FIFTH DIVISION
January 28, 2011

No. 1-10-1985

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re L.S. and S.S.,	)	Appeal from the
Minors-Respondents-Appellees	)	Circuit Court of
	)	Cook County, Illinois.
(PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	No. 05 JA 00781
Petitioner-Appellee,	)	06 JA 00130
v.	)	
	)	Honorable
VERONICA C.,	)	Thomas V. Gainer, Jr. and
	)	Stephen Y. Brodhay,
Respondent-Appellant).	)	Judges Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

ORDER

HELD: The judgment of the trial court terminating respondent's parental rights as to her minor sons L.S. and S.S. is affirmed where (1) respondent's due process rights were not violated by the untimeliness of the third permanency hearing, (2) the trial court's finding of unfitness was not against the manifest weight of the evidence, and (3) the trial court did not improperly take into account the possibility of adoption at the unfitness hearing.

Respondent Veronica C. (Ms. C.) appeals from an order of the juvenile court terminating

her parental rights as to her minor sons, L.S. and S.S., based upon findings that mental retardation kept her from discharging her parental responsibilities and that she had failed to make reasonable progress toward the return of the children. That same order also terminated the parental rights of the boys' father, Librado S., Sr. (Mr. S.), based upon findings that he failed to maintain a reasonable degree of concern as to his children's welfare and that he failed to make reasonable progress toward the return of the children. However, Mr. S. does not appeal from the court's order.

L.S., who is now five years old, was born on March 11, 2005. His brother S.S., who is now four years old, was born on February 4, 2006. On July 22, 2005, when L.S. was four months old, the court took temporary custody of L.S. and his two older brothers based on Ms. C.'s multiple prior reports for abuse and neglect and the State's allegation that Ms. C. had not been compliant with family services offered by the Department of Children and Family Services (DCFS). (L.S.'s older brothers are not involved in the instant appeal.) On February 28, 2006, the trial court also took temporary custody of three-week-old S.S. because it determined that the history of abuse and neglect of his older siblings placed him at risk.

Unfitness proceedings against both parents were held from December 15, 2009, to June 29, 2010. At the conclusion of those proceedings, the trial court found Ms. C. unfit to be a parent pursuant to the unfitness grounds provided in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)). Specifically, it found that Ms. C. was unable to discharge her parental responsibilities due to mental disability, as detailed in subsection (p) (750 ILCS 50/1(D)(p) (West 2008)), and that she had failed to make reasonable progress toward the return of the

children, as detailed in subsection (m) (750 ILCS 50/1(D)(m) (West 2008)). Thus, the court found that it was in the best interest of the children to terminate Ms. C.'s parental rights over L.S. and S.S. The court additionally terminated Mr. S.'s parental rights over those two children.

Ms. C. now appeals. She raises three main contentions on appeal. First, she contends that the trial court violated the requirement under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)) that permanency hearings be held every six months, since it held the third permanency hearing on August 21, 2007, over ten months after the previous permanency hearing on September 27, 2006. She contends that this violation voids the order resulting from the permanency hearing on August 21, 2007, and all subsequent orders, including the order terminating her parental rights that is at issue in this appeal. Second, Ms. C. contends that the trial court's finding of unfitness was against the manifest weight of the evidence. Third, she contends that the trial court improperly considered the likelihood that the children would be placed for adoption in rendering its finding of unfitness. For the reasons that follow, we affirm.

I. BACKGROUND

On July 22, 2005, when L.S. was four months old, the State filed petitions for adjudication of wardship and motions for temporary custody of him and his two older brothers, David and Fernando. In its petitions, the State alleged that Ms. C. had three prior indicated reports for non-organic failure to thrive of L.S.'s older brother Fernando, inadequate supervision, and substantial risk of physical injury.[1] The State further alleged that Ms. C. was not compliant

[1] An indicated report is defined as any report made pursuant to the Abused and Neglected Child Reporting Act where it is determined through investigation that there is credible evidence

with intact family services offered by DCFS.

The court appointed the public guardian to represent L.S. and his brothers as attorney and guardian *ad litem*. After conducting a temporary custody hearing on July 22, 2005, the court found that there was probable cause and urgent and immediate necessity to remove L.S. from his parents' care, and it appointed DCFS as his temporary custodian without prejudice.

S.S. was born on February 4, 2006. Ten days later, the State filed a petition for adjudication of wardship and motion for temporary custody as to S.S. On February 28, 2006, the court found probable cause and urgent and immediate necessity to remove S.S. from his parents' care as well, stating as the basis for its decision: "Mother has four prior indicated reports for non-organic failure to thrive, inadequate supervision, substantial risk of physical injury/environmental injuries to health and welfare by neglect, and medical neglect. Mother and putative father have three minors not in their care and custody."

The trial court conducted an adjudicatory hearing on April 17, 2006, at which Ms. C. agreed to a written stipulation of facts including the following.

Emma Gonzalez, an intact caseworker for DCFS, was assigned to provide services to the

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of the alleged abuse or neglect. 325 ILCS 5/3 (West 2010). Non-organic failure to thrive is defined as "decelerated or arrested physical growth *** associated with poor developmental and emotional functioning," usually in a child younger than two years old who has no known medical condition causing poor growth. *Failure to thrive*, Lucile Packard Children's Hospital at Stanford, http://www.lpch.org/DiseaseHealthInfo/HealthLibrary/growth/thrive.html (last visited January 25, 2011).

family on September 16, 2003, because Fernando had been diagnosed with non-organic failure to thrive on July 4, 2003. Gonzalez referred Ms. C. for domestic violence counseling, a psychological evaluation, and homemaker services, but Ms. C. did not comply with or successfully complete any of these services between September 2003 and July 2005. On June 30, 2004, Ms. C. reported to Gonzalez that Mr. S. had hit her with an aluminum coffee mug when she was holding one-year-old Fernando, and Gonzalez observed a bump with dried blood on Ms. C.'s head. On June 2, 2005, when Gonzalez visited the family, she found two-month-old L.S., three-year-old David, and two-year-old Fernando being watched over by an unknown eight-year-old without any adult supervision.

