SIXTH DIVISION
MAY 6, 2011

Nos. 1-10-2109, 1-10-2110, 1-10-3080 cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In the Interest of: YULIETTE S., VICTOR C., and ALEXEY C., Minors.	)	Appeal from the Circuit Court of Cook County, Child Protection Division
(The People of the State of Illinois, Petitioner-Appellee,	)	No. 04 JA 1563 04 JA 1565
v.	)	04 JA 1564
Zulay C., Respondent-Appellant.)	)	Honorable Maxwell Griffin, Jr. Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Presiding Justice Garcia and Justice McBride concurred in the judgment.

ORDER

Held: Where the record demonstrated that respondent abused her children, the juvenile court's finding that respondent was unfit and its determination that it was in the minors' best interest to terminate respondent's parental rights were not against the manifest weight of the evidence.

Respondent Zulay C. appeals from the juvenile court's decision to terminate her parental rights. She argues that both the finding that she was unfit and the finding that it was in the best interests of her children to terminate her parental rights are against the manifest weight of the evidence. We affirm.

BACKGROUND

Respondent is the mother of Yuliette S., Victor C., and Alexey C., the children at the center of the issues surrounding this appeal (collectively, the children). On or about December 15, 2004, the three children were taken to the emergency room at St. Elizabeth Hospital. 8-year-old Yuliette was observed to have bruises on both thighs and her left arm; she stated that respondent had caused the marks with a belt buckle. 6-year-old Alexey was found to have old and new "loop marks," a bruised and swollen earlobe, and a hematoma on the right side of his head. Alexey stated that respondent hit him on the head with a sticklike object and periodically had hit him with a belt. 5-year-old Victor was observed to have a hematoma on his head and a bruise on his shoulder. The physicians at the hospital found that the three children were victims of child abuse. Respondent admitted to hitting the children with a belt and admitted to hitting Alexey on the head with a broomstick.

On December 17, 2004, the State filed petitions for the adjudication of wardship for the three children and filed motions for temporary custody. The petitions alleged that the children were abused by the respondent, who created a substantial risk of physical injury to them and that the respondent inflicted excessive corporal punishment. On the same day, the juvenile court entered orders removing the children from respondent and granting temporary custody to the Illinois Department of Children and Family Services (DCFS) Guardianship Administrator with the right to place the minors.

On December 21, 2004, the parties stipulated only for the purposes of the temporary custody hearing that DCP investigator Richard Echevarria would testify to the following facts:

that Victor S.[1] is the father of all three children and had not had custody of the children during any relevant time; respondent is their mother and is the custodial parent. At the time of the stipulation, respondent was incarcerated in Cook County jail. On or about December 15, 2004, all three children were taken to the St. Elizabeth Hospital emergency room, where the children were found to be victims of child abuse. That respondent admitted hitting all three children with a belt, striking Victor on the head with a broomstick, and striking Alexey on the head with a broomstick "because he touched Yuliette's breast." Additionally, Victor S. admitted to being the father of all three children, and his home was found to be safe and appropriate.

On the same day, the juvenile court entered a temporary custody order, finding that the children should be returned to the custody of Victor S. The court also entered an order of protection, imposing conditions on Victor S. requiring an assessment from a licensed therapist to determine whether Yuliette "can benefit from sexual abuse counseling because of her past sexual victimization," presumably due to the incident in which Alexey touched her breast. The court also imposed conditions requiring Victor S. to provide random drug samples and to participate in a substance abuse assessment.[2] Victor S. was also required to attend family counseling, ensure

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[1] For the sake of clarity, we refer to the children's father as "Victor S." and to the minor as Victor. Victor S. is not a party to this appeal. Accordingly, we discuss him only where relevant to respondent's appeal.

[2] The order of protection does not state a reason for imposing conditions concerning substance abuse, but the record indicates that Victor S. had previously been arrested for drug trafficking.

that the children regularly attended appropriate family counseling, and ensure that respondent did not have unsupervised contact with the children.

On December 27, 2004, an attorney was appointed for respondent; the court entered an order requiring respondent's visitation to be supervised, and noting that "natural mother is in need of services."

An order of protection was entered in a criminal proceeding on December 30, 2004, barring respondent from having any contact with the children. During the criminal proceeding, respondent pled guilty to three counts of domestic battery and was sentenced to two years conditional discharge. On February 16, 2005, the juvenile court entered an order denying respondent any contact with the children.

On March 24, 2005, the juvenile court entered adjudication orders, finding the children to be abused or neglected in violation of sections 2-3(1)(b), 2-3(2)(ii), and 2-3(2)(v) of the Juvenile Court Act of 1987 (Juvenile Court Act)(705 ILCS 405/1 *et seq.* (West 2008)), as a result of abuse or neglect inflicted by respondent, based on the facts surrounding their hospital visit. The court then entered a disposition order making the children wards of the court, finding that respondent was unable to care for, protect, train, or discipline the children, and finding Victor S. fit, able, and willing to care for, protect, train, and discipline the children. The court also entered an order of protection, imposing the same conditions as on December 21, 2004.

On July 5, 2005, the public guardian's office filed an emergency motion on behalf of the children, claiming that Victor S. violated the order of protection when he failed to bring Yuliette to scheduled assessments concerning the sexual abuse allegations, missed multiple drug testing,

and did not attend a scheduled substance abuse assessment. On July 6, 2005, the court entered and continued the motion, admonishing Victor S. that if he did not fully abide by the order of protection, the children would be removed from his care and custody.

On August 2, 2005, the public guardian's office filed another emergency motion, claiming the order of protection was again violated by Victor S. The motion claimed that Victor S. failed to bring Victor to an appointment for a psychological assessment scheduled for July 20, 2005. The motion also claimed that Victor S. tested positive for cocaine on July 27, 2005. On August 4, 2005, the juvenile court again admonished Victor S., entered and continued the motion to September 16, 2005, and ordered Victor S. to submit to a "urine drug drop."

On August 9, 2005, the public guardian's office filed a third emergency motion, claiming that Victor S. had failed to bring Yuliette to her scheduled therapy appointment on August 6, 2005. Victor S. had informed the caseworker that Alexey had burned Victor with a hot pan, which required Victor S. to bring the children to the hospital on August 6, 2005. The caseworker investigated the matter and found that Victor was not taken to the hospital on that day, but was subsequently taken to the hospital and treated for second-degree burns. The children were removed from the home of Victor S. pending a DCFS investigation of the incident.

On August 10, 2005, the juvenile court vacated the March 24, 2005, order of protection as a result of Victor S.'s repeated violations and found that Victor S. was unable to care for, protect, train, or discipline the children and placed them in the guardianship of D. Jean Ortega-Piron, a DCFS guardianship administrator with the right to place the children.

On January 25, 2007, respondent filed a motion for supervised day visitation. In the

motion, respondent claimed that she had complied with her current service plan, had completed a Juvenile Court Assessment Program evaluation, substance abuse counseling, and completed a parenting skills class. On January 30, 2007, the juvenile court entered a day visit order to be supervised by a DCFS or private agency caseworker. The order concerning visitation with Alexey included the statement that "[v]isits are not to take place until the clinicians providing services to Alexey are in support of visits."

On August 5, 2008, the State filed a petition for the appointment of a guardian with the right to consent to adoption (termination petition) in Yuliette's case. In the petition, the State claimed that respondent and Victor S. "failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" in violation of section 1D(b) of the Adoption Act (750 ILCS 50/1D(b) (West 2008)) and section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2008)). The petition also claimed that respondent and Victor S. "deserted the child" in violation of section 1D(c) of the Adoption Act (750 ILCS 50/1D(c) (West 2008)) and section 2-29 of the Juvenile Court Act and that respondent "failed to protect the child from conditions in the child's environment injurious to the child's welfare" in violation of section 1D(g) of the Adoption Act (750 ILCS 50/1D(g) (West 2008)) and section 2-29 of the Juvenile Court Act. The petition also claimed that respondent and Victor S. "failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from them and/or ha[d] failed to make reasonable progress toward the return of the child to them within 9 months after the adjudication of neglect or abuse under the Juvenile Court Act, or after an adjudication of dependency under the Juvenile Court Act, and/or within any 9 month period after said finding,"

in violation of section 1D(m) of the Adoption Act (750 ILCS 50/1D(m) (West 2008)) and section 2-29 of the Juvenile Court Act. The petition additionally claimed that it would be in Yuliette's best interest to appoint a guardian with the right to consent to her adoption because Yuliette had resided with her foster parents since April 27, 2007, and the foster parents desired to adopt her.

On January 9, 2009, the State filed a termination petition in Victor's case.

On February 6, 2009, before a trial date had been set, the State filed a motion in Yuliette's case for a continuance of the termination trial, which was later amended to a motion for a permanency hearing. The motion stated that at the time the termination petition had been filed, Yuliette had been in a preadoptive foster home for approximately two years. However, on or about January 21, 2009, Yuliette's foster parent gave a 14-day notice to the agency handling her case, and the State claimed that terminating parental rights was not in Yuliette's best interests at the time since she was transitioning to a new foster home and her placement was not yet stable. The motion also stated that Yuliette was undergoing individual therapy at ChildServ, and the therapist did not feel that it was in Yuliette's best interest to terminate parental rights since she was unstable. The court denied the State's motion, but set the case for a permanency hearing.

Also on February 6, 2009, the State filed a motion for a permanency hearing in Alexey's case. The motion stated that on September 2, 2008, Alexey did not pass legal screening with the state's attorney's office because he was not in a preadoptive home. Alexey was placed in a preadoptive home in October 2008, and on January 20, 2009, Alexey's case was again scheduled for legal screening, but Alexey was hospitalized for psychiatric problems on January 18, 2009, and deemed to be a threat to himself. The State claimed that Alexey's emotional and mental

state were uncertain due to his continued hospitalization and it had not been determined what would be in his best interest and whether he would be able to remain in a preadoptive home. DCFS filed a response to the motion, arguing that the State did not assert that the current permanency goal was inappropriate or that a different goal would be in Alexey's best interest.[3]

On July 28, 2009, the State filed a termination petition in Alexey's case. In the petition, the State made the same claims as in Yuliette and Victor's cases. The petition additionally claimed that it would be in Alexey's best interest to appoint a guardian with the right to consent to his adoption because "[a]doption is in the best interest of the minor in that an adoptive family can be located if the court grants the guardian the right to consent to the minor's adoption," and stated that further contact with respondent and Victor S. was not in Alexey's best interest.

