2016 IL App (2d) 150965-U
No. 2-15-0965
Order filed February 22, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* A.P., S.P., and A.R., Minors | ) | Appeal from the Circuit Court |
| | ) | of Winnebago County. |
| | ) | |
| | ) | Nos. 12-JA-93 |
| | ) | 12-JA-94 |
| | ) | 14-JA-100 |
| | ) | |
| (The People of the State of Illinois, Petitioner-Appellee, v. Alicia R., Respondent-Appellant). | ) | Honorable |
| | ) | Mary Linn Green, |
| | ) | Judge, Presiding. |

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Pursuant to *Anders v. California*, 386 U.S. 738 (1967), appellate counsel's motion to withdraw would be allowed and the judgment of the circuit court would be affirmed where no issues of arguable merit were identified on appeal concerning the court's finding that respondent was shown to be unfit by clear and convincing evidence, its ruling that it was in the best interest of the minors that respondent's parental rights be terminated, its denial of respondent's motion to continue the unfitness portion of the termination hearing, or any other issue.

¶ 2 I. INTRODUCTION

¶ 3 On August 11, 2015, the circuit court of Winnebago County found respondent, Alicia R., to be an unfit parent with respect to A.P. (born November 28, 2010) and S.P. (born February 11,

2012), two of her minor children.[1] On September 9, 2015, the trial court found respondent to be unfit with respect to a third child, A.R (born March 8, 2014). Subsequently, the court concluded that the termination of respondent's parental rights was in the best interest of all three minors. Respondent then filed a notice of appeal.

¶ 4 The trial court appointed counsel to represent respondent on appeal. Pursuant to the procedures established in *Anders v. California*, 386 U.S. 738 (1967), and *In re S.M.*, 314 Ill. App. 3d 682 (2000), appellate counsel has filed a motion for leave to withdraw. Counsel avers that he has thoroughly reviewed the record, but is unable to identify any non-frivolous issues on appeal which would warrant relief by this court. Counsel has submitted a memorandum outlining two issues that he determined lacked merit. Counsel further avers that he has served respondent with a copy of his motion and memorandum by regular and certified mail apprising her of his actions. The clerk of this court also notified respondent of the motion and informed her that she would be afforded an opportunity to present, within 30 days, any additional matters to this court. This time has elapsed, and respondent has not presented anything to this court. For the reasons set forth below, we grant appellate counsel's motion to withdraw and affirm the judgment of the circuit court.

¶ 5 The Juvenile Court of 1987 sets forth a bifurcated procedure for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2014). Under this procedure, the State must make a threshold showing of parental unfitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990); *In re Antwan L.*, 368 Ill. App. 3d 1119, 1123 (2006). If a court finds a parent unfit, the State must then show that termination of parental rights would serve the minor's best interest. See *Syck*, 138 Ill. 2d at 277; *Antwan L.*, 368 Ill. App. 3d at 1123. In his memorandum,

[1] On the court's own motion, we will use initials to refer to the minors.

appellate counsel presents two main issues: (1) whether the trial court's finding that respondent is an unfit parent is against the manifest weight of the evidence and (2) whether the trial court's finding that it is in the minors' best interest that respondent's parental rights be terminated is against the manifest weight of the evidence. Counsel discusses the evidence in the record and explains why he believes these issues lack merit. We have reviewed the record, and, for the reasons that follow, we agree with counsel's assessment. In addition, we identify a third potential issue and explain why it lacks merit. We set forth a statement of facts to place the issues in context.

¶ 6 II. BACKGROUND

¶ 7 Respondent gave birth to A.P. on November 28, 2010, and to S.P. on February 11, 2012. On March 26, 2012, respondent, Cristobal P. (respondent's then husband), A.P., and S.P. moved to Illinois from Iowa.[2] On March 30, 2012, the Illinois Department of Children and Family Services (DCFS) received a hotline call stating that respondent contacted 911 because S.P. had thrown up several times and then stopped breathing. S.P. was taken to Rockford Memorial Hospital, where she was observed with facial bruising. After S.P. underwent a CT scan, the treating physician noted evidence of previous head injuries and blood on the brain. While at the hospital, S.P. "coded" three times and the brain bleed worsened. In addition, S.P. was having seizures. Medical personnel eventually stabilized S.P. and placed her on a ventilator. Upon further examination, S.P. was noted to have severe retinal hemorrhaging and fractures to the tibia and femur of her left leg. The treating physician believed that S.P.'s injuries were the result of shaken-baby syndrome.

[2] Genetic tests later revealed that Cristobal was not the biological father of A.P. Respondent subsequently named a different man as A.P.'s biological father.

¶ 8 Respondent denied any knowledge of how S.P.'s injuries occurred. Respondent told DCFS personnel that she had placed S.P. in a swing and walked away. When respondent returned 10 minutes later, she found S.P. unresponsive with blood coming from her nose and foam coming from her mouth. Respondent reported that Cristobal was at work at the time of these events. Respondent indicated that S.P. was born with a brain injury. Respondent claimed that she had suspected something was wrong with S.P. since her birth, but no one would listen to her. DCFS took protective custody of both A.P. and S.P. the same day.

¶ 9 On April 3, 2012, the State filed a petition alleging that S.P. was an abused minor pursuant to section 2-3(2)(i) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(2)(i) (West 2012)). On the same date, the State filed a separate petition alleging that A.P. was a neglected minor based on an injurious environment. See 705 ILCS 405/2-3(1)(b) (West 2012). The parents agreed to waive their right to a shelter care hearing, and temporary custody of the minors was granted to DCFS. A.P. was initially placed in a traditional foster home, but relative foster care was later arranged. In August 2012, A.P. began living with foster parents Mark and Jennifer M. Meanwhile, S.P. underwent extensive medical care and rehabilitation before being placed in the Walter Lawson Children's Home. S.P. later began overnight and weekend visits with A.P., Mark, and Jennifer and eventually moved in with the family.

¶ 10 Due to the incomplete availability of discovery, the adjudication hearing was repeatedly postponed. During this time, respondent participated in individual counseling and parenting-education classes. The therapist reported respondent to be an active participant in counseling, but noted that she continued to deny any abuse to S.P. Respondent also attended scheduled visitations with her children. However, the caseworker indicated that respondent needed to develop "a genuine interaction with [A.P.] in a positive manner that will foster a secure

attachment between her and [A.P.]." The foster parents also noted that A.P. experienced distress and difficulty following visits with respondent. As a result, play therapy was initiated.