On May 24, 2005, Dr. Nada Al-Dallal, a board-certified pediatrician, diagnosed seven-week-old L.S. with bronchitis, non-organic failure to thrive, and dehydration. Dr. Al-Dallal told Ms. C. that L.S. needed to be taken to a hospital for medical care and arranged for L.S. to be admitted to St. Anthony's Hospital immediately, but Ms. C. never took L.S. to the hospital. Subsequently, on July 16, 2005, Scott Peterson, an investigator with the Department of Child Protection, was assigned to investigate an allegation that L.S. was not receiving necessary medical care. He observed L.S. to be extremely dehydrated. He instructed Ms. C. to take L.S. to the hospital, but she did not do so until seven hours later, and only after he personally transported them to the hospital.

Based upon the above-stipulated facts, the trial court found L.S. and S.S. to be neglected because of an injurious environment and abused because of substantial risk of physical injury. The court also entered a finding that L.S. was neglected in that he did not receive necessary care.

The court then proceeded to a dispositional hearing at which it adjudged L.S. and S.S. wards of the court, found Ms. C. and Mr. S. unable to care for the children, and appointed the DCFS Guardianship Administrator as the children's guardian.

Over the next two years, the court held a series of permanency hearings for L.S. and S.S. to review their placement status, as is required under section 2-28 of the Juvenile Court Act (705 ILCS 405/2-28 (West 2010)) for children who have been made wards of the circuit court. At the first permanency hearing, on April 17, 2006, the court set a goal of having L.S. and S.S. return home in 12 months. That goal was maintained through the second permanency hearing on September 27, 2006.

The third permanency hearing was initially scheduled for March 7, 2007. However, that hearing was continued three times: first on the trial court's motion to May 17, 2007, then by agreement of the parties to August 7, 2007, then by the request of the parents to August 21, 2007. At that hearing, although the court maintained the goal of having the children return home within 12 months, it found that neither of the parents had made substantial progress toward that goal.

At the next permanency hearing on February 11, 2008, the court again found that neither of the parents had made substantial progress toward enabling the children to return home, despite the fact that they were still participating in DCFS service programs. Consequently, the trial court changed the goal for L.S. and S.S. to "substitute care pending court determination on termination of parental rights." See 705 ILCS 405/2-28(2)(C) (West 2010).

On December 29, 2008, the State filed motions to permanently terminate parental rights and appoint a guardian with power to consent to adoption for L.S. and S.S. The termination

motions alleged that Ms. C. was unfit pursuant to four of the unfitness grounds provided in section 1(D) of the Adoption Act: that she was unable to discharge her parental responsibilities because of mental impairment, illness, or retardation, and there was sufficient justification to believe that such inability would extend beyond a reasonable time (750 ILCS 50/1(D)(p) (West 2008)); that she failed to make reasonable efforts to correct the conditions that led to her children's removal, or failed to make reasonable progress toward the return of the children within a nine-month period (750 ILCS 50/1(D)(m) (West 2008)); that she failed to maintain a reasonable degree of interest, concern, or responsibility in the children's welfare (750 ILCS 50/1(D)(b) (West 2008)); and, with respect to L.S., that she engaged in continuous or repeated substantial neglect (750 ILCS 50/1(D)(d) (West 2008)). (The trial court would eventually find Ms. C. to be unfit based upon the first two of these grounds, namely, that Ms. C. was unable to discharge her parental responsibilities due to mental retardation and that she had failed to make reasonable progress toward the return of the children, but it did not find her unfit with respect to the other two grounds.)

The unfitness portion of the termination proceeding began on December 15, 2009, and was completed on June 29, 2010. The State called four witnesses, namely, clinical professional counselor Patricia Voloschin-Weiner, clinical therapist Eloisa Rosales, DCFS intact worker Gonzales, and clinical psychologist Dr. Harold Fuentes. All four had worked with Ms. C. in connection with the case of L.S. and S.S. The public guardian, in his capacity as guardian *ad litem*, called one witness, family case worker Yeni Jimenez, who had also worked with Ms. C. in connection with the case of L.S. and S.S. Ms. C. did not call any witnesses on her behalf or put

on any evidence.

The State's first witness, Voloschin-Weiner, was called as an expert in child and family therapy. Voloschin-Weiner stated that she was licensed as a clinical professional counselor and a social worker in Illinois. She was assigned to the instant case in October 2005 in the capacity of a therapist, and she worked with Ms. C. as her individual therapist. Her treatment goals for Ms. C. were the correction of domestic violence issues, the improvement of the circumstances that led to the removal of L.S. and S.S. from the home, improving parenting skills, reducing parenting stress, and "some issues of empowerment and assertiveness."

Voloschin-Weiner opined to a reasonable degree of psychological certainty that during the time she was assigned to the case, from October 2005 to February 2008, little or no progress was made. "[I]t seemed like for every step forward there were three steps backwards," she said. Voloschin-Weiner testified that one factor impeding a finding of progress was that she had difficulty assessing whether the parents were recounting events accurately to her. For instance, the parents disclosed to Voloschin-Weiner that a child had previously died in their care, but they could not agree on what had happened. By Ms. C.'s account, the infant died because Ms. C. had left the infant under a tree and the infant was bitten by a snake. However, by Mr. S.'s account, there was no snake bite; rather, Ms. C. had left the infant in a crib with bottles of spoiled milk, and the infant died of food poisoning. Similarly, Voloschin-Weiner testified that she was unable to determine whether domestic violence was occurring in the home, because Ms. C. originally reported that Mr. S. had pushed her, but she later stated on multiple occasions that Mr. S. had never touched her.

In April 2006, Voloschin-Weiner recommended that the parents be allowed to have unsupervised visitation with their children. These unsupervised visits continued for approximately four months, at which point such visits were suspended. Voloschin-Weiner stated that she recommended that unsupervised visits be ended because both of the parents expressed concerns that S.S. was not really their child but waited six weeks to address the issue. Ms. C. believed that S.S. had been switched because he cut his teeth earlier, cried more, and rolled differently than her other children. Subsequent DNA testing requested by the attorneys in the case showed that S.S. was indeed their child. Voloschin-Weiner also testified that unsupervised visitation was suspended because the parents were not transporting their children in car seats.