Fitness Hearing

On April 9, 2010, the juvenile court conducted a fitness hearing.

Ieshia Harris

The State's first witness was Ieshia Harris, a newly assigned caseworker from ChildServ, who testified solely to provide a foundation for service plans, an unusual incident report, and a case note.

The unusual incident report and case note concerned an incident on October 12, 2007, involving the children and respondent. During a visit at the ChildServ offices for family therapy, respondent began yelling at the caseworker in front of the children about Alexey's socks being

[3] The record does not contain a decision on the motion, which was continued several times, but indicates that the case was eventually set for a permanency hearing.

dirty and him not wearing a belt. All three children were crying. The caseworker told respondent that the visit was over and respondent yelled at the caseworker that " 'You had better be ready because you are going to lose your job. I am going to expose your lies at the meeting on Monday, and everyone is going to know. I am going to kill you, and I am willing to go to jail for it. People are going to pay for what they have done.' " The caseworker again told respondent to leave because the visit was over, and respondent yelled at her children that " 'Mommy loves you very much; no one loves you as much as Mommy.' "

The caseworker later asked Yuliette what had happened before the caseworker entered the room. Yuliette said that Alexey had said something about his foster family, which respondent misunderstood as saying he wished to be adopted by them, and respondent grabbed Alexey by the throat. The therapist present in the room told the boys to go to a different room, and respondent grabbed Yuliette, sitting her on respondent's lap and asking why she was crying.

After the visit was terminated, respondent came back into the room to give the children their jackets and kiss them goodbye. Respondent told the children that they should not allow anyone to do anything to them and that they should "kick, fight, and kill if necessary." The therapist told respondent that her conduct was inappropriate and escorted her from the room. The therapist told the children that it was not their fault that respondent had behaved in that way and that "they would not be having visits for a while with her until she got the help she needed."

Fernand Vargas

The State's next witness was Fernand Vargas, who had served as the family's first intact family caseworker with DCFS at the beginning of 2005. Vargas testified that the case was

brought to DCFS due to allegations of physical abuse on all three children. The emergency room staff at St. Elizabeth Hospital made a hotline call when the children were being treated at the hospital for injuries. Vargas recalled that Alexey had a contusion on an ear swollen "up to twice the normal size and he reported he had been hit with a baseball bat."

Vargas spoke to respondent to develop a service plan. She was in need of anger management therapy and parenting skills classes. There was no visitation plan in place due to respondent's no-contact order in the criminal case.

Jorge Paiz

The State's next witness was Jorge Paiz, a caseworker from ChildServ assigned to the family's case from August 2005 through November 2006. Paiz testified that when he was assigned the case in August 2005, there were ongoing services for respondent, including substance-abuse treatment, individual therapy, urine drops, a psychological assessment, anger-management therapy, and parenting classes. There was no visitation plan in place for respondent because visitation was prevented by the no-contact order. Respondent was participating in individual therapy at Mary and Tom Leo with Eugenio Flamand. Paiz testified that respondent missed a quarter to a third of her scheduled appointments. During his time as respondent's caseworker, respondent never successfully completed individual therapy. Paiz testified that when he received the case, respondent was participating in anger management, which was intended to address the issues that brought her to DCFS, namely, the allegations that she harmed her children with a broomstick and a bat.

Paiz testified that there were several instances during his time as the caseworker that

indicated to him that respondent still needed anger management therapy. He opined that she was sometimes "hostile" and "upset" and opined that "[s]he wasn't well." She consistently inquired about her children, but sometimes when "she didn't get what she wanted," she became upset and screamed on the telephone. Paiz testified that respondent was aware of the criminal court order preventing her from visiting her children for two years, but complained several times about not being able to visit her children. She became upset with him over the telephone because she wanted to "expedite everything" so that she would be able to visit her children. Another instance in which respondent became upset with Paiz occurred in his presence. She was at the agency's office and was upset about the same visitation issues. When she began raising her voice and yelling, Paiz called his supervisor to meet with her.

Paiz also testified about several occasions in which Yuliette's foster mother informed him that respondent visited her at her job and intimidated her by asking why the foster mother was trying to take respondent's daughter away from her. This incident highlighted the fact that respondent appeared to have anger issues. At the time he stopped being the caseworker in December 2006, Paiz opined that respondent still needed anger management therapy but was not attending regularly.

Paiz testified that the intake caseworker had determined that respondent needed a psychological evaluation. Respondent had been referred for a psychological evaluation, but respondent never provided him with a copy after repeated requests. Eventually, in the beginning of 2006, Paiz referred respondent for another evaluation. However, by the time Paiz left the case, he had not received a copy of the psychological evaluation.

Paiz testified that respondent was also assessed to be in need of a substance abuse assessment, which she successfully completed. As a result of the assessment, respondent engaged in outpatient drug treatment at Pilsen Little Village, which she completed successfully. Paiz also testified that respondent completed one parenting class successfully, but there was another referral for parenting classes because "we never saw her interacting with her kids, so we thought at that time that she needed a parenting classes [*sic*]."

On the service plan dated July 7, 2006, there was no anger management task identified for respondent, nor was there a task for a substance abuse assessment or parenting classes. Paiz testified that respondent was rated satisfactory for individual therapy and the note on the bottom of the page indicated that "natural mother is participating in services. At times she can be hesitant and she has *** stated she might go to Cuba for good." Respondent was also rated satisfactory for the psychological evaluation and had a similar note on the bottom.

At the time Paiz left the case, respondent remained in need of individual therapy, a psychological assessment, anger management, and parenting classes.

Donna Johnson

The State's next witness was Donna Johnson, a supervisor at ChildServ. Johnson was the supervisor for respondent's case from January 30, 2007, through the time of the fitness hearing.

Johnson testified that when she first became involved in the case on January 30, 2007, respondent had ongoing service needs of individual therapy with anger management and a psychiatric evaluation. Johnson testified that when she became involved in the case, respondent was participating in individual therapy from February 2006 at Mary and Tom Leo with Eugenio

Flamand. Respondent had started individual therapy in August 2005. Johnson received quarterly progress reports from Flamand that indicated "she was *** making progress, [but] we felt that she wasn't because of her continued anger issues that she had." Johnson explained that "anger issues" meant that respondent was "often arguing with the caseworkers and disruptive during her visits." Johnson specifically recalled one incident in October 2007 where a visit was suspended because respondent became upset with one of the children.

Johnson testified that anger management was to be part of the individual therapy sessions, but opined that respondent's anger management issues were not being adequately addressed during individual therapy. Johnson testified that Flamand was made aware of each of respondent's "outbursts," but only saw one report in approximately two years stating that Flamand was addressing the issues in therapy. Johnson opined that during the time she was on the case, respondent did not improve in anger management.

Johnson testified that when she began with the case, respondent was in need of a psychiatric evaluation based on an assessment performed by Dr. Hector Machabanski in December 2006. ChildServ referred respondent for a psychiatric assessment at Mount Sinai Hospital, where respondent participated in an intake assessment on March 27, 2007. Johnson testified that the doctor performing the evaluation made a recommendation that respondent follow up after she received required information from previous psychiatric reports. Respondent did not follow up with the doctor. The agency re-referred respondent for a new psychiatric evaluation in January 2008 at Stroger Hospital of Cook County (County).

Johnson testified that the County psychiatric evaluation said that respondent had

symptoms of mood disorder and that respondent should follow up in six weeks. Since respondent was pregnant at the time of the evaluation, no psychotropic medications were prescribed. Respondent did not follow up. Johnson asked respondent why she did not follow up and stressed its importance, but "[s]he just didn't go." Johnson opined that as of May 2008, when she stopped being assigned to the case, respondent still needed additional psychiatric treatment.

Johnson was also involved in the case from July 2009 through the time of the hearing. When she came back onto the case, respondent still needed services and there were still outstanding referrals for services. Johnson personally spoke with respondent about completing the psychiatric evaluation and reengaging in individual therapy. Respondent was also in need of anger management. Johnson testified that from July 2009 through the time of the hearing, respondent was not participating in individual therapy or anger management, and respondent never completed the psychiatric evaluation. As of the time of the hearing, respondent was in need of anger management, individual therapy, and a psychiatric evaluation.

Johnson testified that respondent began visitation with her children in April 2007. The no-contact order expired in December 2006, but the visits did not begin then due to recommendations from the children's clinicians. Yuliette's therapist recommended that respondent have a psychiatric evaluation first and to start the visits with respondent slowly. Johnson testified that from January to April 2007, the therapists began working with the children to prepare them for visitation since they had not seen respondent in over two years and the children had expressed fear of respondent. Johnson testified that it was only in April that the

clinicians thought it was appropriate for the children to begin visiting with respondent.

The weekly visits took place at the ChildServ offices and were supervised. Johnson testified that they began with weekly supervised visits because "[s]he haven't (sic) seen the kids in two years, so it was a process for the kids to get reconnected with the mother, to get to know her again, and start the bonding process." Johnson testified that the amount of time respondent spent with her children was supposed to increase as visitation progressed, but they never "reach[ed] that point" because most of the visits were inappropriate. The ChildServ employees had to "constantly redirect the biological mother of not telling the children about returning home or giving them any false hopes of coming home." Respondent also told her children that the caseworker or court system were to blame for why the children were not at home. Johnson testified that respondent would be redirected whenever she said anything inappropriate but persisted in making inappropriate statements. Johnson also testified that respondent was argumentative with caseworkers over the telephone.

Johnson testified about the incident in October 2007. Respondent was visiting with all three children under the supervision of Lara, the family therapist, and respondent became "really upset" about Alexey's dirty fingers or dirty nails and "she lost control and she grabbed him by the neck, was choking him and the therapist called for assistance." The person called by the therapist was able to redirect the situation so that respondent was no longer choking Alexey. The children were "scared" and "crying"; the therapist attempted to calm the children, "but the kids were clearly upset." After the incident, Johnson spoke with Yuliette, who was "very, very afraid." Yuliette told Johnson that what scared her was the "look" in respondent's eyes. Yuliette

said that the incident "reminded her of when she was home." After that incident, the agency decided to suspend visitation because "[t]he minors did not want to visit with her." Johnson testified that the children's therapist also recommended that the visits be suspended until respondent was able to control her "impulsivity as far as her anger" and underwent another psychiatric evaluation. Visitation began again in May 2008.