¶ 11 The adjudication hearing commenced on February 6, 2013. Two witnesses testified at the hearing—Ramona Stinnett, the on-call child-protection investigator for DCFS on March 30, 2012, and Dr. Raymond Davis, Jr. Stinnett recalled that she was summoned to Rockford Memorial Hospital regarding an unresponsive, seven-week old infant. Stinnett identified the infant as S.P. Stinnett observed puffiness around S.P.'s eyes and bruising on the temple area of her head. Stinnett spoke with medical personnel at the hospital and learned that there was another minor in the home. Based on the information she gathered, Stinnett believed that both S.P. and A.P. were at risk of harm, so the minors were taken into protective custody.

¶ 12 Dr. Davis testified that he is a board-certified pediatrician and the medical director of the Medical Evaluation Response Initiative Team (MERIT) program at the University of Illinois College of Medicine. Dr. Davis explained that the purposes of the MERIT program include evaluating minors suspected of being physically abused and educating the community about child abuse and neglect. Dr. Davis further testified that he is board eligible for the new subspecialty area of child abuse and neglect and that he expected to take test for this subspecialty in November 2013. Based on this testimony, the court qualified Dr. Davis to testify in the area of pediatrics and child abuse.

¶ 13 Dr. Davis reviewed S.P.'s medical records from Iowa, noting that she was premature and had some respiratory difficulties immediately after birth. Despite these difficulties, Dr. Davis found no indication that S.P. had suffered any type of brain-related injury. Early in March 2012, S.P. was admitted to an Iowa hospital after respondent reported that she had suddenly stopped breathing. At that time, S.P. underwent various diagnostic tests, including a CT scan, a magnetic

resonance imaging (MRI) scan, and a magnetic resonance angiography (MRA) scan. A radiologist interpreted the CT scan and MRA as normal. The MRI showed some damage to the brain tissue with areas of edema and hypoxic ischemic injury. According to Dr. Davis, the MRI findings suggested a lack of oxygen to brain tissue, resulting in swelling and the death of cells, and were consistent with respondent's report that S.P. stopped breathing.

¶ 14 Dr. Davis also reviewed the actual diagnostic films taken in early March. He interpreted the CT scan as showing a subdural hemorrhage, or bleeding on the surface of the brain. Dr. Davis consulted a radiologist who concurred that the CT scan was abnormal. Dr. Davis testified that the presence of a subdural hemorrhage on the CT scan is consistent with non-accidental trauma. He noted, however, that there was no report that S.P. had been dropped or involved in any other type of accident. Dr. Davis further testified that the MRI revealed areas of brain-tissue death, swelling, edema, and hypoxic-ischemic changes. Dr. Davis noted that several days after S.P. was released from the Iowa hospital, respondent contacted the facility to ask if bruises she observed on S.P.'s face, chest, arm, and foot were the result of her hospital stay.

¶ 15 On April 1, 2012, a couple days after she was taken to Rockford Memorial Hospital, Dr. Davis examined S.P. Upon reviewing S.P.'s chart, Dr. Davis identified an acute subdural hemorrhage and evidence of a prior injury to the brain with fluid around the organ. Dr. Davis also met with respondent and Cristobal to determine if S.P. had a medical problem that could explain her injuries. However, other than a single incident of vomiting, respondent did not report any problems with S.P. on March 30. Cristobal told Dr. Davis that respondent and the minors visited him at work the afternoon of March 30. At that time, Cristobal noticed bruises on S.P.'s face which were not present when he left for work that morning. Respondent disputed Cristobal's story, stating that she remembered S.P. having a bruise on her face that morning and

that more bruises appeared throughout the day. Respondent told Dr. Davis that S.P. vomited again after they left Cristobal's place of employment, but that S.P. ate normally at about 6 p.m. After the feeding, respondent put S.P. down for a nap. S.P. awoke at about 8 p.m., and respondent placed her on a bed. S.P. threw up on the bed, so respondent changed her and placed her in a swing in the living room. Ten minutes later, respondent noticed that S.P. was not breathing. Respondent first called Cristobal and then 911. Respondent denied S.P. was involved in any type of accident that would result in a head injury. However, she did tell Dr. Davis that prior to being hospitalized, S.P. would bruise frequently for no apparent reason.

¶ 16 Dr. Davis continued to monitor S.P.'s condition after he spoke with the parents. Testing did not reveal any medical condition that would lead to unusual or excessive bruising. However, X rays showed metaphyseal fractures of the left leg. Dr. Davis explained that metaphyseal fractures are the "most concerning fractures for child abuse" because they occur only with traction- or pulling-type injuries and they are only seen in children less than two years of age. Dr. Davis further explained that metaphyseal fractures are seen in 30% to 50% of cases of "abusive head trauma," *i.e.*, any type of head injury resulting from shaking a baby. S.P. was also diagnosed with extensive retinal hemorrhaging in both eyes. According to Dr. Davis, the type of hemorrhaging seen in S.P.'s eyes has only been seen in cases of abusive head trauma. Ultimately, Dr. Davis opined that S.P.'s symptoms, in particular the subdural hemorrhage, the metaphyseal fractures of the leg, and the extensive retinal hemorrhaging were indicative of abusive head trauma. According to Dr. Davis, these symptoms are the "classic triad" of shaken-baby syndrome. In Dr. Davis's opinion, S.P. was abused.

¶ 17 Dr. Davis acknowledged that the medical records from Iowa indicated that S.P. suffered from seizures and that it was possible that the bruising was the result of S.P. hitting her head

during a seizure. However, he noted that neither parent reported S.P. experiencing any seizure activity prior to the events of March 30. Moreover, while Dr. Davis admitted that there are accidental mechanisms for some of S.P.'s injuries, he noted that no one ever reported a significant injury or trauma which would have caused S.P.'s injuries.

¶ 18 Following Dr. Davis's testimony, a brief permanency-review hearing was held. Pursuant to stipulation, the court set the permanency goal at return home within 12 months. In addition, the court determined that DCFS and any contracted agencies had made reasonable efforts for the review period and that the minors' placements were necessary and appropriate. The matter was continued to April 26, 2013, for an adjudication decision. At that time, the trial court determined that the State had proven by a preponderance of the evidence the allegations in its petitions. Accordingly, the court adjudicated S.P. abused and A.P. neglected.