For the duration of her time with the case, Voloschin-Weiner never again recommended unsupervised visitation. She explained: "I believe mother was very, very well-intended, and I have no question that she loves her children nor [Mr. S.] for such a matter, but I don't believe it was supported by psychological tests. The mother does not have the cognitive capacity to be able to parent these children on her own." She further stated that Ms. C. had "significant cognitive delays" and was "unable to process information and learn from the environment."

The State next called Rosales, a clinical therapist and a licensed clinical social worker with a Master's degree in social work. Rosales was assigned as a parenting coach to the family from August 2007 until February 11, 2008. In that capacity, Rosales met with the family for an hour each week, conducting hands-on training with the children and modeling appropriate parenting techniques.

When Rosales first received the case, she said, the visits were "very chaotic," since the

parents did not have any activities planned and the children would simply run around. The parents made "significant progress" in establishing structure from August to November 2007; they would first give the children a snack and then engage them in games. However, Rosales stated, during this same time period, Ms. C. did not make progress in learning how to discipline the children. Rosales said that she had a very difficult time identifying when it was appropriate to give a child a time-out and enforcing those time-outs. As of November 2007, Rosales did not recommend that the parents be allowed unsupervised visitation. "I didn't feel that there was a sense of control in that the mother had demonstrated she can keep the children safe," she explained. She also stated that at times during their weekly parenting sessions, Ms. C. seemed overwhelmed and frustrated, "as if she had kind of given up with the kid."

The State then called Gonzalez, a DCFS intact worker, to testify in support of its allegation that Ms. C. was unfit under ground (d) because she had substantially neglected L.S. (As noted, the trial court did not find Ms. C. unfit on this basis.) Gonzalez stated that she visited the family weekly from September 2003 to July 2005 to monitor the safety and well-being of the children and refer the family for services, and she was concerned for the children's safety due to their living conditions. In March 2005, she observed that automobile parts were strewn around the home. In June 2005, she observed a propane tank in the home. Three-month-old L.S. was sick, and Ms. C. told Gonzalez that, although she had taken him to a clinic, she did not know how to administer the medication prescribed for him. The following month, Ms. C. admitted that she had taken L.S. to a massage therapist to cure him.

The State's final witness was Dr. Fuentes, a licensed clinical psychologist, who was

called as an expert in the field of clinical psychology. Dr. Fuentes stated that he was assigned to the case in August 2007 to provide information to the court regarding the ability of Ms. C. and Mr. S to adequately care, protect, and provide for their children. In particular, he said, he was asked to analyze the risk factors and "protective factors" involved with regard to Ms. C.'s cognitive limitations, the parents' "questionable progress in services," and various concerns that arose regarding events that occurred during unsupervised visitation sessions. As part of the assessment process, Dr. Fuentes conducted a review of available records, including DCFS records as well as progress reports from service providers. He conducted clinical interviews with the parents, he observed the parents interacting with their children, and he conducted interviews with relevant collateral contacts, such as case workers.

Dr. Fuentes opined that Ms. C. "seemed to lack the capacity to provide a safe and consistent and nurturing environment for her children and that it was unlikely that she may make the gains necessary to achieve reunification of a return home goal." He described a number of risk factors associated with Ms. C. First, he said, due to her cognitive limitations, "[i]t seemed she had a very limited understanding of the demands and responsibilities of a parent." He explained that when asked about parental responsibilities, she described basic needs – feeding the children, bathing them, cleaning them – but was not able to comment on other responsibilities.

Second, he said that she seemed to have difficulty retaining new information, which impacted her ability to follow through on parenting strategies. For instance, he said, she could not describe what she would do in the event of an emergency and did not know that the emergency number was 911. When Dr. Fuentes informed her that it was 911, she was unable to

recall the information minutes later.

Third, he said, she "demonstrated an inability to execute basic strategies of discipline." For instance, he observed her holding her two-year-old son on the couch for 15 minutes as a "time-out" without explaining to him why he was there. He also observed that in order to prevent her four-year-old son from playing near a foosball table, she held on to his hand for a full 20 minutes while the child was squirming to get free, apparently without offering him any diversion.

Fourth, he said that Ms. C. displayed a lack of insight into her own limitations. Despite the multiple reports expressing concern for her parenting, Dr. Fuentes said, "[s]he was firm that she didn't have any real deficits, that she could parent these children completely independently, that she didn't need any assistance." Finally, he noted that Ms. C. had a history of inconsistent reporting and was not always truthful in her statements to service providers, which raised concerns about the ability of service providers to provide adequate assistance or properly assess risk factors associated with her.

However, Dr. Fuentes cited as a "protective factor" that Ms. C. appeared to have genuine love and care for her children and was committed to regaining custody of them.

In May 2009, Dr. Fuentes was asked to conduct another evaluation of Ms. C. in order to assist the court in determining whether her parental rights should be terminated under ground (p) of section 1(D) of the Adoption Act (inability to discharge parental responsibilities due to mental disability). In particular, Dr. Fuentes was asked to assess whether Ms. C. had a mental disorder and, if so, how that would affect her ability to discharge her parental duties. To perform this

evaluation, Dr. Fuentes again took into account Ms. C.'s records, clinical interviews with Ms. C., direct observations of her with the children, and collateral interviews with service providers.

Dr. Fuentes testified that it was his clinical opinion that Ms. C. met the criteria for mild mental retardation, based upon a review of her records. He stated that tests showed that she had an IQ of 56 and adaptive functioning skills equivalent to those of a six- or seven-year-old. He also stated that she had particularly profound deficits in communication and social interactions.

He opined that these cognitive deficits impaired Ms. C.'s parenting in several ways. First, because of her limited ability to retain information, she found it difficult to follow through on recommendations from service providers, school officials, or doctors. In particular, he said, she was unable to learn how to apply effective discipline strategies. Second, she was unable to determine the developmental needs of her children at their different ages. Although she would reprimand them when they misbehaved, and she would feed them, Dr. Fuentes said that she did not engage in "cognitive stimulating activities" with them. He noted that she herself had difficulty recalling numbers and did not know her current address.

Dr. Fuentes further opined, to a reasonable degree of psychological certainty, that her condition was chronic and would continue indefinitely. He concluded that it seemed unlikely that Ms. C. would be able to independently provide a safe and nurturing environment for her children. After Dr. Fuentes' testimony, the State rested.

