but not progress. He testified that his own approach to the case drastically changed when Kuehn took over the case. He complained that Kuehn viewed everything he did as negative and provided no positive reinforcement. Michael and Lacey had another son, born on January 18, 2018. Michael testified that he has a new caseworker for this child. As of the date of the hearing, Michael had had six parent-child visits with M.T. and the new baby boy. He testified that while he had a good bond with M.T., his bond would have been stronger if he would have been allowed to have visits in his own home.

¶ 52 At the conclusion of the hearing, the State asked the trial court to terminate Michael's parental rights to M.T. In the State's closing argument, the State pointed out that an appropriate care giver for a child must be able to provide a healthy and safe environment to promote the child's health and well-being. Michael had not been able to meet these needs for more than three years, and the State argued that there was insufficient evidence that he would be able to do so in the foreseeable future. The State noted that M.T. had lived nearly his entire life in the care of individuals who are fit, willing, and able to meet and exceed those basic needs. His foster family has provided

M.T. with a stable and safe home, and has been consistently supportive and encouraging of his medical, mental, emotional, and physical needs.

¶ 53 On May 24, 2018, the trial court entered its order concluding that the State proved by a preponderance of the evidence that it was within M.T.'s best interests that Michael's parental rights be terminated. In its order, the court noted that Michael had been consistent with his visits, but according to observers, M.T. largely engaged in independent play as opposed to interactive play. In December 2017, Michael fell asleep during a visit and the visit was terminated. In addition, the court noted that M.T. had become increasingly agitated at the recent visits. The evidence that M.T. had a very strong bond with his foster family was uncontroverted. Furthermore, the foster family wanted to adopt M.T. and had the means and the desire to continue addressing M.T.'s substantial medical needs. The court addressed Michael's argument that Kuehn deliberately sabotaged his ability to succeed and to regain custody of M.T. The court found no credible evidence to support his claim. After considering all of the relevant statutory factors, the court found that by the preponderance of the evidence, Michael's parental rights must be terminated.

¶ 54 The trial court denied Michael's motion to reconsider on September 24, 2018, finding that the motion failed to raise any newly discovered evidence not available at the time of the best interests hearing, any changes to the law, or any discovered trial court errors in application of existing law.

¶ 55 On October 12, 2018, Michael timely filed his notice of appeal to this court.

¶ 56 ANALYSIS

¶ 57 Fitness

¶ 58 Michael appeals to this court and asks us to find that the court's order terminating his parental rights was against the manifest weight of the evidence for two reasons. First, he contends that the court should not have found him unfit for failing to make reasonable progress on the DCFS service plans. Second, he argues that the court should not have found him unfit on the basis of statutory depravity.

¶ 59 The fitness hearing is the first step towards termination of parental rights. 705 ILCS 405/2-29(2), (4) (West 2016). In this case, the State alleged three grounds that would establish that Michael was unfit. Because the grounds alleged by the State are independent of each other, the State only had to prove one of the grounds. *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003). Any ground of unfitness, if proven, is sufficient to conclude that a parent is unfit. *Id.* The State must prove the alleged ground of unfitness by clear and convincing evidence. *Id.* A reviewing court gives great deference to a trial court's finding that a parent is "unfit." *Id.*; *In re M.A.*, 325 Ill. App. 3d 387, 390, 757 N.E.2d 613, 617 (2001). We will not reverse a court's finding that a parent is unfit unless the finding is contrary to the manifest weight of the evidence. *Id.* To meet the standard that the fitness order is against the manifest weight of the evidence, the record must clearly establish that the only possible outcome is the opposite conclusion–that the parent is fit. *In re M.A.*, 325 Ill. App. 3d at 390. Because the trial judge saw and heard the witnesses, on appeal, the reviewing court does not reweigh the evidence or reassess the witnesses' credibility. *Id.* at 391.

¶ 60 *Reasonable Progress on Service Plans*

¶ 61 In Michael's fitness hearing, the State proceeded under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2016)): "Failure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected *** minor ***."