¶ 19 Meanwhile, a service plan dated March 19, 2013, rated respondent unsatisfactory overall. According to the caseworker, "no plausible explanation has been given in regards to the serious injuries incurred by S.P." and respondent "continues to deny having engaged in any activity that would have caused the injuries and *** hospitalization." Given these circumstances, the caseworker found it difficult to determine respondent's progress, especially as it pertained to her protective skills and her ability to keep the minors safe from harm. As such, the caseworker found that although respondent had engaged in services, she made no progress with respect to the incident that resulted in the minors coming into care.

¶ 20 In April 2013, respondent was referred for psychotherapy to Carol Fischer, a licensed social worker. Fischer found that respondent presented with a variety of symptoms and defenses which made it difficult to design an appropriate treatment strategy. According to Fischer, respondent "is clearly distrustful of the counseling process and goes to some lengths to

whitewash any questions about her past or current parenting capacity." Because of her defensiveness, Fischer found it difficult to assess if respondent could recognize her parenting limitations, emotional stability, tendency towards narcissism, and her capacity to truly attach to another person. Fischer recommended additional psychological testing.

¶ 21 On May 23, 2013, a dispositional hearing was held. At that hearing, respondent disputed Dr. Davis's opinion that S.P. was the victim of abusive head trauma. Moreover, respondent denied any responsibility for what occurred to S.P., explaining that S.P.'s injuries were the result of an underlying medical condition. Respondent also testified about the services she was asked to undergo and about her weekly visitation with the minors. Respondent complained that the infrequent visitation has affected her bond with the minors and confused A.P. regarding the identity of his parents. Respondent also expressed frustration that she was unable to feed S.P. during visits. Respondent stated that she spoke with her caseworker about increasing visitation, but she was not apprised of the status of her request. Respondent acknowledged that she has not attended all of S.P.'s medical appointments, but attributed her absences to illnesses or lack of transportation.

¶ 22 Mark M., the minors' foster father, testified that S.P. has medical appointments several times a week. According to him, the biological parents are invited to these appointments by the agency, but they show up less than 10% of the time. Mark testified that the biological parents initially had visitation with A.P. for 90 minutes at a McDonald's restaurant. In February 2013, visitation was changed to the biological parents' home and increased to three hours. At that time, A.P. went through six weeks of extreme anxiety, diarrhea, and vomiting. Following Mark's testimony, the court concluded that the parents were willing to care for the minors, but

that they were not fit or able to do so. The court entered an order granting guardianship and custody of the minors to DCFS.

¶ 23 In a client service plan dated September 24, 2013, respondent was rated unsatisfactory overall. The caseworker noted that respondent continued to minimize S.P.'s injuries, deny engaging in any activity that would have caused S.P.'s hospitalization, and insist that S.P.'s condition was the result of medical complications. The caseworker also noted that respondent's attendance at counseling had been sporadic and she missed medical appointments for S.P.

¶ 24 The first permanency-review hearing following adjudication was held on November 25, 2013. At the hearing, Vicki Moore, the caseworker at the time, testified that respondent had not fully engaged in all of her services. Moore noted, for instance, that respondent was notified of seven or eight of the children's appointments, but failed to attend three of them. Respondent also missed several appointments with her therapist. In a report to the court, the caseworker also noted that respondent reported that she and Cristobal were no longer together, that she was in a new relationship with Abraham R., and that she and Abraham were expecting a child in March 2014. At the conclusion of the hearing, the trial court concluded that respondent had not made reasonable efforts during this review period and that it was in the minors' best interests to maintain the permanency goal of return home within 12 months.

¶ 25 In a report covering treatment between May 15 and December 30, 2013, Fischer (respondent's therapist) expressed concern that respondent was impulsive in ways that seemed not to take the children's welfare into account. For instance, Fischer noted that respondent left Cristobal suddenly and went missing for a period of time. When respondent resurfaced, she was in a relationship with Abraham and was pregnant with Abraham's child. Fischer also wrote that respondent's attendance and openness in therapy was poor and indicative of a trust problem.

Fischer questioned respondent's ability to handle the needs of young children, particularly a child with special needs, given her impulsive actions, lack of cooperation, and lack of openness in therapy. Fischer again recommended psychological testing, which she felt would shed some light on how S.P. was injured.

¶ 26 The next permanency-review hearing was held on March 4, 2014. Respondent did not appear at the hearing, and her attorney's motion to continue was denied. At the hearing, Moore testified that respondent visits the minors weekly and their interactions had been positive. Moore also testified that respondent had attended less than half of S.P.'s medical appointments. At the conclusion of the hearing, the court concluded that DCFS and its contracting agencies had made reasonable efforts during the applicable review period, but that respondent had not made reasonable progress or reasonable efforts. The court maintained the permanency goal at return home within 12 months.

¶ 27 Respondent gave birth to A.R. on March 8, 2014. Paternity testing confirmed that Abraham was A.R.'s biological father. On March 10, 2014, DCFS received a hotline call notifying it of A.R.'s birth. On March 11, 2014, the State filed a neglect petition (which was later amended) with respect to A.R. on the basis of an injurious environment. See 705 ILCS 405/2-3(1)(b) (West 2014). That same day, DCFS took protective custody of A.R. and placed him in a foster home. The parents subsequently agreed to waive their right to a shelter care hearing, and temporary custody of the minor was granted to DCFS.

¶ 28 In a client service plan dated March 26, 2014, respondent was rated unsatisfactory overall. The caseworker reiterated that respondent had failed to provide a plausible explanation for S.P.'s injuries and she continued to believe that S.P.'s condition was the result of medical complications. Moreover, although respondent expressed interest in being included in the

minors' appointments, she had not actively attended them when requested. The caseworker also noted that respondent failed to inform DCFS of A.R.'s birth, resulting in the minor being released from the hospital to respondent's home.

¶ 29 On June 19, 2014, respondent underwent a psychological evaluation by Dr. Valerie Bouchard. Testing revealed that respondent had an IQ of 66, placing her in the extremely low range of intellectual functioning. Dr. Bouchard found that respondent's judgment and insight was limited and poor. She also found respondent to be narcissistic with difficulty comprehending the circumstances that led to DCFS involvement. Further, Bouchard noted that respondent contradicted herself and engaged in significant minimization of issues and concerns. Dr. Bouchard recommended that respondent participate in parent coaching and individual therapy to assist in reducing her minimization and denial. However, Dr. Bouchard felt that respondent's prognosis for improvement was poor due to diminished capacity and personality characteristics that make it difficult for her to acknowledge problems and concerns.