The sole witness called by the guardian *ad litem* was Yeni Jimenez, a family case worker from Association House who was assigned to Ms. C.'s case from June 2, 2008, to May 11, 2009. From June 2, 2008 to December 30, 2008, she supervised Ms. C. and Mr. S.'s visitation with the

children. She observed that both parents were "very disengaged" and had difficulty in stopping the children from acting in inappropriate ways.

In September 2008, both L.S. and his older brother Fernando were diagnosed with muscular dystrophy, a debilitating genetic disease. Shortly after the diagnosis was made, Jimenez met with the parents to explain the diagnosis. She testified that both parents showed no emotion at the news. Subsequently, Jimenez offered to set up a meeting between the parents and a geneticist to further explain the diagnosis, but Ms. C. showed no interest.

At the conclusion of the unfitness hearing, the court ruled that the State had shown by clear and convincing evidence that Ms. C. was unfit under ground (p) of section 1(D) of the Adoption Act, based on her inability to discharge parental duties due to mental retardation, and under ground (m) of section 1(D) of the Adoption Act, based on her failure to make reasonable progress toward the return of the children. With regard to ground (p), the court stated:

> "The situation boils down to the fact that the mother was incapable of caring for these children by herself. She demonstrated that over and over again from the time of the in-home assistance that she received through the various agencies through basically today, and she's been diagnosed. The reason why she couldn't care for them is based upon her diagnosis of cognitive deficiencies that prevent her from caring for the children alone and that her mental health diagnosis is mild mental retardation. *** Regardless of the help that the agency has provided, it is also clear that she's not going to be able to care for these children any time soon because there is not any therapy that can make her cognitive deficiencies go away.

> Therefore, and based upon the testimony, the expert testimony of her mental health condition and the fact that that opinion is uncontradicted and basically uncontroverted by the evidence certainly, the State has proven by clear and convincing evidence that the mother is unfit and that she's unable to discharge her parental responsibilities ***."

With regard to ground (m), the court stated that Ms. C.'s failure to make progress was due to her cognitive deficiencies, but that those cognitive deficiencies were not an adequate defense: "[T]he law is quite clear that it's an objective standard as to whether or not a parent has made progress during the time periods specified, and clearly she has not made any progress."

However, the court stated that, "given her mental condition," it did not find that Ms. C. was unfit under ground (b), failure to maintain a reasonable degree of interest, concern, or responsibility in the children's welfare, or ground (d), continuous or repeated substantial neglect.

After rendering its finding of unfitness, on that same day, the court proceeded to hold a hearing on whether it was in the best interest of L.S. and S.S. to appoint a guardian with the right to consent to adoption. At this best interest hearing, the court heard testimony from Margarita R., the foster parent for L.S. and S.S. Ms. R. testified that she and her husband had been the foster parents for five-year-old L.S. and four-year-old S.S. for nearly two years. When asked to describe how L.S. and S.S. had been integrated into their family, Ms. R. testified, "They are our life. They are our family. We love them to death. Our daughter loves them to death. My husband and I can't imagine our life without them." She stated that she wished to adopt them "without a doubt," as did her husband.

Ms. R. testified that shortly after L.S. moved into her home, he was diagnosed with Duchenne muscular dystrophy. She described the special services that L.S. needed as a result of his disability, stating that she took him for swimming lessons to help him with his legs and took him to Rush Hospital to see various specialists. She stated that she planned to do "whatever the doctor asks of us" to continue to meet L.S.'s special needs, "and if he ask [*sic*] us to stand on our head, that's what we'll do because we truly love those boys."

The State's other witness at the best interest hearing was Fernando Resendiz, the current caseworker for L.S. and S.S. Resendiz testified that L.S. and S.S.'s foster home had always been safe and appropriate and that the bond between the children and Mr. and Ms. R. was "very close." He stated that, if the court were to find that parental rights should be terminated, he would recommend a goal of adoption for L.S. and S.S.

After hearing this testimony, the trial court found that it was in the best interest, health, and safety of L.S. and S.S. to terminate the rights of their parents. It entered an order terminating Ms. C.'s rights and appointed a guardian with the right to consent to their adoptions. The court additionally entered a permanency goal of adoption for the two children.

It is from this ruling that Ms. C. now appeals.

II. ANALYSIS

On appeal, Ms. C. raises three contentions of error. First, she states that the permanency hearing on August 21, 2007, was held over ten months after the previous permanency hearing, in violation of the requirement under the Juvenile Court Act that permanency hearings be held every six months. Thus, she contends, that hearing and all subsequent proceedings, including the

termination proceeding, are void. Second, she contends that the trial court's finding of unfitness was against the manifest weight of the evidence. Third, she contends that, in rendering its finding of unfitness, the trial court improperly considered the likelihood that the children would be placed for adoption. We consider these arguments in turn.

A. Untimeliness of Third Permanency Hearing

It is undisputed in the present case that the third permanency hearing for L.S. and S.S. was held on August 21, 2007, over ten months from the previous permanency hearing on September 27, 2006. Ms. C. contends that this permanency hearing was held in violation of the requirement under section 2-28 of the Juvenile Court Act that permanency hearings be held every six months. She further contends that such violation of the Juvenile Court Act constitutes a violation of her due process rights which therefore renders the third permanency hearing and all subsequent proceedings in this cause void *ab initio*. She therefore requests that we declare those proceedings to be void and "that the cause be remanded for proceedings consistent with a goal of return home to Respondent-mother for both minors." The State and public guardian argue that we lack jurisdiction to consider this claim and that, in any event, Ms. C. has not shown a due process violation, insofar as she does not contend that the delay in the third permanency hearing prejudiced her or affected her efforts at reunification with her children in any way. As shall be discussed below, we find possible merit in the jurisdictional argument. However, as shall be further discussed, even if the jurisdictional argument were to fail, Ms. C.'s due process argument would, in any event, fail on the merits.