Johnson testified that respondent sometimes arrived at visitation with her new boyfriend and baby, which she was not permitted to do. Johnson instructed respondent not to do so, but respondent continued to come several times before she stopped. On November 14, 2008, Victor S. came to respondent's visit. Johnson testified that he knew where the visitation was taking place because respondent told him. Respondent was not permitted to bring Victor S. to visits unannounced, and respondent knew that she was not to bring anyone with her to her visits. When Victor S. appeared, Carina Ramos, a caseworker, spoke with him. However, Johnson testified that they allowed the visit because the agency decided that it would be more harmful to the children to remove Victor S. than it would be to allow the visit to continue. After the visit, Yuliette was upset because she had not seen her father in a long time and was unaware that he was going to be there.

Johnson testified that there were periods when visitation was proceeding well and other periods "where they were not okay." Some visits were unacceptable because "[a]gain, mom's inappropriate communication with the kids as far as the false promises again and that she's doing services and the kids should be home." Visits were again suspended in December 2008 due to an "[a]ccumulation of incidents that were happening" from May to December 2008.

Johnson testified that on January 28, 2008, the permanency goal changed from "[r]eturn home within 12 months" to "[s]ubstitute care pending TPR." The goal was changed because "[m]om or dad did not make substantial progress in services." Immediately after the goal changed, respondent stopped attending individual therapy. Once the goal changed, the agency no longer funded the therapy. Johnson informed respondent that even though the goal had changed, she was still required to attend individual therapy. Respondent responded that she had completed her therapy and that "Mr. Flamand told her she was finished," but respondent had not completed individual therapy. Johnson contacted Flamand who informed Johnson that he did not tell respondent that she had completed the individual therapy or anger management and that he had told respondent that she needed to continue to see him on a sliding-scale fee basis. Johnson also testified that respondent was referred for community-based services at Mansion Association House of Chicago, where respondent could receive individual therapy and psychiatric monitoring at no cost. Johnson testified that respondent had not gone there for individual therapy.

Johnson testified that visitation with respondent resumed in May 2009 and the visits were monthly due to the goal change. Prior to resuming visitation, the agency had respondent sign a contract containing the type of inappropriate behavior that was not permitted at visits. Yuliette reported to Johnson that respondent had spoken with Yuliette about "her intention of her going home, that she's doing services, and her therapist will discuss with her, you know, what the current goal is." Johnson testified that the topics discussed with Yuliette were inappropriate topics that respondent had agreed to avoid when she signed the contract.

Johnson testified that as of the date of the hearing, respondent had anger management,

individual therapy, and a psychiatric evaluation outstanding. While a parenting coach was not a service listed in the service plan, Johnson opined that a parenting coach would be beneficial to respondent.

Miriam Valencia

The State's next witness was Miriam Valencia, a caseworker at ChildServ from April 2008 to approximately July 2009 who oversaw services for the two parents and Yuliette. When she was assigned to the case in April 2008, respondent was in need of individual therapy, which included anger management, family therapy, and a psychiatric evaluation.

Valencia testified that respondent was not participating in individual therapy or anger management and did not participate in a psychiatric evaluation. Respondent went to one appointment at County to see the clinicians, but "[i]t was only like an intake appointment" and respondent needed to follow up, but never did. Valencia and respondent had "plenty of conversations" about respondent's failure to follow up on the psychiatric evaluation. Valencia testified that respondent usually said that she had to work or could not go because she was pregnant. "There was always something going on and she couldn't go."

Valencia testified that respondent had the same excuses for not attending individual therapy. The anger management was a part of the individual therapy and also would have been free through ChildServ. Respondent did not take advantage of the free therapy.

Valencia testified that respondent participated in family therapy. Respondent began with Lara, the family therapist at the agency. However, "that's when they started to have issues with her behavior and she, you know, she would become aggravated and violent, and that's when it

stopped." Valencia testified that at the time she was assigned to the case in April 2008 the visits were still suspended because of the October 2007 incident but were reinstated in May 2008.

Valencia testified that respondent had monthly visits between May 2008 and July 2009 and that most of those visits were appropriate. Valencia testified that there was one incident in December 2008 that required suspension of visits. Valencia testified that the children informed their foster parents that respondent had been telling them that they would be going home with her and giving them false hope. The agency spoke to respondent, who "stood her ground" by stating that "that's what she believed and that's what she was telling the children," so the agency decided that "it was not proper for the kids to see her for a while." Respondent told Valencia that "that's what she felt was true to her and that she could tell her kids whatever she wanted 'cause they were her children."

Valencia testified that respondent did not make progress in individual therapy or in the psychiatric assessment. In a service plan dated August 6, 2008, respondent was rated as satisfactory in individual therapy. The note accompanying the plan stated "[d]iscontinue intervention." Valencia testified that the goal had changed and the agency was no longer responsible for providing the service. The evaluation for psychiatric services also said "satisfactory." The note accompanying the service read "[t]o maintain the intervention." Valencia explained that even though it was no longer the responsibility of the agency to maintain the service, the service plan indicated that intervention should be continued because respondent stated that she was going to County. The overall evaluation on the service plan read: " 'The overall evaluation of progress is unsatisfactory progress. Maintain the outcome.' " Valencia

explained why respondent could be rated satisfactory for individual tasks but unsatisfactory overall: "Usually, this is like the most recent information that we have. For example, she said she's going to the County for psychiatric appointments, then I would say that's satisfactory. But, then, overall in the whole six months, she hadn't completed anything, so it's still unsatisfactory overall." Valencia testified that unsatisfactory progress meant that the agency would maintain the goal and keep working with the client to get to the point where progress was satisfactory. Valencia testified that at the time she left respondent's case in July 2009, individual therapy, anger management, and the psychiatric evaluation were still outstanding.

Valencia testified that while she was a family caseworker, the only child she was assigned to was Yuliette. When respondent said inappropriate things during her visits, Valencia testified that Yuliette "would be confused and then she would become upset and then she would kind of, (sigh), kind of think every over, think everything, and it -- it would change. For -- For example, she would be happy at this foster home and all of the sudden she wasn't anymore." Yuliette would say that she did not want to live at her foster home anymore but wanted to "go home." Valencia testified that Yuliette would change her mind about adoption and that "[i]t was just cause a whole bunch of chaos in her life."

Kelli Hanlon

The State then called Kelli Hanlon, who was employed by Little City Foundation, where she was assigned to Alexey's case as a caseworker. Hanlon was on his case from October 2008 to the beginning of April 2009.

The first visit that Hanlon observed occurred in November 2008. During the visit, Victor

S. appeared with his girlfriend and three children, which was not expected. Hanlon testified that the agency's "impression" was that Victor S. became aware of the visitation information from respondent; Hanlon testified that it was not appropriate for Victor S. "just to randomly show up at a visit." After the incident occurred, Hanlon testified that the "lead caseworker" informed respondent that it was inappropriate for her to show up with Victor S.

The second visit occurred on December 12, 2008. Hanlon testified that the visit was "very chaotic" and respondent needed to be redirected several times. The children were "hyper" and had a difficult time interacting. Respondent asked whether Alexey and Victor were taking psychotropic medication since they were acting so "hyper." Hanlon testified that it was inappropriate because of the manner in which respondent was asking questions. Hanlon was also concerned because respondent stated that if the children did not behave she would leave; Hanlon described respondent's tone of voice as "hostile." Hanlon testified that near the end of the visit, respondent asked Yuliette if she wanted to be adopted and Yuliette began crying and went to her caseworker.

Hanlon testified that the agency suspended visits in January 2009. The visit immediately prior to the suspension was with Victor S. and occurred on a Friday night. That Saturday, Alexey had a "very severe outburst" that resulted in his hospitalization at Streamwood Behavioral Health Systems. Hanlon testified that Alexey was at his foster home, ran upstairs to his bedroom, and began pounding his head against the wall "in a very aggressive manner." Alexey was also attempting to choke himself, either with a rope around his neck or by grabbing himself around his neck, to the point where he was red in the face and "not really" able to breathe. The agency

suspended visits until Alexey was sufficiently stable emotionally to handle visits. Hanlon opined that the visit could have been the "catalyst" for the outburst and testified that a similar incident occurred after the November visit, but not as severe. After the November visit, Alexey's foster parents contacted SASS and Alexey was taken to the hospital, but was not admitted. Hanlon testified that Alexey had a pattern of having "very severe behavior or emotional responses" after visits with either of his parents.

Nancy Meza

The State's final witness was Nancy Meza, Victor's caseworker at Seguin Services from February 2008 through the time of the hearing. During that time, Meza testified that she observed no more than 10 visits between Victor and his parents. Meza testified that respondent began visiting in March or May 2008. Respondent did not have visitation prior to that because visitation had been suspended, and when the visits resumed, they were monthly.

Meza testified that visits were suspended in December 2008 due to respondent's inappropriate comments during visits. Meza testified that once, Victor came to her and told her that respondent told him that he would be adopted by a family member. Respondent also told Victor that he would come home to her and that she was doing the services that she needed to do in order for the children to return home. Meza informed respondent that these comments were inappropriate, but respondent continued acting inappropriately.

Meza testified that Victor's behavior changed depending on the success of the visit. Meza testified that Victor's behavior was "very inappropriate at times," particularly at school. She testified that his grades decreased, he was being suspended, "and things like that started

happening with his behavior." Meza testified that Victor was moved from one foster home to another in May 2008 because the previous foster home was unwilling to provide permanency.

Eugenio Flamand

Respondent called Eugenio Flamand to testify on her behalf. Flamand was an individual family therapist and worked with respondent through Mary and Tom Leo from February 2006 through March 2008. Flamand testified that initially the scope of his work with respondent was to establish a successful relationship, followed by "reviewing and reflecting on why DCFS opened her case, what were the reasons why her case was open and custody of her children taken away from her." He further testified that they were also working on anger management skills, exploring the background of her outbursts, and individual therapy generally. Flamand testified that he worked on anger management with respondent for "part of the time," beginning to work on anger management only after he and respondent agreed that they could work together.