¶ 62 Initially, Michael appears to conflate his earlier positive reasonable efforts findings as signifying reasonable progress. The two terms are not interchangeable. A failure to make reasonable progress and a failure to make reasonable efforts are separate grounds for a finding of unfitness. Reasonable efforts relate to the parent's goal of correcting the conditions that caused the removal of the child. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67, 859 N.E.2d 123, 137 (2006). DCFS judges those efforts subjectively based upon the amount of effort that is reasonable for a particular person. *Id.* Reasonable progress is an objective standard that focuses on the parent's progress towards reunification. *In re J.A.*, 316 Ill. App. 3d 553, 564-65, 736 N.E.2d 678, 688 (2000) ("demonstrable movement toward the goal of reunification"). Progress towards reunification is measured by the parent's compliance with court orders, DCFS service plans, or both. *Id.* The court must find that there has been "measurable or demonstrable movement" towards reunification. *Id.* Section 1(D)(m)(ii) further provides:

> "If a service plan has been established *** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication [of neglect]." 750 ILCS 50/1(D)(m)(ii) (West 2016).

¶ 63 Here, Michael argues that he had made substantial progress towards reunification and, therefore, he should not have been found to be an unfit parent. He also alleges that DCFS caseworker Kuehn conspired against him and violated his rights. He cites to progress he made with his first caseworker after he was released from the Madison County jail. At that point, M.T. was already in foster care. Upon release from jail, he met with caseworker Carpenter to establish his action steps and to receive referrals. DCFS referred Michael for a substance abuse assessment with Chestnut Health. He worked with a parenting coach and was consistent in his visits with M.T. The court's October 7, 2014, and February 5, 2015, orders showed that Michael was making reasonable efforts but not reasonable progress. At this point, Carpenter moved and Kuehn was assigned to Michael's case. At about that time, it was also learned that Michael had been arrested for domestic battery back in 2014 for an attack against Lacey. DCFS determined that it was necessary for Michael to undergo an anger management evaluation and to follow any prescribed therapy. Kuehn also added service plan objectives requiring Michael to attend all court hearings, refrain from criminal activity, obtain steady employment, and obtain an established safe housing situation. In addition, because medical doctors had diagnosed M.T. with several conditions resulting in physical and mental delays necessitating therapy, Kuehn added a service plan objective to teach Michael the therapies M.T. needed and to assist Michael in working with M.T. in a therapeutically meaningful way during visits.

¶ 64 We fail to find any evidence that Kuehn's additions of service plan objectives were made with the intent of sabotaging Michael's efforts. The added objectives were

made because DCFS discovered additional issues that Michael needed to address and because M.T. eventually had been given specific diagnoses and prescribed treatment plans. If Michael had any desire to be reunified with M.T., he had to address his anger management and substance abuse issues, obtain employment and housing, and learn and utilize everything about M.T.'s medical condition and the prescribed therapies.

¶ 65 We start with the anger management action step. Michael is the individual who was involved in the domestic battery charges. The two charges were not facts fabricated by Kuehn and DCFS. Michael never completed the anger management assessment, although ordered to do so by DCFS and two separate courts. Furthermore, although he took an anger management class at Chestnut Health, Michael never appreciated that he needed to address these issues and informed the instructor that he never got angry. The Chestnut Health therapist indicated that Michael likely derived no benefit from the classes. Furthermore, the record contains several reported out-of-control incidents during child visits and with DCFS personnel.

¶ 66 Michael also struggled with methamphetamine use. While he argued that he did not use the drug, two positive drug tests established that he was not truthful. Accordingly, DCFS mandated that he do something to address his substance use. Early in DCFS involvement, Michael had not tested positive for drug use and he had informed a Chestnut Health counselor that he was no longer using. Given those factual claims, Chestnut Health did not have treatment options available. However, Michael was told that he needed to attend AA and/or NA meetings in order to work a program towards staying clean. The record contains no proof or claims that Michael attended any meetings

on his own. Then in December 2015 and in June 2016, Michael tested positive and was referred for additional help through Chestnut Health. He acknowledged to a Chestnut Health counselor that he was smoking methamphetamine on a daily basis. At that time, no inpatient spots were open, but Chestnut Health wanted Michael to attend outpatient programs until a spot became open. Michael's attendance at these outpatient appointments plummeted over the next few months.

¶ 67 Regarding employment, what Michael had to do was to get a job, keep that job, and provide documentary proof. He never provided proof. He would work inconsistently according to his own statements, which was simply not enough to have made reasonable progress towards becoming financially independent to the extent necessary to be able to reunify with M.T.