Section 2-28 of the Juvenile Court Act requires that the court make efforts to establish

timely, permanent living arrangements for a child that has been made a ward of the circuit court. 705 ILCS 405/2-28 (West 2010); see *In re Curtis B.*, 203 Ill. 2d 53, 55 (2003). To this end, section 2-28 requires that the court hold "permanency hearings" on a regular basis to review the child's placement status. Pertinent to the instant action is the provision regarding permanency hearings subsequent to the initial hearing:

> "Subsequent permanency hearings shall be held every 6 months or more frequently if necessary in the court's determination following the initial permanency hearing ***. The permanency hearings must occur within the time frames set forth in this subsection and may not be delayed in anticipation of a report from any source or due to the agency's failure to timely file its written report ***." 705 ILCS 405/2-28(2) (West 2010).

However, the Juvenile Court Act does not specify the consequences for failure to comply with the six-month requirement, nor does it explicitly provide any remedy for parents where the six-month requirement has not been met.

Ms. C. contends that the trial court violated the plain language of this provision by holding the third permanency hearing more than four months after the deadline and that she was thereby deprived of due process. At the outset, the State and the public guardian contend that we lack jurisdiction to consider this contention, because the permanency planning issue that she raises is not properly addressed in an appeal from an order terminating parental rights. They argue that, if she sought to challenge the validity of the third permanency order, the proper way for her to raise such a challenge would have been for her to petition for leave to appeal that order under Supreme Court Rule 306, and, having failed to do that, she may not do so now in the

instant appeal.

In support, they cite *In re Jordan V.*, 347 Ill. App. 3d 1057 (2004). In *Jordan V.*, the respondent father appealed the trial court's decision to terminate his parental rights. He contended that the trial court had erred by entering a permanency order changing the permanency goal to "substitute care pending court determination on termination of parental rights," an error which, he argued, constituted a violation of his due process rights. *Jordan V.*, 347 Ill. App. 3d at 1066. The *Jordan V.* court did not consider this issue on the merits, stating, "At this point in the proceedings, the only order subject to review is the court's finding on the termination petition." *Jordan V.*, 347 Ill. App. 3d at 1066. Thus, the court held that mere "preliminary determinations" such as the permanency order challenged by the respondent father were not at issue on appeal. *Jordan V.*, 347 Ill. App. 3d at 1066. It further explained:

> "We acknowledge that consideration of such preliminary orders should be considered on review to the extent that those orders adversely affected respondent's ability to make reasonable progress, if such evidence was considered by the trial court during the termination proceedings. However, beyond any effect that such interlocutory orders may have had on the ultimate issue before us – namely, whether the trial court erred by determining that the State proved its termination petition by clear and convincing evidence – they are irrelevant and not justiciable." *Jordan V.*, 347 Ill. App. 3d at 1066-67.

The *Jordan V.* court noted that its holding did not leave respondents without remedy for an improperly entered permanency order, since, pursuant to the decision in *Curtis B.*, 203 Ill. 2d

at 61, such orders were appealable on a discretionary basis under Supreme Court Rule 306(a)(5). *Jordan V.*, 347 Ill. App. 3d at 1066-67. That rule provides, in relevant part:

> "(a) Orders Appealable by Petition. A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:
>
> * * *
>
> (5) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules[.]" 166 Ill.2d R. 306(a)(5).

See *Curtis B.*, 203 Ill. 2d at 61 (permanency orders "plainly fall" within the language of this rule).

Like the respondent in *Jordan V.*, Ms. C. appeals from an order terminating her parental rights, seeking to challenge the validity of a previously issued permanency order. Also like the respondent in *Jordan V.*, Ms. C. makes no allegation that the entry of that permanency order adversely affected her ability to make reasonable progress or otherwise had any effect on the question of whether the trial court erred in determining that the State proved its termination petition by clear and convincing evidence. That is, she does not purport to argue or demonstrate that the entry of that permanency order caused her any substantive prejudice on the merits with regard to the court's subsequent finding of unfitness which is the subject of the instant appeal.

Ms. C. makes no effort to distinguish *Jordan V.* The only case that she cites with regard to this jurisdictional issue is the case of *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999), in which respondent filed an interlocutory appeal under Rule 306 challenging the trial court's denial of her

motion to continue a permanency hearing. The court found that an order denying a continuance was not appealable under Rule 306, because such an order did not fall under any of the categories of interlocutory orders listed in Rule 306(a) from which a party could petition for leave to appeal. *M.R.*, 305 Ill. App. 3d at 1086. Ms. C. argues that, under *M.R.*, she would not have been able to challenge the permanency order at issue via a Rule 306 petition for leave to appeal. We disagree. Ms. C., unlike the *M.R.* respondent, is not challenging a denial of a motion for continuance. Indeed, the record reflects that the trial court granted a continuance of the permanency hearing at issue at the request of the parents, which contributed to the untimeliness of the hearing. Rather, Ms. C. is challenging the validity of the permanency order, contending that the order cannot stand because the hearing failed to comply with the timing requirements contained in section 2-28 of the Juvenile Court Act. The permanency order clearly qualifies as an "interlocutory order[] affecting the care and custody of unemancipated minors," as described in Rule 306(a)(5). 166 Ill.2d R. 306(a)(5); see *Curtis B.*, 203 Ill. 2d at 61 (permanency orders fall within the language of Rule 306(a)(5) as interlocutory orders from which discretionary appeals may be taken). Because the permanency order challenged by Ms. C. in this appeal, unlike the order denying a continuance to the respondent in *M.R.*, falls within one of the enumerated categories of interlocutory orders from which discretionary appeals can be taken pursuant to Rule 306, *M.R.* is inapposite. Under the plain language of Rule 306(a)(5) and our supreme court's decision in *Curtis B.*, Ms. C. would, in fact, have been able to petition for leave to appeal the third permanency order as an interlocutory order.

Moreover, even if we would find petitioner's jurisdictional argument to be flawed and the

reasoning in *Jordan V.* to be inapplicable, in that the validity of the termination proceeding would be contingent upon the validity of the prior permanency hearings, such that any due process violation in the latter would necessarily have an impact upon the former, our result would remain unchanged, since Ms. C.'s due process claim fails on its substantive merits.