Flamand was aware that respondent had an unusual incident during a visit in 2007. He testified that he was not present at the incident but was informed of what happened by Lara, respondent, and respondent's caseworker. He testified that Alexey became angry and respondent felt disrespected. Flamand testified that respondent indicated that "she wasn't being supported as a parent and then she felt like she didn't have any support by *** the professionals present and then she did very not properly had an outburst."

Flamand testified that after the incident, he and respondent continued working on her behavior and determining what had triggered the outburst, since she had not had an "explosive outburst" in "years." Flamand opined that respondent felt powerless and as though she had no

support from the agency workers in addressing Alexey's behavior. Flamand testified that they addressed the outburst itself and respondent acknowledged that "she had had the totally wrong reaction." Flamand opined that when respondent reported the incident to him, "she already had a disposition of having made a mistake, a huge mistake." Flamand considered respondent's reaction after the incident appropriate "in the sense that she had knowledge she had -- she lost her control of the impulse."

Flamand testified that he worked with respondent on strategies to control her impulses "on and off" since meeting her. Flamand testified that respondent had never lost control during her sessions with him, even though they addressed difficult topics.

Flamand testified that before he began working with respondent individually, she had participated in a parenting skills group that he led. At that time, she said that if she had been exposed to learning the skills and the input from the group earlier, she probably would not have used the "severe corporal punishment" that she had used, because she had learned so many strategies for managing behavior. When the incident in October 2007 occurred, respondent realized that she had not applied the strategies that she had learned. Flamand testified that the October 2007 incident was the only incident of which he was aware.

Flamand testified that he stopped working with respondent in March 2008. On January 28, 2008, the permanency goal was changed and ChildServ informed him that they would no longer be paying for respondent's individual therapy. He offered to work with respondent on a sliding-scale fee basis "[t]emporarily for support." He testified that respondent tried to continue to see him but that she did not have a large income, and ChildServ suggested that she work with

Lara since Lara was still working with the children. Flamand testified that respondent was "really distraught" about the goal change and attended some sessions without paying Flamand. On March 18, 2008, there was a meeting at ChildServ, and it was agreed that Flamand would withdraw from the case and Lara would continue working with respondent.

Flamand testified that he saw respondent a few times after the goal changed because he believed that respondent used the "dialogues" that they had established for personal growth. When asked to characterize respondent's growth over the time that he worked with her, Flamand replied that "[respondent] was extremely hypervigilant, guarded, non-trusting," but as therapy continued, she "progressively felt more comfortable and she was willing to consider anything and everything to be able to -- to develop skills and strategies and awareness, in my opinion." Flamand opined that respondent "[d]efinitely" progressed during his time working with her, but cautioned that "[n]o rehabilitation is a straight line" and "[y]ou take two steps forward, maybe one backwards at times." Flamand testified that respondent did have an "explosive event," but "that doesn't mean that she had not progressed in terms of moving forward in her skills and her awareness."

Flamand opined that respondent was fully engaged in therapy when he terminated his work with her. During cross-examination, Flamand admitted that his quarterly reports indicated that respondent missed a total of 10 out of 30 appointments with him. Flamand's therapy report dated May 1, 2006, contained a statement that " '[Respondent] currently presents as partially cooperating because of her frequently canceled and rescheduled appointments,' " but opined that respondent may have been in a "phase" in which she was not as committed to therapy.

Flamand never observed respondent with any of her children. Flamand opined that as of March 2008, respondent was still in need of individual and anger management therapy.

Juvenile Court Findings

On June 22, 2010, the juvenile court issued a ruling on fitness. As to respondent, the court found that the State had met its burden by clear and convincing evidence that she was unfit on grounds (b), failing to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare, and (m), failing to make reasonable efforts and failing to make reasonable progress towards return during seven time periods: March 25, 2005, to December 25, 2005; December 26, 2005, to September 26, 2006; September 27, 2006, to June 27, 2007; June 28, 2007, to March 28, 2008; November 4, 2007, to August 4, 2008; August 22, 2006, to May 22, 2007; and May 23, 2007, to February 23, 2008. The court found that Victor S. was unfit on the same grounds and during the same time periods.

Best Interest Hearing

The court then conducted a hearing to determine whether termination of parental rights was in the children's best interest.

Donna Johnson

The State's first witness was Johnson, the supervisor for the family and Yuliette at ChildServ. Johnson testified that Yuliette was in an adoptive home at the time of the hearing. The home was a traditional non-relative foster home where Yuliette was placed in May 2008. Yuliette resided in the home with the foster mother and her 16-year-old daughter. Johnson testified that prior to the placement, Yuliette had been placed in three other foster homes. The

caseworker last visited the home on May 25, 2010, approximately a month before the best interest hearing, and Johnson testified that the home seemed safe and appropriate, with no signs of abuse, neglect, or corporal punishment.

Johnson testified that there was one unusual incident within the last six months regarding Yuliette, occurring June 19, 2010. Yuliette was scratched by a dog, which required her to be taken to the emergency room for two stitches.

Johnson testified that Yuliette was receiving weekly individual therapy through ChildServ. Yuliette needed the therapy to discuss the goal change, her relationship with respondent, and being separated from her siblings. Johnson opined that the therapy was having a positive impact on Yuliette. Johnson had not observed Yuliette interacting with her foster mother, but her caseworker, educational liaison, and therapist had observed the interactions and reported their observations to Johnson. Johnson testified that Yuliette had a good relationship with the daughter and had bonded with the foster family and the foster mother expressed interest in adopting Yuliette.

Johnson testified that respondent was in need of individual therapy and a mental health follow-up. Johnson also testified that respondent currently had a child in her care. The child was not in daycare and respondent cared for him during the day. Respondent was also employed as a maintenance worker for the building in which she resided.

Johnson testified that it was the agency's opinion that it was in Yuliette's best interest to have her parental rights terminated because Yuliette was in a "safe place" at her current foster home, the foster home was willing to "take permanency of her whether it's guardianship or

adoption," and Yuliette still struggled with fear of being returned home to respondent.

Johnson testified that Yuliette was bilingual but that the foster home was not a Spanish-speaking home. Johnson further testified that Yuliette was currently visiting with her siblings and that her foster mother had contact information for the foster parents of the other children and had a relationship with them.

Nancy Meza

The State next called Nancy Meza, Victor's caseworker with the Seguin Services agency. Meza testified that Victor was currently placed in a specialized non-relative Spanish speaking foster home that consisted of two foster parents and two children, plus Victor. The two children were 14 and 10, and Victor was 11 at the time of the hearing. Victor had been placed in the home for two years. The last time that Meza visited the foster home was June 18, 2010, approximately four days before the hearing. Meza testified that the home was safe and appropriate, with no signs of abuse, neglect, or corporal punishment.

Victor had been diagnosed with posttraumatic stress disorder (PTSD), attention-deficit/hyperactivity disorder (ADHD), and oppositional defiant disorder (ODD). Meza testified that "[m]ostly it's behavior problems." Through the agency, Victor was assigned a behavior analyst who visited the home twice per month or as needed. Victor also visited a psychiatrist on a monthly basis for psychotropic medication monitoring. Meza testified that the behavior analyst was having a positive impact on Victor's behavior "[a]t times." Meza testified that sometimes the behavior therapy did not help and that "[t]he school actually last year had to put social-work services in place" because of Victor's "acting out" in school. Meza testified that Victor's

behavior "at this point" was more a problem at school than it was at home. She further testified that Victor had been suspended three times within the last month at school; once for handcuffing a student to a chair using plastic handcuffs and twice for swearing at a teacher. Victor was doing well academically.

Meza opined that there had been five unusual incidents in the past six months that may have played a part in triggering Victor's negative behavior. Three were Victor's suspensions, and one was on February 15, 2010, when Victor threatened to kill himself after respondent canceled a visit. When his therapist told Victor that respondent needed to cancel the visit, Victor became very upset and told the therapist that he was going to kill himself and had a plan as to how to do it. Meza testified that Victor wanted to hurt himself because "he wanted to hurt mom like mom had hurt him."

The fifth, and most recent, unusual incident was on May 21, 2010, when Victor had a visit scheduled with respondent at a restaurant. Meza testified that she, Victor, respondent, and Victor's therapist were present; respondent's boyfriend and youngest child were with respondent in an automobile. When they arrived at the visit, everyone was standing outside of the automobiles. Meza began walking towards the restaurant, and Victor began to hug respondent. Victor said either " 'We have one more visit before' " or " 'We have one more visit.' " He then said, " 'before parental rights are terminated.' " Respondent became very upset with Meza and said that Meza had told Victor this. Meza testified that she did not tell Victor that would be his last visit with respondent or that he would no longer be visiting with respondent. However, she testified that Victor was aware that there was a possibility that he would have to come to court

and speak to a judge; she testified that he knew "what's going on." Respondent began yelling at Meza and "trying to talk about court at that point and saying how she couldn't say -- or why would I tell her son that and that she couldn't talk about certain things, that because we're -- the workers didn't want her to talk about court." Meza explained to respondent that if she wanted to talk to Meza about a problem, respondent should do so outside of the visit and told respondent to "take advantage of that visit."

Meza testified that they proceeded to walk into the restaurant, while respondent kept talking to Victor "about how during the last court hearing how we were all liars, that we all came on the stand and we lied about certain things." Meza told respondent that it was inappropriate for her to talk to Victor in that way. Respondent continued talking, and Meza canceled the visit. Respondent became very upset and "came in [Meza's] face" and began swearing at Meza in front of Victor, calling Meza names and yelling at her. Meza told respondent to calm down and removed herself from the situation by leaving the restaurant, leaving Victor with the therapist. Meza called her supervisor, who said that she would try to come to the restaurant, but also told Meza that if things were "getting out of hand," to call the police.

Respondent, Victor, and the therapist left the restaurant and Meza could hear respondent yelling and the therapist telling respondent " 'You can't say that' " or " 'You can [*sic*] use those words. He's a child.' " Meza walked over to them and said " 'You know what? That's it.' " She told Victor to go into the therapist's automobile. Respondent was very upset and told Meza that she would "beat [Meza] up." Meza testified that Victor "looked completely mortified."