¶ 30 Meanwhile, on June 27, 2014, the trial court adjudicated A.R. a neglected minor pursuant to the parties' factual stipulation. On August 7, 2014, the court held a dispositional hearing with respect to A.R. At that time, respondent stipulated that although willing, she was not fit or able to care for A.R. Guardianship and custody of A.R. was placed with DCFS with discretion to place the minor with a responsible relative or in traditional foster care. Visitation was at the discretion of DCFS. A.R. was initially placed with a traditional foster family. However, when A.R. was about 4½ months old, he was placed with the same family as A.P. and S.P.

¶ 31 In a client service plan dated September 22, 2014, respondent was again rated unsatisfactory overall. The caseworker reiterated that respondent continued to minimize the injuries to S.P., provide no plausible explanation for S.P.'s condition, and insist that S.P.'s

injuries were the result of medical complications. This, in turn, made it difficult for the caseworker to assess respondent's protective skills and her ability to keep her children safe from harm. In addition, the caseworker noted that respondent had not attended all of her children's medical or educational appointments and she failed to consistently engage in counseling services.

¶ 32 On December 10, 2014, the court held a permanency-review hearing with respect to all three minors. At the hearing, Janette Grygiel, the new caseworker for the children, testified that the foster parents had signed a permanency-commitment form with respect to A.P. and S.P. and were willing to adopt those two minors. Luisa Munoz, the family caseworker, also testified. With respect to A.R.'s return to respondent's care, Munoz stated that respondent had complied with her services and made reasonable efforts. Munoz also indicated that respondent had made reasonable efforts with respect to A.P. and S.P. Munoz noted, however, that the psychological evaluation identified serious concerns with regards to respondent's abilities, so she had not made reasonable progress. In turn, the frequency of respondent's visits had not increased. Based on the testimony presented, the trial court, with respect to A.P. and S.P., determined that respondent had made reasonable efforts but not reasonable progress. The court changed the goal for A.P. and S.P. from return home to substitute care pending court determination of termination of parental rights. Because this was only the first permanency review with respect to A.R., the court found that respondent had made reasonable efforts. The court set the goal for A.R. as return home within 12 months.

¶ 33 In January 2015, respondent and Abraham moved to Iowa. Respondent told Munoz that the move was necessary because she was needed to help care for her ill grandmother. Respondent also told Munoz that she would not be returning to Illinois for court because she

obtained a job and could not miss work. As a result of her move to Iowa, respondent did not begin any of the services recommended by Dr. Bouchard. Munoz was in the process of trying to locate appropriate agencies in Iowa to allow respondent to reengage in services. Following respondent's move to Iowa, she temporarily ceased exercising visitation with the minors.

¶ 34 On February 18, 2015, the State filed separate motions to terminate respondent's parental rights with respect to A.P. and S.P. In the motions, the State alleged that respondent was unfit to parent the minors on three separate grounds: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minors from her within any nine-months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) failure to make reasonable progress toward the return of the minors to her within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2014)). With respect to the second and third grounds listed in the motions, the State cited three nine-month periods: (1) April 26, 2013, to January 26, 2014; (2) January 26, 2014, to October 26, 2014; and (3) April 26, 2014, to January 26, 2015.

¶ 35 A client service plan dated February 26, 2015, rated respondent unsatisfactory overall. The caseworker noted, among other things, that respondent had not consistently engaged in counseling services, she had not progressed in regards to the incident that brought the minors into care, she failed to provide a plausible explanation for S.P.'s injuries, and she had not attended all of her children's medical or educational appointments.

¶ 36 As to A.P. and S.P., the unfitness portion of the termination proceeding began on May 20, 2015. Despite receiving notice of the hearing, respondent failed to appear. Respondent's

attorney was present, however, and he moved to continue the matter. The trial court denied the motion.

¶ 37 At the hearing, Munoz testified that in December 2014, the frequency of respondent's supervised visitation with A.P. and S.P. was changed from weekly to monthly. Munoz testified that when respondent resided in Illinois, she was regular on her visits with the minors. However, since moving to Iowa, respondent has missed scheduled visits in February, March, and April 2015, and she has not asked about her children. In May 2015, respondent resumed her monthly visits with the minors.

¶ 38 Munoz also testified that respondent was required to engage in various services pursuant to the service plans developed for her. Munoz noted that an administrative case review meeting is held every six months, during which the parents can review the service plan and ask questions about it. Munoz related that respondent did not attend all of the administrative case reviews. Munoz identified service plans "approved" on September 25, 2013, March 26, 2014, and October 9, 2014, and they were admitted into evidence.[3] Munoz admitted that respondent completed some services, including individual counseling and play therapy with A.P. However, after October 2014, respondent had not completed any of her services, despite being referred for individual counseling and parent coaching by Dr. Bouchard. Moreover, Munoz was not aware of respondent's participation in any of these services since her move to Iowa. Munoz further testified that since she became the caseworker, respondent has never been able to move towards unsupervised visits or placement of the minors with her due to her failure to make reasonable progress towards the goal of return home.

[3] These are the service plans dated September 24, 2013, March 26, 2014, and September 22, 2014, respectively.

¶ 39 Grygiel noted that S.P. is non-verbal, non-mobile, and experiences seizures. Grygiel testified that S.P. has from one to three doctor's appointments each month. According to Grygiel, respondent has been notified in writing of S.P.'s medical appointments, but she has not consistently attended them. Grygiel also testified that S.P.'s developmental therapy appointments were held at the agency office to allow respondent to be present. However, that was changed because respondent did not regularly attend. Grygiel further testified that respondent only contacted her to inquire about S.P.'s medical care about every other month, with the last time being in November 2014. Grygiel testified that A.P., who does not have the same special needs as S.P., attends preschool. According to Grygiel, respondent has not inquired about A.P.'s educational welfare. In addition, respondent has only attended some of A.P.'s medical appointments. Grygiel testified that, between the two minors, respondent missed 9 of 14 appointments without any explanation.