Due process is not a technical concept divorced from time, place, or circumstances; rather, it is a flexible concept, calling for such procedural protections as a particular situation demands. *Atwood v. Warner Elec. Brake and Clutch Co., Inc.*, 239 Ill. App. 3d 81, 89 (1992). In the seminal due process case, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the United States Supreme Court laid out a three-part test for assessing the demands of due process with regard to procedural protections:

> "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

See *In re Andrea F.*, 208 Ill. 2d 148 (2003) (evaluating challenged procedure at parental rights termination proceeding under the *Mathews* factors); *In re M.H.*, 196 Ill.2d 356, 363 (2001) (same).

In the present case, as shall be developed below, although significant private interests are

at stake in permanency hearings, and a delay in permanency hearings could potentially lead to an erroneous deprivation of those interests, Ms. C.'s proposed solution – namely, invalidating untimely permanency orders and any orders handed down in subsequent proceedings – would not serve to safeguard those interests, but, in fact, could very well be detrimental to those interests in many cases. Therefore, we find that under *Mathews*, due process does not require invalidation of all subsequent proceedings where the six-month requirement for permanency hearings under section 2-28 of the Juvenile Court Act has been violated.

It is undeniable that permanency hearings implicate important private interests. First, a parent has an interest in custody of her children. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("the interest of parents in the care, custody, and control of their children *** is perhaps the oldest of the fundamental liberty interests recognized by this Court"); *In re O.S.*, 364 Ill. App. 3d 628, 637 (2006) (parents have a constitutional right to the custody of their children); *In re F.S.*, 322 Ill. App. 3d 486, 489 (2001) (parental rights are "fundamental and as ancient as mankind"); but see also *In re S.W.*, 315 Ill. App. 3d 1153, 1156 (2000) ("a parent's right or interest in his child does not amount to an absolute vested right"). Second, a child has an interest in having a loving, stable, and safe home environment (*In re Bernice B.*, 352 Ill. App. 3d 167, 176 (2004)), as well as an interest in having living arrangements that are permanent (*Curtis B.*, 203 Ill. 2d at 55 (section 2-28 of the Juvenile Court Act reflects concern that lack of permanency in a child's life can be harmful to the child's development)).

However, Ms. C. makes no attempt to address the second *Mathews* factor, namely, the risk that she might have been erroneously deprived of her parental rights as a result of the

untimeliness of the third permanency hearing. She presents no theory as to how the delay that she complains of had any impact on the termination of her parental rights. She does not, for instance, allege that if the third permanency hearing had been held in March 2007 instead of August 2007, it could have enhanced her capacity to discharge her parental responsibilities and enabled her to make reasonable progress toward the return of the children, such that she would not subsequently have been found unfit pursuant to section 1(D) of the Adoption Act. Nor would we find support for any such allegation in the record. Indeed, it would appear from the record that, if anything, the four-month delay would have been helpful for Ms. C., in that it gave her additional time to engage in reunification services provided by DCFS and make progress toward the return of the children. Consequently, we cannot say that Ms. C.'s due process rights have been violated. See *Andrea F.*, 208 Ill. 2d at 165-66 (in appeal from order terminating respondent's parental rights, holding that respondent's due process rights were not violated where the risk that respondent was deprived of his parental interests by the challenged procedure was "minimal"); *Bernice B.*, 352 Ill. App. 3d at 177-78 (absence of mental fitness hearing for respondent parent was not a due process violation where such absence "offered little or no risk that respondent's rights were erroneously terminated").

Moreover, even if we were to consider the effect of Ms. C.'s requested relief on proceedings for termination of parental rights generally, the relief sought by Ms. C. in this case would not reduce the risk of erroneous deprivation of such rights. As noted, Ms. C.'s desired relief consists of two parts. First, she would have us declare that the order issuing from the untimely permanency hearing, as well as all subsequent orders in this cause, are void. Second,

she would have us remand for additional proceedings. We observe that this requested relief is internally incoherent, in that she contends that all proceedings past the third permanency hearing are invalid yet also seeks additional proceedings which would necessarily be past the third permanency hearing. More overridingly, invalidating all orders which result from permanency hearings that are untimely under the Juvenile Court Act and requiring that new permanency hearings be held in their place would safeguard neither parental interests nor the interests of children in safety, well-being, and permanency. Indeed, to the extent that such a purported safeguard would delay the ultimate disposition of a child custody case by requiring that proceedings be redone, it would, in fact, be detrimental to the child's interest in permanency as well as, potentially, the parent's interest in regaining custody of her child. Such a solution would therefore have no value in preventing the erroneous deprivation of private interests while imposing additional fiscal and administrative burdens upon the State.

Accordingly, despite the admittedly weighty private interests at stake in this case, we cannot agree with Ms. C. that due process requires the invalidation of the untimely permanency order and all subsequent orders in this cause, insofar as, under *Mathews* and *Andrea F.*, such invalidation would not reduce the risk of an erroneous deprivation of private interests.

B. Manifest Weight of the Evidence

Ms. C. next claims that the trial court's finding of unfitness was against the manifest weight of the evidence.

In a proceeding for involuntary termination of parental rights, the State bears the burden of proving by clear and convincing evidence that a parent is unfit under any one of the grounds

listed in section 1(D) of the Adoption Act. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002); *In re D.D.*, 196 Ill. 2d 405, 417 (2001). Any single ground, if properly proven, will suffice for a finding of unfitness. *D.F.*, 201 Ill. 2d at 495. The trial court's finding that a parent is unfit must be given great deference, because the trial court is in the best position to view and evaluate the parties and their testimony. *D.F.*, 201 Ill. 2d at 498-99; *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Thus, the trial court's finding of unfitness cannot be disturbed on appeal unless it is against the manifest weight of the evidence. *Daphnie E.*, 368 Ill. App. 3d 1064. A trial court's decision regarding parental fitness is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *D.D.*, 196 Ill. 2d 405. The reviewing court may not substitute its judgment for that of the trial court regarding the credibility of witnesses, the proper weight to be accorded the evidence, or the inferences to be drawn. *D.F.*, 201 Ill. 2d at 499; see *Zaderaka v. Illinois Human Rights Com'n*, 131 Ill. 2d 172, 180 (1989) (reviewing court may not reweigh evidence under the manifest weight of the evidence standard).