Respondent came to the automobile, opened Victor's door, said that she was his mother,

and "moved in." Respondent hugged Victor and gave him a bag containing two pairs of shoes that she had brought for him. Respondent then moved to Meza's door, opened the door, and "started getting in [Meza's] face" and swearing at her. Meza testified that respondent was approximately four inches from Meza's face. Meza raised her arm to block respondent, who was "putting her fists up." Respondent stated that she was going to beat Meza up, among other things. Meza told Victor to stay in the vehicle and told respondent to "back off," and respondent's boyfriend came and moved her away.

Meza, the therapist, and Victor drove away from the restaurant. They stopped at a traffic light and respondent and her boyfriend pulled up in the next lane. Respondent opened her door and began yelling at Meza, swearing at her and threatening to beat her up. The light turned green and Meza's automobile drove away. Meza testified that she felt threatened when respondent was physically close to her and yelling at her. However, she did not call the police and did not request an order of protection against respondent. Meza testified that they then went to the agency, where she, her supervisor, the therapist, and Victor discussed the situation.

Meza testified that Victor was very "shaken up" by the incident and could not believe what had occurred. She testified that "he said that he didn't understand why his mom would do that, that I hadn't said anything, and he just kept saying that he wasn't really sure that his mom hadn't -- had -- that his mom hadn't changed and that he wasn't sure that if he went home, things would be any different." Meza testified that as a result of the incident, Victor no longer wanted to visit with respondent.

Meza testified that she had the opportunity to observe Victor interact with his foster

parents. Meza opined that Victor had a good relationship with his foster mother, who was fairly young and very active with all of her children, and similarly had a good relationship with his foster father. Meza testified that Victor had joined a soccer team, which the foster parents supported. Meza testified that "[t]hey're the type of family that if foster mom cannot make a soccer game or things like that, foster dad's the one there with the children." Meza further testified that the family was planning on taking a trip during the summer and were hoping that Victor could accompany them; Meza testified that Victor was "excited" about the trip. Meza opined that Victor struggled with "wanting to stay there or not wanting to stay there, wanting to be adopted, not wanting to be adopted," and testified that after the incident on May 21, he stated that he wanted to stay with the foster family. Meza further testified that Victor had a good relationship with the foster family's children, opining that he had a "sibling-type relationship" with them, although he had struggled with the younger girl at first. Meza testified that Victor had indicated to her that he felt safe at the foster home.

Meza testified that Victor had the opportunity to visit with Alexey and Yuliette and the visits were to take place twice a month. She testified that there were times when not all three children could attend at once and that it was usually Victor and either Yuliette or Alexey at the visits. Meza opined that Victor was "keeping up" the bond with his siblings and enjoyed his visits with them very much, looking forward to seeing them. Meza related a recent instance in which Alexey went to watch Victor's soccer game, and both were "extremely happy" to see each other.

Meza testified that the foster parents were interested in adopting Victor and that it was the

agency's opinion that it was in Victor's best interest that parental rights be terminated.

Santhosh Kurian

The State then called Santhosh Kurian, a child welfare advanced specialist with DCFS assigned to Alexey since May 15, 2009. Kurian testified that Alexey was 12 years old and was currently placed at Larkin Group Home, where he had been since March 2009, due to "behavioral-management problems." Prior to being placed at Larkin, Alexey had been at a specialized foster home, followed by psychiatric hospitalization at Streamwood. Kurian testified that Alexey had special needs, being diagnosed with PTSD, ADHD, and needing special education services. Alexey was receiving psychiatric services, medication monitoring, individual counseling, group therapy, and special education services. Kurian testified that for the psychiatric services, Alexey visited a psychiatrist every quarter or more if needed and the service was to allow Alexey to discuss his issues and to determine if his medication was working. Kurian opined that Alexey was responding well to the psychiatric services.

Kurian testified that with the individual therapy, Alexey met with his therapist once a week and seemed to have a good relationship with the therapist. The therapy was intended to address issues of "hyperactivity, you know, impulsivity, physical aggression, and how to get along in a group." Kurian opined that the individual therapy was "up and down" because Alexey recently changed therapists after the previous one left the agency. After the new therapist began working with Alexey, Kurian testified that the number of unusual incidents decreased and opined that the therapy seemed to be helping Alexey.

Kurian testified that Alexey's group therapy was intended to address issues within the group home because physical aggression was an issue with which Alexey struggled. Kurian testified that Alexey could be "very aggressive" and "very mouthy" at times. The group therapy considered drawing boundaries and how to deal with the other children in the home. Alexey attended group therapy once a week and Kurian opined that it seemed to be helping with his physical aggression issues.

Kurian testified that Alexey was receiving special education services because "[d]ue to Alexey's emotional and behavioral disorder," he was unable to be "put in with the regular kids" at school. Kurian testified that Alexey was doing well in school with the program. Kurian testified that Alexey was well-liked by his peers and was considered "sort of a leader." He further testified that Alexey was very intelligent and was not in special education because of any intellectual limitations.

Kurian testified that when Alexey was initially placed at Larkin, his behavior was "really out of control." He initially did well at Larkin but then his behavior began returning to the way it was prior to arriving at Larkin. Kurian testified that as Alexey remained at Larkin longer, his behavior was again improving and opined that the program "has been working." Kurian opined that at some point, Alexey could be "stepped down" and placed in a foster home.

Kurian testified that Alexey's therapists believed that many of Alexey's problems developed from his abuse and his feelings of guilt from the children being in the system. Kurian testified that Alexey was the "target" because it was the abuse to him that brought the case to the hospital and thereafter into the DCFS system.

Kurian last visited Larkin on June 11, 2010, approximately 11 days before the date of the hearing. He opined that the placement seemed safe and appropriate, with no signs of abuse, neglect, or corporal punishment. Kurian testified that Alexey had approximately 20 to 25 unusual incidents within the past six months, and a total of 54 from the time he was placed at Larkin.

Of the incidents within the past six months, many involved Alexey fighting with another resident. Kurian testified that Alexey reacted to problems by "throwing stuff and things like that which usually end up in [a] fight." Kurian testified that generally, when fights occurred, the home's staff broke up the fight and addressed the issues that brought about the fight. Kurian testified that of the 20 to 25 unusual incidents over the past six months, over 10 concerned Alexey fighting.

Another issue that arose concerned "runaway behavior." Kurian testified that beginning in February 2010, Alexey had been leaving the group home and returning in the evening. The agency discovered that Alexey had a friend from school and would go to the friend's house. Alexey had never been gone overnight, and did not mention why he ran away.

The other type of unusual incident involving Alexey concerned fighting with the staff. Kurian testified that when Alexey got into a fight with his peers or with staff, he was in a setting where the inappropriate behavior could be redirected.

Kurian testified that the agency was searching for a preadoptive home for Alexey. If the agency was unable to locate a preadoptive foster home, Alexey would likely be stepped down to a less restrictive setting than a group home, such as a specialized foster home, and the case would

be assigned to a private agency that was contracted with DCFS.

Kurian testified that he visited Alexey on a monthly basis and spoke to him about his desires and his current status. Kurian testified that he had spoken to Alexey about being adopted on two of his visits, including the visit on June 11, 2010. At that visit, Alexey said that he would like to be adopted "if that's what his siblings are going to do." Kurian testified that Alexey wanted to maintain contact with his siblings but also wanted a new family. Kurian opined that Alexey was more concerned with maintaining a relationship with his siblings than he was with respondent. Kurian testified that Alexey had expressed a realization that returning to respondent "may not be the best thing for him." He testified that it was the agency's opinion that it would be in Alexey's best interest for parental rights to be terminated. Kurian testified that Alexey "desperately craves to be with a family" and the decision that it was in Alexey's best interest for parental rights to be terminated was partly based on Alexey needing closure so that he could "move on and make progress in his life."

Kurian testified that the relationship with Victor and Yuliette was very important to Alexey and that Alexey "would love" to maintain a relationship with them regardless of the outcome of the termination proceedings. Kurian testified that Yuliette and Victor's foster parents indicated that they were willing to continue with a relationship between the children.

Kurian testified that Alexey was not visiting respondent after his last psychiatric admission in March 2010. The visits were suspended because "Alexey was acting out a lot and also he -- it just created a confusion and uncertainty with regard to his future because he don't know where he's going after completion of his treatment."

Jeannette S.

The State then called Jeannette S., the foster mother of Yuliette. Jeannette testified that Yuliette had been living with her for a year and a half, along with Jeannette's 17-year-old daughter Victoria. Jeannette testified that Yuliette was integrating very well into the family. Yuliette and Victoria had birthdays one day apart and had many things in common, such as music and clothing. Jeannette testified that Yuliette and Victoria went roller skating together and the family went to church together at least twice a week, which Yuliette enjoyed. Jeannette opined that Yuliette got along well with her, saying that they talked a great deal and Yuliette "share[d] a lot." Jeannette and Yuliette discussed school, music, and boys, "[a]ll the typical *** teenager things that a young lady would talk about." Jeannette testified that Yuliette was "real open with questions and things like that," which she opined helped develop a bond between them. Jeannette testified that she considered Yuliette to be "just like my daughter" and not a foster child. She testified that Yuliette called her "Mom" and knew that Yuliette loved her. Jeannette testified that she loved Yuliette and liked having her in the home.

Jeannette testified that Yuliette had a good relationship with Jeannette's extended family. Jeannette testified that "my family has taken Yuliette as their family," even Victoria's father, who had remarried and had another family. She testified that she wanted to adopt Yuliette because they loved her and believed that she had moved around enough and "we just want to open our home, our hearts to giving her a stable atmosphere to nurture her so that she can grow up and be a very successful young lady."

Jeannette testified that she was prepared for the challenges of adopting Yuliette and had

dealt with a similar situation with a child in the past. She testified that if anything happened to her, her parents would be able to step in, and Yuliette was very comfortable with them.

Jeannette testified that if she was to adopt Yuliette, she would be open to having her remain in contact with Victor and Alexey because she believed that it was important for them to remain in contact; she would also be open to Yuliette having a relationship with respondent's youngest child. Jeannette would also be open to Yuliette maintaining a relationship with respondent or Victor S. if Yuliette asked to, "[s]o long as it was under circumstances that it would be neutral grounds." She understood that would be her decision to make and that nobody could force her to do that. Jeannette also testified that Yuliette's relationship with her therapist was beneficial to Yuliette, and Jeannette wanted that relationship to continue.