¶ 68 Regarding housing, Michael lived in at least 10 different short-term locations and was homeless three or four times from the date he was released from the Madison County jail until the hearing on the minor's best interests. The residence he had the longest was a trailer in Granite City. Michael was in the process of rehabbing the trailer in order to make it an adequate and safe space in which he could have visitation with M.T. When Kuehn came to review the space, it was initially unclean and sparsely furnished. On another visit, there were boards and tools strewn about–meaning that the house was still not habitable and safe for a young child. Finally, Kuehn and his supervisor came over for a view only to be precluded from seeing the master bedroom because an overnight guest was still in the room. DCFS mandates that its workers review and create a report about the safety of the entire residence. Because the employees were barred from the master

bedroom, they could not review the entire trailer on that date as required. Shortly after that, the power to the trailer was shut off and Michael was evicted. His landlord alleged that Michael and/or his friends were selling methamphetamine out of the trailer. No charges on these allegations were filed. Eventually, Michael ended up in a different house in Granite City, but shortly after that, he was homeless again and his vehicle was impounded. At the time of the best interests hearing, Michael claimed to be living in a bedroom of a house in East Alton. By October 2018, the court record reflects that a mailing to Michael at that East Alton address was marked "return to sender." In other words, Michael had apparently moved or had become homeless again after the best interests hearing.

¶ 69 Michael was also tasked with living a crime-free life. We would agree that perhaps it was incorrect for Kuehn to rate him as unsatisfactory for a six-month period during which he had not been arrested or engaged in known illegal activity. However, there were other instances in which an unsatisfactory rating was appropriate. Twice, Michael was arrested for domestic battery. And twice, Michael tested positive for methamphetamines in his system. Those are all illegal acts in Illinois. When he tested positive for drugs and was charged with domestic batteries, Michael was not living a crime-free life.

¶ 70 Michael rarely missed a visit with his child. However, he did struggle with staying awake at times and generally did not follow through with the therapeutic techniques and exercises he was taught to use with his child. We agree with Michael that during a four-hour visitation, there are going to be times where the child does not want to interact with his father and may want to play uninterrupted by himself. Towards the end of these visits,

Michael's attitude deteriorated. Not only was he falling asleep, but he occasionally raised his voice at M.T. over insignificant issues.

¶ 71 To review, Michael finished one set of substance abuse program recommendations, but upon testing positive for drugs, he did not complete the recommended program. Michael also did not provide proof that he was engaged in self-help by way of attendance at AA and/or NA meetings. Michael never completed anger management evaluation and therapy despite two domestic battery charges and several verbally aggressive incidents during visitations. Michael had periods where he lived a crime-free lifestyle, but other times he was unable to do so. Michael never obtained steady employment and never provided proof of employment despite numerous requests. Michael tried to obtain housing, but was never successful. During parent-child visitations, Michael was unable to actively use the strategies he was taught by M.T.'s therapists.

¶ 72 Overall, Michael's compliance with all of the most recent service plans was rated unsatisfactory. We find that the State presented clear and convincing evidence that Michael failed to make reasonable progress during any nine-month period, and that the trial court's order concluding that Michael was unfit is not contrary to the manifest weight of the evidence.

¶ 73 We also concur with the trial court's conclusion that Michael was unable to establish that DCFS caseworker Kuehn was biased against him or in some way interfered with his ability to complete his service plan tasks.

¶ 74 *Depravity*

¶ 75 Although the courts only need to find one ground of unfitness and we would not need to address the matter of whether Michael met the statutory definition of depravity, we elect to do so in this case. The State alleged that Michael was unfit on the grounds of depravity and provided verification of the following four drug-related convictions: 2015 (possession of methamphetamine); 2009 (possession of methamphetamine); 2005 (possession of methamphetamine manufacturing chemicals); and 1993 (delivery of cannabis).

¶ 76 In Illinois case law, the term "depravity" has been defined to mean " 'an inherent deficiency of moral sense and rectitude.' " *In re A.M.*, 358 Ill. App. 3d 247, 253, 831 N.E.2d 648, 654 (2005) (quoting *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1952)). To establish that a parent is depraved, the State must prove that the "acts constituting depravity *** [are] of sufficient duration and of sufficient repetition" that the parent has a "deficiency in moral sense and either an inability or an unwillingness to conform to accepted morality." (Internal quotation marks omitted.) *Id.* (quoting *In re J.A.*, 316 Ill. App. 3d at 561). Section 1(D)(i) of the Adoption Act states:

> "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2016).