As mentioned above, the trial court found Ms. C. to be unfit by clear and convincing evidence under grounds (m) and (p) of section 1(D) of the Adoption Act, which states, in relevant part:

"The grounds of unfitness are any one or more of the following ***:

***

(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication

> of neglected or abused minor *** or (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor ***.
>
> ***
>
> (p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation *** and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period." 750 ILCS 50/1(D) (West 2010).

Ms. C. challenges the trial court's findings of unfitness on both of these grounds. We consider them in turn.

1. Failure to Make Reasonable Progress Under Ground (m)

Ms. C. first contends that the trial court erred in finding that she failed to make reasonable progress toward the return of her children. First, she argues that progress is demonstrated by the fact that she completed various service programs, including parenting classes and therapy. Second, she argues that testimony at trial indicated that she did, in fact, make progress toward reunification in ways that shall be detailed below.

Under the language of subsection (m), lack of "reasonable efforts" and lack of "reasonable progress" are two distinct and independent grounds for finding a parent unfit. *In re C.N.*, 196 Ill. 2d 181, 210-11 (2001); *Daphnie E.*, 368 Ill. App. 3d at 1066. Reasonable efforts are judged subjectively, based upon the amount of effort that is reasonable for the particular

parent. *Daphnie E.*, 368 Ill. App. 3d at 1066-67. By contrast, reasonable progress is judged objectively and is defined as "demonstrable movement toward the goal of reunification." *C.N.*, 196 Ill. 2d at 211; see *Daphnie E.*, 368 Ill. App. 3d at 1067; *In the Interest of M.C.*, 201 Ill. App. 3d 792, 798 (1990). Reasonable progress is present where "the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Daphnie E.*, 368 Ill. App. 3d at 1067; see *In the Interest of L.L.S.*, 218 Ill. App. 3d 444, 461 (1991) (reasonable progress exists where "[t]he court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child"). Thus, "glacial progress" or progress that "must be measured with a micrometer" is insufficient to constitute reasonable progress. *L.L.S.*, 218 Ill. App. 3d at 461.

In this case, given the evidence presented at the unfitness hearing, we cannot say that the trial court erred in finding that Ms. C. had not made demonstrable movement toward reunification such that L.S. and S.S. could be returned to her custody in the near future. Voloschin-Weiner, a licensed clinical professional counselor and a social worker who worked with Ms. C. in the capacity of a therapist from October 2005 to February 2008, opined to a reasonable degree of psychological certainty that no progress was made during her time with the case. She explained that, although Ms. C. was well-intentioned, she lacked the cognitive capacity to parent her children on her own. For this reason, she said, from the time that unsupervised visitation was suspended in August or September of 2006 onward, she never again recommended that the parents be allowed unsupervised visitation. Similarly, Rosales, a clinical

therapist and licensed clinical social worker who worked as a parenting coach for the family from August 2007 until February 11, 2008, stated that as of November 2007 she did not recommend that Ms. C. be allowed unsupervised visitation, explaining, "I didn't feel that there was a sense of control in that the mother had demonstrated she can keep the children safe." This testimony is consistent with the testimony of Dr. Fuentes that Ms. C. "seemed to lack the capacity to provide a safe and consistent and nurturing environment for her children" and was unlikely to make sufficient improvements that reunification would be possible. In light of this testimony, we are entirely unable to say that the trial court's finding that Ms. C. failed to make reasonable progress toward reunification was against the manifest weight of the evidence.

Contrary to Ms. C.'s implication, the fact that she complied with various DCFS services is not, in and of itself, sufficient to show reasonable progress. Although compliance with service plans may be relevant, our supreme court has rejected a mechanical application of a rule that looks only to compliance with such plans in determining whether reasonable progress has been made under the Adoption Act. *C.N.*, 196 Ill. 2d at 215. Rather, "the overall focus in evaluating a parent's progress toward the return of the child remains, at all times, on the fitness of the parent in relation to the needs of the child." *C.N.*, 196 Ill. 2d at 215. As detailed above, there was ample testimony regarding Ms. C.'s lack of improvement in this regard.

Ms. C. nevertheless contends that there was testimony showing some improvement on her part. First, she argues, although domestic violence was one of the factors bringing her family into the DCFS system, Voloschin-Weiner, Rosales, and Gonzalez all testified that they did not observe domestic violence involving Ms. C. while she was in services. She states that this is

indicative of progress. However, Voloschin-Weiner also testified that it was difficult to be certain about whether Ms. C. was accurately reporting such matters; for instance, she said that Ms. C. reported being hit by Mr. S., but she later retracted her story and said that he never touched her. More overridingly, curing a domestic violence problem would not, by itself, ensure that Ms. C. would in the near future have "*fully complied* with the directives previously given to the parent in order to regain custody of the child" (*L.L.S.*, 218 Ill. App. 3d at 461), insofar as it would not resolve the concern that Ms. C. lacked the necessary parenting skills to ensure the safety and well-being of her children.

Second, Ms. C. points out that Rosales testified that she had made progress in structuring her supervised visits with her children, in that she would give them something to eat and then attempt to engage them in games. However, as noted, Rosales also noted Ms. C.'s inability to control the children and stated that she did not recommend that Ms. C. be allowed to have unsupervised visits with them.

Finally, Ms. C. points to reports ranging from 2007 to 2009, admitted into evidence, stating that she encouraged her children to read and color and "appeared to maintain a safe environment for the children." Yet to the extent that such testimony was at odds with the trial testimony of Rosales and Dr. Fuentes that Ms. C. lacked the capacity to keep her children safe, it was for the trial court to make a credibility determination, one which we cannot overturn on appeal. *D.F.*, 201 Ill. 2d at 499 (under the manifest weight of the evidence standard, reviewing court may not substitute its judgment for that of the trial court regarding the credibility of witnesses or the weight to be accorded their testimony). Accordingly, we cannot say that the trial

court's finding of unfitness under ground (m) was against the manifest weight of the evidence.