Jeannette testified that Yuliette had a "rough patch" at school when a girl was harassing Yuliette. Jeannette had reported it, and Yuliette walked away from the situation, but the girl punched Yuliette, who retaliated. A dean jumped in between the two girls and was struck by Yuliette. Because the dean was struck, the school was going to expel Yuliette. Jeannette was involved in the situation and "did homework," including seeking advice from a juvenile court judge who came to the school. Jeannette made the decision to place Yuliette in another school so that she would not lose any time, and Yuliette was on track to graduate.

Edith E.

The State next called Edith E., Victor's foster mother. Edith testified that Victor was 11 years old and had been living with her, her husband, her 15-year-old son, and her 10-year-old daughter for two years. Edith opined that Victor was integrating into the family "[p]retty good,"

referring to her children as his brother and sister and calling her and her husband "Mom" and "Dad." Edith testified that Victor got along well with her son, playing soccer with him every day and "showing him off to his friends." Edith testified that at the beginning, Victor and her daughter were competitive because they were near the same age, but now got along well and played video games together. Edith testified that Victor's relationship with her husband was like that of a "father figure" and Victor respected him. She testified that she had heard Victor talking with pride about her husband with his friends. Edith testified that her husband treated Victor as though Victor was his son.

Edith testified that she had a good relationship with Victor and he felt at ease with her and could joke with her. She testified that he "messed around" with her more than with her husband, but knew "where the line is and not to cross it." She testified that she loved Victor and opined that Victor loved her family, but that he was "torn" between fidelity to his foster parents and his biological parents. Edith testified that she was willing to adopt Victor because it had been two years and "if they take him away, it would be the same thing like if they took my daughter away." She testified that if Victor was not going back to his parents, she wanted him to stay with them.

Edith testified that she would be open to allowing Victor to visit with his siblings because it was "very important," although she did not have their contact information. She further testified that she would be willing to consider Victor having a relationship with respondent or Victor S. under certain conditions and would be willing to allow Victor to visit with respondent's youngest child. She understood that if she adopted Victor, it would be her choice along with her husband

as to whether to allow Victor to maintain the relationships.

Edith testified that Victor was a "handful" but that she thought that she could handle the issues that he presented, since he had a difficult time when he first came to their home and "it would be the same thing." If something happened to her and her husband, Edith's sister would take care of Victor. Edith testified that the family was going to Florida in several weeks for her sister's wedding anniversary and Victor would meet more family then. Edith opined that Victor was looking forward to the trip and had told his brother and sister that he was going to a wedding.

Gracie Whalen

The guardian *ad litem* called Gracie Whalen, a licensed clinical social worker at Hephzibah Children's Association. Whalen worked as a caseworker as well as working in a program that conducted independent assessments. She explained that in the program, they were referred cases that were in crisis or needed further assessments and were asked to examine a specific issue. They took the cases for a given period of time, assessed the case for that time, and made recommendations. She had completed four assessments alone, and had consulted on 10 to 15 others.

Whalen was contacted by the public guardian's office regarding Alexey in December 2009. She was asked to meet Alexey and consider whether moving forward with termination was in his best interest at the time and whether he was emotionally prepared to go through the process of termination; she testified that best interest was often a topic that was considered over the course of the assessments. During her assessment, Whalen reviewed documents, spoke with

Alexey twice, and spoke with his therapist and caseworker; she prepared a report with her recommendations.

The parties and the court had a discussion in chambers as to Whalen's qualifications and the appropriateness of calling her report an independent clinical assessment. The parties eventually stipulated to the document as renamed "Report of Gracie Whalen, LCSW." The report indicated that Alexey did not want his parents' rights terminated. It further stated that Alexey had a close relationship with his siblings and was "holding onto his biological family with all of his might" and raised the concern that should Alexey lose his biological family, he could lose his motivation to make progress in the group home. The report concluded that it was not in Alexey's best interest to terminate parental rights.

The guardian *ad litem* also tendered an offer of proof that if called to testify, Whalen would testify that her report was generated in March 2010, that it represented a snapshot in time, and that if additional information were provided or things had changed, the report could also change.

Yuliette S.

Yuliette testified before the court in chambers. She testified that she was 13 years old and beginning the eighth grade. She testified that she loved school and was looking forward to attending high school.

Yuliette testified that she loved her foster home. She testified, "[i]t's everything I -- it's what I want and what I need. I wanted attention and support and love, and I have that. And what I need -- well, what I feel I need is educational wise and for me, spiritually, I have it. Everything

I need there is there." She testified that she was comfortable staying at her foster home and did not mind being adopted into her foster family. She only wished to keep in contact with "all my family." She testified that she wanted to stay in touch with her brothers and her mother, but hesitated before saying that she wanted to keep in touch with her father. She explained that he had been trying to call her but she did not want to speak with her stepmother and did not want "to step out of place of being his daughter at my age," so did not answer the telephone. Yuliette testified that she was confident that her foster family would allow her to keep in touch with her biological family.

Alexey C.

Alexey also testified before the court in chambers. Alexey testified that he wanted to be adopted, but wanted to be adopted by the same family as Victor or Yuliette. He testified that he was currently at Larkin, which he thought was "[a]ll right," but wanted to leave there. He believed he knew why he was at Larkin, saying, "[b]ecause when I first went to a foster home in Hanover Park, I took myself and I went to a hospital. And they said that was kind of scary to them, so they wanted me to go back there. So I went to Larkin Center." He testified that he became very angry sometimes but that he had a good therapist.

Victor C.

Victor also testified before the court in chambers. He testified that he was 11 years old and in the sixth grade. He did not like school but played soccer. He testified that where he was living was "[g]ood," but that he would rather be living with his siblings. Victor asked whether his parents were there and asked the judge, "Have they done anything to get me back?" The

judge explained that his parents had been found unfit but that the best interest determination had not yet been made. Victor testified that he did not want to be adopted "[b]ecause then I wouldn't get to see my mom."

Victor testified that his foster parents were nice and he felt like part of the family. Victor testified that he did not know how he would feel if he was adopted by his foster family and they allowed him to see his biological family. Victor testified that he did not think the situation was fair "[b]ecause it's not -- my brother and sister just want to live again with me together."

Respondent

Respondent was the final witness during the best interest hearing. Respondent testified that the case came into the system "[b]ecause I hit my children." She testified that she completed all of her services. She testified that she learned from her parenting classes "that first of all, over here in this country, you cannot hit your children. You have to discipline your children different ways no matter what. Even if they hit you, you cannot hit them back." She testified that she loved her children very much and wanted them to come home.

She testified that in Cuba, where she came from, the culture was different and she believed that she was supposed to hit her children when they misbehaved because "it's the way they do it to all of us over there." She testified that "over here, it's completely different because over here, I see the children hit the parents, kill the parents, you know, when they try to discipline them." Respondent also testified concerning the incident with Meza. She testified that Victor hugged her and said " 'Mom, my attorney Meza told me to tell you that you don't complete and do everything, and next month is June.' " Respondent testified that Meza walked

toward the restaurant and was smiling and laughing. Respondent approached Meza and asked her if she heard what Victor said; Meza said she did not. Respondent told Meza, " 'You know exactly what he just told me, and you pretend that you don't hear. You was laughing.' And he (sic) said, 'You know what, Ms. C***, just because the way you react to it, he don't want to go talk to the Judge.' "

Victor told Meza that she was lying and that he did want to talk to the judge. Respondent told Meza, " 'Meza, why you lie to the baby in front of me? Why you lie?' And she was talking to me loud, and I said -- I told her that don't talk to me loud because I was not her child." Respondent explained to Victor that it was not the right time to discuss the issue, and Victor told her, " 'Well, Mom, calm down. Please do it for me. Calm down. I know they lie, but please. Do it for me. Calm down.' "

Meza then told respondent that was the last visit she would have with Victor. Victor asked why and respondent told Victor " 'it's okay.' " Meza told Victor to go to the automobile and respondent said that she had a present for Victor and told him to take it. Meza screamed from the automobile for Victor to " 'get inside.' " Respondent told Victor to leave the automobile, which he did. Respondent testified that Victor "was up and down with both -- was driving me crazy because she ordered her (sic) like a little dog to do something, and I was telling him to get out and do something, and I cannot control no more." Respondent got into the automobile and gave Victor his present.

Meza told respondent to leave the automobile, and respondent opened Meza's door, "g[o]t in her face," and said, " 'Don't talk to me.' " Respondent admitted that she told Meza that

she would beat her up. Respondent also testified that Meza and the public guardian bought a bicycle for Victor "so Victor can tell everything that he wanted for him to tell."

Respondent acknowledged that her reaction was not the correct reaction, but that she was upset that the social worker had lied in front of Victor. She testified that Meza "can come over here and lie, but in front of my children, she cannot lie, you know."

Respondent also testified that she underwent a psychiatric assessment. She testified that first she had a psychological evaluation with Dr. Machabanski, who diagnosed her with bipolar disorder and recommended she take medication. She took that evaluation and completed a psychiatric assessment at Mount Sinai, where they agreed with the psychological evaluation that she had bipolar disorder and needed medication. Respondent testified that she took the medication for two days, but her face was swollen. She went to the center[4] and "they" told her not to take the medication anymore and to throw it away.

Respondent testified that it was not in her children's best interest to terminate her parental rights because she had done everything that the court told her to do and she loved her children. She testified that she was sorry for her actions and had paid for them, saying that "I was two years with no contact with them, and even after all this time, I'm there to nurture and know what's wrong with them." She asked for a second chance.

Best Interest Ruling

On July 1, 2010, the juvenile court found that as to Yuliette and Victor, the State had met

[4] The name of the center does not appear in the record. During respondent's testimony, the name was inaudible.

its burden of proof by a preponderance of the evidence. The court held that it was in the best interest of both minors to terminate both respondent and Victor S.'s parental rights.

As to Alexey, the court noted that it had examined Whalen's report and had questions about the assertions concerning Alexey's emotional stability and ability to handle termination and the amount of weight that the court should give to the opinion in the report. The court made a request to the Cook County Juvenile Court Clinic (CCJCC) for clinical information to help the court determine whether Alexey was emotionally equipped to handle termination.