¶ 40 Grygiel further testified that respondent has not provided any other care for the children such as food, clothing, diapers, or school supplies. Grygiel noted that respondent attended visitation regularly through January 2015. However, in the month prior to her move to Iowa, respondent canceled visits frequently. Grygiel also recounted that respondent's weekly visits were scheduled for 90 minutes, but respondent would frequently leave 30 minutes early. Respondent told Grygiel that she would end the visits early because it takes time for the minors to get loaded in the car. Grygiel talked to respondent about taking full advantage of her entire visit, but nothing changed after their conversation. Grygiel felt that it was important for respondent to spend the entire visit with the children so as to develop a bond with them. Grygiel also noted that respondent never asked to extend the visits. Grygiel stated that respondent did not notify her of the move to Iowa until after it occurred.

¶ 41 At the conclusion of Grygiel's testimony, the court took judicial notice of the previous orders entered in the case and, at the State's request, admitted into evidence the indicated packet. Respondent's attorney then renewed his motion to continue so as to allow respondent to testify. The court denied the motion. The matter was continued to July 13, 2015, for a decision on unfitness and a possible best-interest hearing.

¶ 42 Meanwhile, the parties convened on June 1, 2015, for a permanency-review hearing with respect to A.R. Respondent's attorney attended the hearing, but respondent did not. Following arguments by the parties, the court determined that respondent did not make reasonable progress or reasonable efforts. In addition, the court concluded that it was in A.R.'s best interest that the permanency goal be changed from return home to substitute care pending court determination on termination of parental rights.

¶ 43 On July 13, 2015, the State filed a motion to terminate respondent's parental rights with respect to A.R. In the motion, the State alleged that respondent was unfit to parent A.R. on three separate grounds: (1) failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from her within any nine-months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) failure to make reasonable progress toward the return of the minor to her within any nine-month period after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2014)). With respect to the second and third grounds listed in the motion, the State provided two nine-month periods: (1) June 27, 2014, to March 27, 2015, and (2) October 13, 2014, to July 13, 2015.

¶ 44 When the parties reconvened on August 11, 2015, the court determined that the State had proven by clear and convincing evidence all three counts alleged in the motions to terminate filed on behalf of A.P. and S.P. The court set forth a factual finding for its determination, noting, among other things, that (1) respondent missed visitation with the minors in February, March, and April 2015; (2) respondent has not inquired about the minors since she moved to Iowa; (3) respondent has not completed any requested services since October 2014; (4) respondent did not consistently attend the minors' medical and therapy appointments; (5) respondent called the caseworker to check on the minors' well-being only once every other month; (6) respondent has not provided any care or supplies to the minors; (7) respondent would often leave visits early; (8) respondent never requested longer visits with the minors; (9) respondent moved to Iowa without making plans for the minors to accompany her or receive services there so she could continue any return-home goals; and (10) respondent was found not to have made reasonable efforts in the time period from April 26, 2013, through January 26, 2014, or reasonable progress from January 26, 2014, through October 26, 2014, and from April 26, 2014, through January 26, 2015.

¶ 45 Also on August 11, the court conducted the unfitness hearing with respect to the termination motion filed on behalf of A.R. Respondent did not attend the hearing, and her attorney's motion to continue was denied. Munoz testified that respondent and Abraham are married and live in Iowa. Munoz testified that she has provided respondent with court orders, information about future court dates, and service plans. Munoz testified that although respondent returns her phone calls, she does not answer any written correspondence. Munoz also testified that respondent has not attended any of the administrative case reviews for A.R. Munoz identified a service plan "approved" on October 9, 2014, and one dated February 26, 2015, both

of which were admitted into evidence.[4] Munoz testified that since the rating of the service plan on February 26, 2015, respondent has not completed any requested services. Munoz testified that she has been looking to establish services for respondent in Iowa, but has yet to find a place that will accommodate respondent.

¶ 46 Munoz testified that when A.R.'s case first came into care, respondent was receiving weekly supervised visitation. Respondent attended most of those visits. Prior to respondent's move to Iowa, the frequency of the visits were reduced to one a month. Respondent missed visits scheduled for February, March, and April 2015, with no explanation for her absences. Respondent resumed visits with A.R. in May 2015, and also attended visits in June and July. Munoz further testified that respondent has not attended any medical appointments for A.R. or provided any care, gifts, cards, photographs, or letters for him. Following Munoz's testimony, the court admitted the indicated packets for all three minors. The court also took judicial notice of all orders previously entered in the case and continued the matter for decision.

¶ 47 When the parties reconvened on September 9, 2015, respondent was present and moved to reopen the proofs as to all three minors. The trial court denied the motion. The court then determined that the State had proven by clear and convincing evidence all three counts of unfitness alleged in the motion to terminate respondent's parental rights with respect to A.R. With respect to the factual basis for the finding, the court found that respondent did not visit the minor for a period of three months, she failed to complete any recommended services, she moved out of state without a plan for the minor, she had not given the minor any support, and she had not inquired about him. The court also reviewed the court orders entered in the case and the service plans. The court acknowledged that following the first permanency review in

[4] The service plan approved on October 9, 2014, is the plan dated September 22, 2014.

December 2014, respondent had made reasonable efforts. However, following the permanency review hearing in June 2015, respondent was found to not have made reasonable efforts or reasonable progress. The matter then proceeded to the best-interest phase with respect to all three minors.

¶ 48 Munoz testified that the fathers of S.P. and A.R. are of Hispanic heritage, while A.P.'s father and respondent are both Caucasian. Munoz also testified regarding efforts in 2015 to place A.R. with Abraham's sister in Utah. Ultimately, the placement in Utah was denied because A.R. was already placed with his siblings in Illinois, he had been in that placement for more than six months, and he had already formed an attachment with the caregivers.

¶ 49 After the court took judicial notice of her best-interest report, Grygiel testified that S.P. is "quite medically complex" and that the foster parents have been involved in special training to meet S.P.'s needs. Grygiel further testified that the foster parents take care of all of S.P.'s doctor appointments. Grygiel testified that although A.P. does not have any special needs, he is a very active child and requires consistent redirection. Grygiel also noted that the foster mother is a registered nurse, so she is well trained to care for not only S.P.'s special needs, but also any needs of A.P. and A.R.

¶ 50 Grygiel noted that when A.R. was born in March 2014, the siblings' foster family was approached about taking him. At that time, the foster family was not ready to take A.R. because they were still getting used to their routine with S.P., who transitioned to their home on a permanent basis in December 2013. However, the family with whom A.R. had been placed would travel to the home of A.P. and S.P. for sibling visits. During these visits, the siblings and their foster parents became accustomed to A.R., and in July 2014, the foster parents decided they could take A.R. into their home. Grygiel acknowledged that the foster parents are not bilingual.