"The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent ***." *In re A.L.*, 301 Ill. App. 3d 198, 202, 702

N.E.2d 1021, 1024 (1998). On appeal, we deferentially review a trial court's conclusion that a parent is depraved. *Id.*

¶ 77 "Depravity must be shown to exist at the time of the petition to terminate parental rights ***." *In re A.M.*, 358 Ill. App. 3d at 253 (citing *In re J.A.*, 316 Ill. App. 3d at 561). The only effect of the rebuttable presumption "is to create the necessity of evidence to meet the *prima facie* case created thereby, and which, if no proof to the contrary is offered, will prevail." (Internal quotation marks omitted.) *Diederich v. Walters*, 65 Ill. 2d 95, 102, 357 N.E.2d 1128, 1131 (1976). When the depravity presumption is rebuttable, the parent may present evidence to prove that even though he has felony convictions, he is not depraved. *In re J.A.*, 316 Ill. App. 3d at 562. The parent is not required to prove that he is not depraved by clear and convincing evidence, but must simply provide evidence opposing that presumption. *In re P.J.*, 2018 IL App (3d) 170539, ¶ 14, 101 N.E.3d 194. "[O]nce evidence opposing the presumption comes into the case, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." *Diederich*, 65 Ill. 2d at 100-01. "The burden of proof does not shift but remains with the party who initially had the benefit of the presumption." *In re J.A.*, 316 Ill. App. 3d at 562-63 (citing *Diederich*, 65 Ill. 2d at 101).

¶ 78 The State established its case that Michael suffered from depravity on the basis of the felony convictions in compliance with section 1(D)(i) of the Adoption Act. To rebut, Michael testified that he was having four-hour visits with M.T., that he had completed

anger management classes at Chestnut Health, and that his original caseworker found that he was making reasonable efforts.

¶ 79 As we must defer to the trial court's assessment, we agree that the State established that Michael was unfit on the basis of depravity. We find that Michael has a "deficiency in moral sense and either an inability or an unwillingness to conform to accepted morality." (Internal quotation marks omitted.) *In re A.M.*, 358 Ill. App. 3d at 253 (quoting *In re J.A.*, 316 Ill. App. 3d at 561). Although he was not charged with or convicted of a new felony during the four years he worked with DCFS, we find that Michael's overall behavior was morally deficient, and almost exclusively nonconforming. Instead of complying with his service plan, Michael chose to do things his own way. DCFS repeatedly informed Michael that he needed to comply with the plan. Instead, he chose not go to AA and/or NA meetings early on in DCFS involvement; refused to complete the anger management evaluation; created his own anger management program via Chestnut Health classes, but was noted to have not gotten anything from the experience; claimed to be employed but refused to provide verification; never obtained approved housing; was arrested twice for domestic battery; tested positive twice for methamphetamine; and admitted to using methamphetamine on a daily basis late in the DCFS involvement, but refused to take the offered rehabilitation options from Chestnut Health. We affirm the trial court's finding of depravity.

¶ 80 Termination of Parental Rights

¶ 81 Michael also contends that the trial court erred in finding that it was in M.T.'s best interests that his parental rights be terminated.

¶ 82 A best-interests hearing is the second step towards termination of parental rights. 705 ILCS 405/2-29(2) (West 2016). The State had the burden of proof that termination of Michael's parental rights was in M.T.'s best interests. *Id.* The State must prove that termination is in the minor's best interests by a preponderance of the evidence; *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). On review of a trial court's order terminating a parent's rights, we must determine if the decision is contrary to the manifest weight of the evidence. *In re S.J.*, 368 Ill. App. 3d 749, 755, 859 N.E.2d 281, 286 (2006).

¶ 83 We have reviewed the record and briefs on appeal, and find no basis to conclude that the trial court's order terminating Michael's parental rights in this case was contrary to the manifest weight of the evidence. After over four years in foster care, M.T. is entitled to permanence and stability. 705 ILCS 405/1-3(4.05)(g) (West 2016). M.T. has been in one foster setting for most of his life. His foster family loves him and plans to adopt him. While we acknowledge that Michael loves his son, and tried not to miss visitations with him, appropriate parenting mandates more than attendance. M.T. has special needs, and all of those needs have been and most likely will continue to be met by his foster family. While Michael attempted to learn the necessary therapeutic techniques, he was not consistent in utilizing them. Towards the end of the reported visits, M.T. began acting out, crying, refusing to engage with Michael, and having difficulties with sleep upon his return home. M.T.'s best interests are being met in his foster home. Accordingly, we affirm the trial court's order finding that it was in M.T.'s best interests to terminate Michael's parental rights.

¶ 84 CONCLUSION

¶ 85 For the foregoing reasons, we affirm the judgments of the Madison County circuit court finding that Michael was unfit and terminating his parental rights.

¶ 86 Affirmed.