On September 29, 2010, the court entered the CCJCC report into evidence. Based on all of the evidence, the court found that Alexey was "an intelligent 12-year-old boy whose [*sic*] expressed his desires, in very certain terms, to have his parental rights terminated so that he might find stability and permanency in a new home and family." The court further found that Alexey had expressed his desire to remain connected to his siblings, not his parents. Finally, the court found that Alexey's parents had a long history of inconsistent visitation and behaviors that had served as a destabilizing force in his life and therefore found that it was in Alexey's best interest to terminate parental rights "so that Alexi [*sic*] may achieve the consistency and predictability in his life that is crucial for his normal development." Respondent timely appealed.

Status Report

On February 16, 2011, the public guardian filed a motion on behalf of the children seeking permission to file a report on the current status of the children, which was granted on February 23, 2011.

On December 28, 2010, Yuliette left her foster home and lives with the adult daughter of her godmother. On January 25, 2011, Yuliette told the guardian *ad litem* that she wished to remain with her godmother's daughter and was willing to be adopted by her. The godmother's daughter is interested in providing permanency to Yuliette.

On January 19, 2011, and February 7, 2011, the guardian *at litem* interviewed Victor. Victor stated that he did not want his current foster parents to adopt him but was willing to be adopted by a different family that could better understand his needs and experiences.

On February 10, 2011, the guardian *ad litem* spoke to Alexey, who continued to state that he wished to be adopted with his sister or brother. He also said that he wants to find an adoptive home.

ANALYSIS

Respondent argues that both the juvenile court's finding that respondent was unfit and its finding that it was in the best interest of the children to terminate respondent's parental rights were against the manifest weight of the evidence. We consider each of these arguments in turn.

Fitness

Under the Juvenile Court Act, termination of parental rights requires a two step process. First, there must be a showing, by clear and convincing evidence, that the parent is unfit, as defined in section 1 of the Adoption Act. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re Brown*, 86 Ill. 2d 147, 152 (1981). Since the trial court was in the best position to view and evaluate the parties, its decision is entitled to great deference, and a finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re Brown*, 86 Ill. 2d at 152. A finding

is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Additionally, due to the "delicacy and difficulty of child custody cases *** wide discretion is vested in the [juvenile court] to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied." *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998). If the court makes a finding of unfitness, it then must decide whether it is in the best interest of the child to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2008); *In re C.W.*, 199 Ill. 2d at 210. However, the best interests of the child cannot be considered when the court is determining fitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990).

In the case at bar, the juvenile court found that respondent was unfit under both sections 1D(b) and (m) of the Adoption Act. Since the grounds for unfitness are independent, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000); *In re T.Y.*, 334 Ill. App. 3d 894, 905 (2002); *In re M.J.*, 314 Ill. App. 35 649, 655 (2000); see also *In re D.L.*, 191 Ill. 2d 1, 8 (2000) (Section 1D lists a variety of discrete grounds for finding a parent unfit and a challenge of only one ground of unfitness among several renders the appeal moot). Accordingly, unless the juvenile court's finding of unfitness under *both* sections 1D(b) and (m) were against the manifest weight of the evidence, we must affirm the court's decision regarding fitness.

Section 1D(b)

The juvenile court first found that respondent was unfit under section 1D(b). Section 1D(b) provides:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:
>
> * * *
>
> (b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1D(b) (West 2008).

Since the statute lists them in the disjunctive, a parent may be found unfit for failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204 (2008); *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004).

In determining whether a parent demonstrated reasonable interest, concern, or responsibility, a court must examine the parent's conduct "in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d at 278. Moreover, "a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts." *In re Adoption of Syck*, 138 Ill. 2d at 279 (citing *In re Drescher*, 91 Ill. App. 3d 658, 664 (1980)).

In the case at bar, we cannot find that the juvenile court's determination that respondent failed to show reasonable interest, concern, or responsibility for her children was against the manifest weight of the evidence. Respondent argues that she was prevented from having any

contact with her children until December 2006 due to the criminal no-contact order, with the result that the State "effectively thwarted any realistic chance of reunification" during the time covered by the order. Respondent also contends that the agency further prevented her from contacting her children by delaying visitation until April 2007, four months after the December 2006 date on the no-contact order had passed, with "no explanation of the delay." This lack of contact from December 2004 to April 2007 represented a "*de facto* termination of her parental rights." We disagree.

In support of her argument that the State and the agency interfered in her ability to reunite with her children, respondent cites to *In re Alicia Z.*, 336 Ill. App. 3d 476 (2002), and *In re Taylor*, 30 Ill. App. 3d 906 (1975). We find these cases wholly distinguishable. *In re Alicia Z.* concerned an order transferring guardianship of the respondent's children to their foster parents. *In re Alicia Z.*, 336 Ill. App. 3d at 494. The court found that the order was against the manifest weight of the evidence in part because DCFS failed to provide the respondent with adequate services in Spanish and gave him conflicting information about which of his child's therapy sessions he was required to attend. *In re Alicia Z.*, 336 Ill. App. 3d at 496. Likewise, the court in *In re Taylor* found that the respondent was not unfit under section 1D(b) because her attempts to fulfill her duties were prevented by the policies and personnel of DCFS. *In re Taylor*, 30 Ill. App. 3d at 909.

In the case at bar, there is absolutely no evidence that the State or the caseworkers attempted to impede reunification between respondent and her children. Respondent correctly asserts that she was not able to visit her children until April 2007. However, the criminal no-

contact order was a direct result of respondent's own actions and not an action by the State to "thwart" her ability to regain custody of her children. Similarly, the record indicates that the delay in beginning visits occurred for a reason. Johnson testified that visitation did not begin until April 2007 on advice of the children's therapists, who suggested that the children be permitted to gradually adjust to the idea of visiting their mother. This is supported by the court's visitation order of January 30, 2007, which indicated that, regarding visits with Alexey, "[v]isits are not to take place until the clinicians providing services to Alexey are in support of visits." Accordingly, the actions of the State or the caseworkers do not relieve respondent from a finding of unfitness.

Moreover, a lack of visits does not equate to a "*de facto* termination of [respondent's] parental rights." Visitation is not the only method of demonstrating interest, concern, and responsibility for a child. Compliance with a service plan can show interest, concern, and responsibility under section 1D(b) and noncompliance with a service plan can demonstrate unfitness. See *In re Konstantinos H.*, 387 Ill. App. 3d at 204; *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065 (2006); *In re Jaron Z.*, 348 Ill. App. 3d at 259; *In re C.M.*, 319 Ill. App. 3d 344, 359 (2001). In the case at bar, compliance with the service plan is even more important since respondent could not demonstrate interest by contacting her children until April 2007.

Prior to April 2007, when compliance with service plans was the sole method for respondent to demonstrate interest, concern, and responsibility for her children's welfare, respondent failed to do so. Paiz, Johnson, and Flamand provided testimony about respondent's behavior during this time period. As of August 2005, when Paiz began working with her,

respondent was in need of substance abuse treatment, individual therapy, urine drops, a psychological assessment, anger management therapy, and parenting classes. Respondent completed the substance abuse assessment and one parenting class, but did not complete a second required parenting class. However, respondent failed to provide Paiz with a copy of her psychological assessment, despite being referred for the service twice. Additionally, when the psychological assessment recommended a psychiatric assessment, respondent completed the initial psychiatric assessment but failed to follow up. Like the psychological assessment, respondent needed to be referred for the psychiatric assessment twice and failed to follow up both times she was referred for the service. Johnson opined that as of May 2008, respondent needed additional psychiatric treatment, and testified that respondent never completed her psychiatric evaluation.

More problematically, respondent never completed individual therapy and anger management therapy, despite the fact that it was her physical abuse of her children that led the children to be removed from her home. Paiz testified that respondent missed a large number of her appointments with Flamand, and Flamand confirmed that respondent missed 10 of 30 therapy sessions. Moreover, despite Flamand's opinion that respondent was progressing, Paiz and Johnson both testified that respondent still needed anger management therapy; Johnson opined that respondent was not improving. Paiz testified that respondent would grow upset and scream over the telephone when Paiz was unable to "expedite everything" so that she could see her children. Respondent also intimidated Yuliette's foster mother several times by visiting her workplace and accusing her of trying to take Yuliette away from respondent.

Respondent's compliance with her service plans did not improve once she was able to begin visiting her children. In fact, at the time the permanency goal changed to "substitute care pending determination on termination of parental rights" on January 28, 2008, respondent stopped participating in services altogether. Flamand testified that he offered to keep treating respondent on a sliding-scale fee basis, and Johnson testified that respondent was referred to community-based services, where she would be able to receive individual therapy and psychiatric monitoring at no cost. However, respondent did not engage in services in its intended manner. Respondent's noncompliance with her service plan indicates a lack of interest, concern, and responsibility for her children's welfare, and it was not against the manifest weight of the evidence for the juvenile court to find her unfit on that basis.

Respondent's behavior during visits with her children only emphasizes her unfitness. While respondent participated in visits, she repeatedly made inappropriate comments to her children, such as giving them false hopes of returning home and blaming the caseworkers or the court system for the children not being able to return home. Respondent was warned a number of times about the inappropriateness of her comments, but persisted in making them, saying that "she could tell her kids whatever she wanted 'cause they were her children." A number of visits were terminated and visitation was suspended several times due to respondent's conduct.

Respondent also disobeyed rules regarding bringing visitors to visits, bringing her boyfriend and child several times. Respondent brought Victor S. to visit the children once, which led to Yuliette being upset after the visit because she was not aware that he was coming. Most disturbingly, respondent engaged in physical violence against Alexey in October 2007

when she grew angry and attempted to choke him while Yuliette and Victor were present and crying. The inappropriateness of respondent's conduct during visits can be seen in the fact that while the caseworkers wanted to gradually extend the length and frequency of visits, they were never able to progress beyond weekly one-hour visits because most of the visits were inappropriate.