She stated, however, that the foster parents understand the children's backgrounds and are willing to expose the minors to their heritage. Grygiel opined that the minors are well bonded to the foster family, are doing well in their current environment, and that it was in all three minors' best interest to terminate the parental rights of respondent so as to allow the children to have permanency moving forward. Following Grygiel's testimony, the court took judicial notice of letters submitted to the court by the foster parents.

¶ 51 Respondent testified that she has attended some therapy and doctor appointments for S.P. and has a firm grasp of S.P.'s issues. Respondent explained how she cares for S.P. when she has seizures. Respondent believed that she would be able to care for S.P. if given the chance. Respondent also believed that she was capable of nurturing and raising A.R. Respondent testified that she and her husband, Abraham, have a three-bedroom home in Iowa, where Abraham works as a meat cutter. Respondent stated that the couple earns enough money to support all three minors. Respondent testified that the minors recognize her during their monthly visits.

¶ 52 Respondent acknowledged that when she moved to Iowa, there was a three-month period during which she did not see the children. Respondent testified that she moved to Iowa for a job. Respondent also admitted that she did not engage in services because of the move. Respondent testified that she attempted to maintain contact with the caseworker after the move, but she never received any calls back. In addition, respondent voiced concerns she has about the children. She recounted that during a visit prior to her move to Iowa, A.R. had a rash. She also testified that during a recent visit, A.R. was wearing "torn up" athletic shoes. In response, respondent bought A.R. a new pair of shoes and gave them to the foster parents. Although never asked to do so, respondent testified that she has also provided "garbage bags of clothes" for all three minors.

¶ 53 On cross-examination, respondent was unable to recall S.P.'s diagnosis at the time she was removed from her care in March 2012. Respondent added that she was "still pretty much unclear of what [S.P. is] diagnosed with." Respondent was unable to recall the last doctor or therapy appointment she attended for S.P. In addition, she could not recall the last time she sent the minors clothing, but admitted that it was "a while ago." Respondent also testified that she is currently unemployed. She testified that she left her job because of asthma issues and because she was spitting up blood. She later stated that she had reapplied to work at her former employer.

¶ 54 In rebuttal, Grygiel acknowledged that one of the children had a rash. She stated the condition was the result of an allergy to dairy products and was taken care of by the foster parents. Grygiel denied having any concerns about A.R.'s clothing or footwear during respondent's visits.

¶ 55 The parties then presented closing argument. The court then took a brief recess before announcing its decision. Ultimately, after considering the statutory factors, the court determined that it was in the best interest of all three minors that the parental rights of respondent be terminated. Respondent then filed a notice of appeal.

¶ 56 III. ANALYSIS

¶ 57 With this background, we address counsel's two arguments that no meritorious argument could be made that the basis for the trial court's findings that respondent is an unfit parent and that it is in the minors' best interests that her parental rights be terminated are against the manifest weight of the evidence. We then discuss the third potential issue and explain why it too lacks merit.

¶ 58 A. Unfitness

¶ 59 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) lists various grounds under which a parent may be found unfit. *Antwan L.*, 368 Ill. App. 3d at 1123. As the grounds of unfitness are independent, evidence supporting any one of the alleged statutory ground is sufficient to uphold a finding of unfitness. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30. The State has the burden of proving a parent's unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2014); *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. As such, a trial court's determination of a parent's unfitness will not be reversed unless it is contrary to the manifest weight of the evidence. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 29. A decision is against the manifest weight of the evidence "if a review of the record 'clearly demonstrates that the proper result is the one opposite that reached by the trial court.' " *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (quoting *In re M.K.*, 271 Ill. App. 3d 820, 826 (1995)).

¶ 60 The trial court found respondent unfit on all three grounds alleged in the State's motions. Appellate counsel argues that no meritorious argument could be made that the basis for the trial court's finding of unfitness with respect to the minors is against the manifest weight of the evidence. Appellate counsel focuses his argument on the trial court's finding that respondent was unfit for failing to make reasonable progress towards the return of the minors to her within any nine-month period following adjudication. See 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 61 Under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), a parent is unfit where he or she fails to make reasonable progress towards the return of the child to her during any nine-month period following the adjudication of abuse or neglect. "Reasonable progress" means "demonstrable movement toward the goal of reunification." *In re C.N.*, 196 Ill.

2d 181, 211 (2001). "[T]he benchmark for measuring a parent's 'progress toward the return of the child' * * * encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216–17. When proceeding on an allegation under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2014)), the State is required to give notice to the parent of the nine-month periods it intends to rely on at trial. 750 ILCS 50/1(D)(m) (West 2014). The court may only consider evidence of the parent's conduct during the relevant nine-month time period identified by the State. *In re R.L.*, 352 Ill. App. 3d 985, 999 (2004).

¶ 62 1. A.P. and S.P.

¶ 63 In the present case, the trial court adjudicated A.P. neglected and S.P. abused on April 26, 2013. As noted previously, among the grounds of unfitness alleged by the State in its motions was that respondent had failed to make reasonable progress towards the return of the minors to her within any nine-month period after an adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2014). The motions listed three nine-month periods: (1) April 26, 2013, to January 26, 2014; (2) January 26, 2014, to October 26, 2014; and (3) April 26, 2014, to January 26, 2015. The trial court found that respondent failed to make reasonable progress during the latter two nine-month periods. Appellate counsel asserts that no non-frivolous argument can be made that the trial court's determination was against the manifest weight of the evidence. We agree.

¶ 64 The minors came into protective custody due to S.P.'s injuries, which included a subdural hemorrhage, metaphyseal fractures of the leg, and extensive retinal hemorrhaging. Dr. Davis described these symptoms as the "classic triad" of shaken-baby syndrome. In his opinion, S.P.

had been abused. As a result of her injuries, S.P. underwent extensive medical care and rehabilitation and will experience life-long medical issues and developmental delays. S.P. is non-verbal and non-mobile. She has seizures. Respondent was S.P.'s sole caretaker the day S.P. was first hospitalized for her injuries. Nevertheless, she has refused to accept any responsibility for what occurred to the minor and has repeatedly denied that S.P. was abused.