2. Inability to Discharge Parental Responsibilities Due to Mental Impairment Under Ground (p)

Moreover, the trial court's finding as to ground (p), inability to discharge parental responsibilities due to mental impairment, provides an independent basis for affirmance of its finding of unfitness. See *D.F.*, 201 Ill. 2d at 495 (a finding of unfitness may be premised upon any one of the grounds listed in section 1(D)). Ms. C. argues that the finding of the trial court in this regard was against the manifest weight of the evidence for two reasons: first, Dr. Fuentes was not qualified to render opinions upon which to base a ground (p) finding, since he is merely a clinical psychologist, rather than a medical doctor or board-certified physician, and second, the diagnosis of another clinical psychologist, Dr. Stiava, contradicted Dr. Fuentes' conclusions.

Ms. C.'s contention that Dr. Fuentes was unqualified to offer opinions on her mental impairment is without merit. Subsection (p) provides that the finding of mental impairment, illness, or retardation must be "supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist." 750 ILCS 50/1(D)(p) (West 2010). Dr. Fuentes was, in fact, a clinical psychologist. He testified that he held a doctor of psychology from the Illinois School of Professional Psychology and was licensed to practice in Illinois. Accordingly, under the plain language of the Adoption Act, and contrary to Ms. C.'s contention, Dr. Fuentes was competent to offer opinions regarding Ms. C.'s mental condition.

Ms. C. next contends that, even if Dr. Fuentes was qualified to render the opinions he gave at the termination hearing, his testimony was insufficient for a ground (p) finding, because it was contradicted by the diagnosis of another clinical psychologist, Dr. Stiava. Although Dr.

Stiava did not testify at the termination hearing, Ms. C. cites to a report that he compiled that was filed with the court in this cause in September 2006. In this report, Dr. Stiava opined that Ms. C.'s cognitive deficits were not so severe that she could not benefit from services and that she "has been observed to meet at least the minimum parenting skills for ordinary interaction with her children." Dr. Stiava additionally recommended that Ms. C. continue to receive services, stating that "there is no indication contrary to a return home goal apparent via diagnostic interview and testing."

However, Dr. Stiava did not testify at the termination hearing, nor was his report admitted into evidence at the termination hearing. Moreover, even if Dr. Stiava's opinion could properly be considered, the credibility of his opinions versus the credibility of Dr. Fuentes' opinions would have been a matter for the trial court to decide. It is well established that, when reviewing a decision of the trial court under the manifest weight of the evidence standard, we may not substitute our judgment for that of the trial court regarding the credibility of witnesses, the proper weight to be accorded the evidence, or the inferences to be drawn from that evidence. *D.F.*, 201 Ill. 2d at 499. In effect, Ms. C. is arguing that we should substitute our judgment for that of the trial court as to whether the conclusions of Dr. Stiava ought to be given greater weight than those of Dr. Fuentes, which we may not do.

On the contrary, given the evidence presented at the unfitness hearing as to Ms. C.'s mental disability, we cannot say that the trial court erred in finding her unfit under ground (p). Based upon examinations of Ms. C. in 2007 and 2009, Dr. Fuentes opined, to a reasonable degree of psychological certainty, that Ms. C. met the criteria for mild mental retardation, with an

IQ of 56 and adaptive functioning skills equivalent to those of a six- or seven-year-old, and he further opined that her condition would continue indefinitely. He described several risk factors associated with her, stating that she had little understanding of the demands and responsibilities of a parent; she had difficulty retaining new information, such as the fact that 911 was the number to call in an emergency; she was unable to execute basic strategies of discipline; she failed to understand her own cognitive limitations; and she had a history of inconsistent and potentially untruthful reporting to service providers, thus limiting their ability to provide her with assistance. He therefore concluded that she "seemed to lack the capacity to provide a safe and consistent and nurturing environment for her children and that it was unlikely that she may make the gains necessary to achieve reunification of a return home goal."

Dr. Fuentes' testimony was corroborated by the testimony of Voloschin-Weiner, a licensed clinical professional counselor and social worker who had been Ms. C.'s therapist. Voloschin-Weiner stated that Ms. C. had "significant cognitive delays" and lacked the ability to process information and learn from her environment. She concluded, "The mother does not have the cognitive capacity to be able to parent these children on her own."

Thus, there was ample support for the trial court's finding that Ms. C. was unfit under ground (p). At the very least, we cannot say that an opposite conclusion is clearly apparent, as is required for reversal under the manifest weight of the evidence standard. *D.D.*, 196 Ill. 2d 405.

C. Whether the Trial Court Improperly Considered the Likelihood of Adoption

Ms. C. finally contends that the trial court's finding of unfitness must be reversed because, in rendering that finding, the trial court improperly considered the likelihood that the

children would be adopted, in contravention of the rule that only after a parent has been found unfit may the court consider the child's best interests, including the likelihood of adoption. *In re A.S.B.*, 381 Ill. App. 3d 220 (2008).

However, Ms. C. does not cite to any testimony or statement of the court at the unfitness hearing to support her conclusion that the court improperly considered the possibility of adoption at that hearing. Rather, she cites the permanency order entered on November 17, 2008, where the court selected the goal of "substitute care pending court determination on termination of parental rights," stating that the placement of the children was "preadoptive." Yet Ms. C. does not provide any evidence, nor does our review of the record disclose any indication, that this statement by the court influenced the court's later ruling at the permanency hearing. On the contrary, the court's finding of unfitness as issued from the bench made no reference to the children's chances for adoption. Rather, the court made clear that its decision was premised upon the evidence of Ms. C.'s statutory unfitness under grounds (m) and (p) of the Adoption Act. With regard to ground (p), inability to discharge parental responsibilities due to mental retardation, the court explicitly issued a finding as follows:

> "The reason why she couldn't care for [L.S. and S.S.] is based upon her diagnosis of cognitive deficiencies that prevent her from caring for the children alone and that her mental health diagnosis is mild mental retardation. *** Regardless of the help that the agency has provided, it is also clear that she's not going to be able to care for these children any time soon because there is not any therapy that can make her cognitive deficiencies go away."

The court further found, with regard to ground (m), that due to her cognitive deficiencies, Ms. C. had failed to make reasonable progress toward the return of the children under an objective standard. It was upon these statutory factors that the court's ruling rested. Accordingly, we are unable to find merit in Ms. C.'s argument that the court improperly considered the likelihood of adoption at the unfitness hearing.

For the foregoing reasons, the judgment of the trial court is affirmed.

Affirmed.