¶ 65 Respondent was rated unsatisfactory on the client service plans prepared during the applicable nine-month periods. The caseworker emphasized that claimant minimized S.P.'s injuries, she provided no plausible explanation as to S.P.'s injuries, and she continued to believe that S.P. was injured as a result of medical complications. As a result of respondent's refusal to acknowledge the reason the minors came into care, the caseworker found it difficult to assess respondent's protective skills and her ability to keep her children safe from harm. In turn, the frequency of respondent's visits with the minors were never increased. After conducting a psychological evaluation of respondent in June 2014, Dr. Bouchard agreed that respondent tended to minimize the issues that brought the minors into care. Dr. Bouchard recommended that respondent participate in parent coaching and individual therapy to assist in reducing her minimization and denial. Dr. Bouchard felt that respondent's prognosis for improvement was poor due to diminished capacity and personality characteristics that make it difficult for her to acknowledge problems and concerns. Respondent never began the services recommended by Dr. Bouchard because she moved to Iowa with her husband in January 2015. DCFS did not learn of respondent's move until after it occurred.

¶ 66 Although the record establishes that respondent exercised regular visitation with the minors prior to her move to Iowa, she would frequently leave 30 minutes early. Moreover, in the month prior to her move to Iowa, she repeatedly canceled visits. According to Grygiel,

respondent never asked her to extend visits. Further, respondent did not consistently attend counseling services and she failed to complete any services after October 2014. Although respondent expressed interest in being included in the children's medical and educational appointments, she missed many appointments without any explanation. Grygiel also indicated that the agency tried to accommodate respondent by changing the location of S.P.'s developmental therapy appointments, but she still failed to regularly attend the appointments. According to Munoz, respondent had not asked her about the children since moving to Iowa. Likewise, Grygiel testified that respondent inquired about S.P.'s medical issues infrequently, with the last time being in November 2014. Respondent's absence at S.P.'s medical appointments was noted to be especially significant since her attendance would have allowed respondent to gain a more clear understanding of the medical treatment needed by S.P. and acquire skills to address the minor's special needs. The record also establishes that respondent did not attend the administrative case reviews to go over the service plans and she did not regularly provide any other care for the children such as food, clothing, diapers, or supplies.

¶ 67 The foregoing evidence supports a finding that respondent failed to make "demonstrable movement toward the goal of reunification" (see *In re C.N.*, 196 Ill. 2d at 211) during the two nine-month periods from January 26, 2014, to October 26, 2014, and from April 26, 2014, to January 26, 2015, as specified in the motions to terminate respondent's parental rights with respect to A.P. and S.P. Notably, respondent failed to acknowledge the reason the minors came into care, she has not completed any requested services since October 2014, she did not consistently attend the minors' medical and therapy appointments, she inquired about the minors' well-being only occasionally, she has not provided any care or supplies to the minors, she would often leave visits early, she never requested longer visits with the minors, and she

moved to Iowa without making plans for the minors to accompany her or receive services there so she could continue any return-home goals. In light of this evidence, we agree that counsel could not make a colorable argument that the trial court's finding that respondent is unfit to parent A.P. and S.P. pursuant to section 1(D)(m)(ii) of the Adoption Act is against the manifest weight of the evidence. Since evidence supporting any one of the alleged statutory ground is sufficient to uphold a finding of unfitness, we need not address any other ground of unfitness found by the trial court. *B'yata I.*, 2014 IL App (2d) 130558–B, ¶ 30.

¶ 68 2. A.R.

¶ 69 We reach the same result with respect to the third minor, A.R. A.R. was adjudicated neglected on June 27, 2014. In its motion to terminate respondent's parental rights as to A.R., the State alleged, *inter alia*, that respondent was unfit for failing to make reasonable progress towards the return of A.R. to her within any nine-month period after an adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2014). The motion listed two nine-month periods: (1) June 27, 2014, to March 27, 2015, and (2) October 13, 2014, to July 13, 2015. The trial court found that respondent failed to make reasonable progress during the latter nine-month period. As noted above, throughout this case, respondent has failed to acknowledge the reason the minors came into care. Since October 2014, she failed to complete any requested services. Respondent then moved to Iowa in January 2015 without making plans for the minors to accompany her or receive services there so she could continue any return-home goals. Thereafter, she failed to attend visits scheduled for February, March, and April 2015. Although respondent visited with A.R. as scheduled in May, June, and July 2015, she never offered an explanation for missing the earlier visits. In addition, respondent failed to attend any administrative case reviews for A.R., provide any care, gifts, cards, photographs, or letters for the minor, or go to any of his medical

appointments. Given this evidence, we agree that counsel could not make a colorable argument that the trial court's finding that respondent is unfit to parent A.R. on the basis of failure to make reasonable progress within the specified nine-month period following the adjudication of neglect is against the manifest weight of the evidence.

¶ 70 B. Best Interest

¶ 71 Having concluded that no meritorious argument could be made that the bases for the trial court's findings of unfitness are against the manifest weight of the evidence, we turn to the trial court's best-interest determinations. As noted earlier, once the trial court finds a parent unfit, it must determine whether termination of parental rights is in the minor's best interest. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. As our supreme court has noted, at the best-interest phase, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) sets forth various factors for the trial court to consider in assessing a minor's best interest. These considerations include: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with parental figures; (5) the minor's wishes and goals; (6) community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) preferences of the individuals available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014). The State bears the burden of proving by a preponderance of the evidence that termination is in the best interests of a minor. *D.T.*, 212 Ill. 2d at 366; *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Like

the fitness determination, we review the trial court's best-interest finding under the manifest-weight-of-the-evidence standard. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41.

¶ 72 According to the evidence presented at the best-interest hearing, including the testimony and Grygiel's report, each of the minors had been placed in their current foster home for the majority of their lives. The foster parents have provided for the minors' daily needs, including food, clothing, and shelter. The foster parents also take the minors to the doctor when necessary and have kept them up to date on their immunizations. In addition, the foster parents ensure that S.P. attends her therapy appointments and they follow through at home with the techniques observed at the therapy sessions. The foster parents also maintain contact with A.P.'s preschool. The minors are bonded to the foster parents and to each other and feel love, a sense of security, and attachment to the foster home. A.P. refers to the foster parents as "mom" and "dad." He has been observed going to the foster parents for comfort. Similarly, A.R. seeks his foster mother for comfort and interacts with the foster parents without caution. When the foster parents talk to S.P., she turns her head towards them, smiles, and coos. S.P. also expresses excitement when the foster parents enter the room by making noises and moving her extremities. S.P. also responds positively when her brothers approach her. The minors have been integrated into the foster parents' extended family and have developed community ties through school and other activities. The foster parents have agreed to provide permanency for A.R. through adoption. While, respondent undoubtedly feels love for her children, it is not clear that she will be able to provide for the minors' daily needs or the stable and safe environment they deserve. Significantly, although respondent testified at the best-interest hearing that she could care for S.P., she also indicated that she does not fully understand S.P.'s medical issues. Given this record, we agree with appellate counsel that a non-frivolous argument cannot be made that the trial court's

findings that it is in the minors' best interest that respondent's parental rights be terminated are against the manifest weight of the evidence.

¶ 73 C. Denial of Motions to Continue

¶ 74 Finally, we note a further potential issue not identified by counsel. The unfitness hearings in this case were held on May 20, 2015, for A.P. and S.P., and on August 11, 2015, for A.R. Respondent was not present at either hearing. Respondent had a statutory right to be present. 705 ILCS 405/1-5(1) (West 2014). We note further that a parent's absence at such hearings invokes due process concerns. *In re C.J.*, 272 Ill. App. 3d 461, 464-66 (1995). Nevertheless, based on our review of the record, it does not appear to us that a nonfrivolous argument could be made based on respondent's absence at the hearings.

¶ 75 On December 10, 2014, the trial court held a permanency-review hearing with respect to the minors. Respondent was present at the hearing. At the conclusion of the December 10 hearing, the court changed the goal for A.P. and S.P. from return home to substitute care pending court determination of termination of parental rights. The court scheduled an "arraignment and pretrial conference" pertaining to A.P. and S.P. for February 18, 2015. The court also scheduled "part one" of the termination hearing for A.P. and S.P. on May 20, 2015, and a permanency-review hearing for A.R. on June 1, 2015.

¶ 76 Meanwhile, in January 2015, respondent and her husband, Abraham, moved to Iowa. Following the move, respondent told Munoz that she would not be returning to Illinois for court because she obtained a job and could not miss work. Respondent did not attend the February 18 hearing. Respondent's attorney informed the court that respondent called him to let him know that she would be unable to attend due to a work obligation. Respondent also failed to appear at the May 20, 2015, unfitness hearing. At that time, respondent's attorney referenced respondent's

previous statement that she did not intend to return to Illinois for court. He then moved to continue the hearing. The trial court denied the motion.

¶ 77 Respondent did not attend the June 1, 2015, hearing. At that time, respondent's attorney stated that his client had moved to Iowa to care for a sick grandmother. At the conclusion of the hearing, the court changed the goal for A.R. from return home to substitute care pending court determination on termination of parental rights. The motion to terminate respondent's parental rights as to A.R. was filed on July 13, 2015. That same day, a hearing was held at which the trial court set August 11, 2015, as the date of the unfitness phase of the termination proceeding. Respondent did not appear at the hearings on July 13 or August 11, 2015. At the August 11 hearing, Grygiel noted that she had spoken to respondent on July 28 and confirmed the date of the hearing with her. Respondent told Grygiel that she would be present for the hearing. Grygiel also indicated that she had mailed respondent a copy of the court order. Respondent's attorney stated that he did not have a current phone number or address for his client and that he had not had any contact with her. He moved to continue the matter so that respondent could be present. The trial court denied the motion and the unfitness phase was held that day. Respondent did appear at the next court date on September 9, 2015. At that time, respondent's attorney moved to reopen proofs with respect to the unfitness portion of the hearing as to all three minors, but the trial court denied the motion.

¶ 78 We review a trial court's decision to grant or deny a continuance using the abuse-of-discretion standard. *In re Tashika F.*, 333 Ill. App. 3d 165, 169 (2002). An abuse of discretion occurs only if no reasonable person could agree with the trial court. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). Moreover, the denial of such a request does not provide a basis for

reversal unless the purportedly aggrieved party shows prejudice. *Tashika F.*, 333 Ill. App. 3d 165, 169 (2002).

¶ 79 Although respondent had a statutory right to be present at the unfitness phases of the termination proceedings (705 ILCS 405/1-5(1) (West 2014)), her presence was not mandatory (*In re M.R.*, 316 Ill. App. 3d 399, 402 (2000)) and her absence does not *per se* invalidate the hearing. In this case, following her move to Iowa, respondent indicated that she did not intend to return to Illinois for court. As such, one could infer that respondent declined her statutory right to be present at the hearings. A reasonable person could therefore agree with the trial court's decision to deny respondent's attorney's request for a continuance, and respondent could not prevail on an argument to the contrary. Furthermore, it is unclear what additional evidence could have been presented to change the outcome of the case given the considerable evidence in support of the trial court's findings. Thus, respondent cannot establish that she was prejudiced by the denial of the motion to continue.

¶ 80 As for respondent's due process right to be present, we apply the balancing test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). *Matthews* identifies three factors to consider: (1) the private interest affected by the government's action; (2) the risk of an erroneous deprivation of that interest, keeping in mind any additional safeguards used; and (3) the State's interest, including any additional fiscal and administrative burdens additional procedural protections would entail. *Matthews*, 424 U.S. at 334-35. Applying the first *Matthews* factor, we find that respondent had an interest in raising her children. See *D.T.*, 212 Ill. 2d at 363. Thus, this factor weighs in favor of respondent. However, the second factor weighs against respondent. In this regard, respondent was ably represented by counsel at all stages of these proceedings, and, as noted above, it is unclear what additional evidence she could have been presented to change the

outcome of the case. See *M.R.*, 316 Ill. App. 3d at 402 ("Although respondent was not present at the termination hearing, in light of the testimony as to respondent's psychiatric conditions, respondent's attorney likely represented the interest of respondent to the best degree possible."). The third factor also weighs against respondent since "delay imposes a serious cost on the functions of government, as well as an intangible cost to the lives of the children involved." *M.R.*, 316 Ill. App. 3d at 403. Accordingly, based on the record before us, and in light of the applicable law, an argument based on respondent's unexplained absence from the fitness hearing in this matter ultimately lacks merit.

¶ 81 IV. CONCLUSION

¶ 82 In sum, after carefully examining the record, the motion to withdraw, the accompanying memorandum of law, and the relevant authority, we agree with appellate counsel that no meritorious issue exists that would warrant relief in this court. Therefore, we allow the motion of appellate counsel to withdraw in this appeal, and we affirm the judgment of the circuit court of Winnebago County finding respondent unfit and terminating her parental rights to the minors.

¶ 83 Affirmed.