Respondent argues that her visits and compliance with the service plans demonstrate a reasonable degree of interest, concern, and responsibility in her children's welfare. Respondent also points to the fact that she brought food for the children even when visits were suspended as support for her claim. There is no doubt that respondent visited her children and has affection for them. However, a parent is not fit simply because she demonstrates some interest in or affection for her child; the interest, concern, and responsibility must be reasonable, which also includes being a responsible parent. See *In re Daphnie E.*, 368 Ill. App. 3d at 1064; *In re Jaron Z.*, 348 Ill. App. 3d at 259; *In re E.O.*, 311 Ill. App. 3d at 727. This facts of this case are similar to the situation in *In re M.J.*, in which the court upheld a finding of unfitness under section 1D(b), noting that "[w]hile the record shows that respondent consistently attended scheduled visitations with her children, it also demonstrates a failure to comply with the remainder of the service plan despite her knowing that the compliance was necessary in order for her children to be returned home." *In re M.J.*, 314 Ill. App. 3d at 656. In the case at bar, although respondent apologized for her conduct, she continually lost her temper and did what she pleased knowing that her conduct in her children's presence was improper and not in her children's best interest. Given respondent's inconsistent engagement in services and her improper and inappropriate conduct

during visits with her children, we find that the juvenile court's determination that respondent did not demonstrate a reasonable degree of interest, concern, or responsibility for her children's welfare was not against the manifest weight of the evidence.

Section 1D(m)

The juvenile court also found respondent unfit based on section 1D(m) of the Adoption Act. Even if we found that the juvenile court's finding of unfitness based on section 1D(b) was against the manifest weight of the evidence, we may affirm if the court's finding based on section 1D(m) was not against the manifest weight of the evidence. *In re Jaron Z.*, 348 Ill. App.3d at 259. Section 1D(m) provides:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. 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 under Section 2-3 of the Juvenile Court Act of 1987 ***, 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 under Section 2-3 of the Juvenile Court Act of 1987 ***." 750 ILCS 50/1D(m) (West 2008).

The "reasonable efforts" and "reasonable progress" grounds of section 1D(m) are distinct and must be considered separately. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). "Reasonable efforts" is a subjective standard that is concerned with the correction of the behavior that caused the removal of the child, and considers the amount of effort that would be reasonable for the particular parent. *In re M.A.*, 325 Ill. App. 3d at 391. The court must determine whether the parent has made " 'earnest and conscientious strides' " toward correcting the unacceptable behavior. *In re D.F.*, 332 Ill. App. 3d 112, 125 (2002) (quoting *In re B.S.*, 317 Ill. App. 3d 650, 658 (2000)). "Reasonable progress" is an objective standard that considers whether the parent has made progress in the goal of having the child returned home. *In re M.A.*, 325 Ill. App. 3d at 391. "The standard by which progress is measured is the parent's compliance with the court's directives, service plans, or both." *In re D.F.*, 332 Ill. App. 3d at 125. At a minimum, for there to be reasonable progress, there must be "measurable or demonstrable movement toward the goal of reunification." *In re D.F.*, 332 Ill. App. 3d at 125. Lack of either reasonable efforts or reasonable progress is an appropriate basis for finding unfitness. *In re M.A.*, 325 Ill. App. 3d at 391.

In its ruling, the juvenile court found that the State established, by clear and convincing evidence, that respondent failed to make reasonable efforts or reasonable progress during seven

time periods: March 25, 2005, to December 25, 2005; December 26, 2005, to September 26, 2006; September 27, 2006, to June 27, 2007; June 28, 2007, to March 28, 2008; November 4, 2007, to August 4, 2008; August 22, 2006, to May 22, 2007; and May 23, 2007, to February 23, 2008. We cannot find that this decision was against the manifest weight of the evidence.

The time periods listed by the judge begin on March 25, 2005, and end on March 28, 2008. Accordingly, we will consider only behavior that occurred during that time. Under section 1D(m), a parent's "failure to substantially fulfill his or her obligations under the service plan and correct the condition that brought the child into care" can be considered as failure to make reasonable progress. In the case at bar, respondent did not fulfill her obligations under the service plans and was unable to correct the condition that brought her children into care, namely, her physical abuse.

As noted earlier, as of August 2005, respondent was in need of substance abuse treatment, individual therapy, urine drops, a psychological assessment, anger management therapy, and parenting classes. Respondent completed the substance abuse assessment and one parenting class, but did not complete a second required parenting class. After the psychological evaluation was completed, that service changed to a psychiatric evaluation. Respondent went twice for initial psychiatric evaluations, but did not follow up either time, despite caseworkers informing her of the importance of following up. Accordingly, respondent never completed the psychiatric evaluation service. In fact, as of the time of the fitness hearing, respondent was still in need of anger management, individual therapy, and a psychiatric evaluation, meaning that respondent did not complete any of those services in the five years her case was in the system.

Respondent participated in individual therapy, including an anger management component, for part of the relevant time. However, respondent missed a number of appointments and stopped individual therapy altogether after the goal change in January 2008, despite having the option of continuing therapy with Flamand on a sliding-scale basis or taking advantage of community-based services at no cost. Moreover, when respondent was attending therapy, she was not advancing in her ability to cope with stressful situations. See *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051 (2003) ("while respondent attended various counseling sessions and parenting classes, the evidence indicated she did not internalize and demonstrate the lessons she learned there"). While under the treatment of Flamand, respondent choked Alexey in front of Victor and Yuliette because she was angry that Alexey was dirty. She also engaged in behavior such as screaming at the caseworkers and intimidating Yuliette's foster mother. Even Flamand, her therapist, acknowledged that respondent never completed individual therapy.

Respondent argues that, "[r]egardless of other services offered," the family never recovered from the lack of visitation between December 2004 and April 2007, which "rendered it impossible" for her to make reasonable progress. However, respondent fails to understand the meaning of "reasonable progress." As noted, under the language of section 1D(m), a parent's "failure to substantially fulfill his or her obligations under the service plan and correct the condition that brought the child into care" can be considered as failure to make reasonable progress. Respondent cannot separate "reasonable progress" from "other services offered" and focus only on the lack of visitation because engagement in services is part of the determination of whether reasonable progress has been made. If respondent had participated in the "other services

offered" and had learned from those services, she likely would have made reasonable progress.

Respondent's behavior does not demonstrate the "measurable or demonstrable movement toward the goal of reunification" that is required to show reasonable progress. See *In re D.F.*, 332 Ill. App. 3d at 125. Not only did respondent fail to move toward the goal of reunification, she was unable even to increase the length or frequency of her visits with her children beyond the initial one-hour weekly meeting schedule set in April 2007. Likewise, respondent did not demonstrate any sort of effort to curb her abusive behavior, as is best exemplified by the choking incident in October 2007. Respondent also knowingly engaged in behavior that was adverse to the goal of reunification: she failed to engage in services despite knowing that it would adversely affect her chances of reunification and repeatedly made inappropriate comments to her children after having been warned that they were inappropriate. Considering the evidence in the record, we cannot find that it was against the manifest weight of the evidence for the juvenile court to find by clear and convincing evidence that respondent had failed to make reasonable efforts or reasonable progress under section 1D(m). Thus, under either section 1D(b) or (m), we must affirm the juvenile court's finding of unfitness.

Best Interest

Respondent also argues that the juvenile court's determination that it was in the children's best interest to terminate respondent's parental rights was against the manifest weight of the evidence. Once a parent has been found unfit, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). Section 1-3 of the Juvenile Court Act enumerates a number of factors that must be considered when determining

whether termination of parental rights is in the minor's best interest, including (1) the physical safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachments, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of every family and child, (9) the risks attendant to entering and being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2008). The State has the burden of proving that it is in the child's best interest to terminate parental rights by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). Upon review, a lower court's determination that the State has met its burden will not be reversed unless it was against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). In the case at bar, the juvenile court determined that the State demonstrated that it would be in the children's best interest to terminate respondent's parental rights by a preponderance of the evidence..

Victor and Yuliette

Respondent argues that the juvenile court's determination that it was in Victor and Yuliette's best interest to terminate her parental rights was against the manifest weight of the evidence. In support, she claims that both children informed the court that they wanted to maintain contact with their mother, that termination would not guarantee that the minors could keep their close bond, and that the children's behavioral problems raise the question of whether they would successfully be adopted. We do not find these arguments persuasive.

Victor informed the juvenile court that he did not want to be adopted "[b]ecause then I wouldn't get to see my mom." However, respondent fails to address the rest of the testimony

concerning Victor. Meza and Edith E. both testified that Victor felt torn between his foster family and his biological parents. Meza also testified regarding an incident in May 2010, when respondent threatened to beat up Meza and screamed at her in front of Victor, after which Victor no longer wished to visit with respondent. Victor also threatened to kill himself after respondent canceled a visit in February 2010.

Victor had a good relationship with his foster family, including taking family vacations with them and playing soccer. He had been with the same family for two years at the time of the best interest hearing, and Victor testified that he felt like part of the family.

Likewise, Yuliette informed the juvenile court that she wanted to stay in contact with her family. However, unlike Victor, Yuliette also told the court that she did not mind being adopted into her foster family. In fact, Yuliette testified that she loved her foster home and that "[i]t's everything I -- it's what I want and what I need. I wanted attention and support and love, and I have that. And what I need -- well, what I feel I need is educational wise and for me, spiritually, I have it. Everything I need there is there."

Yuliette had been living in the same foster home with Jeannette S. for a year and a half and had a good relationship with her foster family. Yuliette and Victoria, Jeannette's daughter, had many things in common and spent time together. Jeannette testified that she talked with Yuliette frequently and that they had a bond. Jeannette considered Yuliette to be "just like my daughter," and Yuliette referred to Jeannette as "Mom." Yuliette had also been accepted by Jeannette's extended family.

Respondent is correct when she asserts that there would be no guarantee that the children

would be able to maintain a relationship if they were adopted. However, Edith E. testified that she would allow Victor to maintain a bond with Yuliette and Alexey and considered it to be "very important."; Jeannette S. also testified that she would allow Yuliette to maintain a relationship with her siblings.

Finally, the question of whether any of the children would be successfully adopted due to their behavior issues does not make the juvenile court's decision to terminate parental rights incorrect. While the availability of an adoptive home is one of the factors to consider in determining whether termination is in a child's best interests, it is not the only factor. *In the Interest of E.C.*, 337 Ill. App. 3d 391, 401-02 (2003); *In re B.S.*, 317 Ill. App. 3d 650, 665 (2000). In Victor's case, given the relationship between Victor and his foster family and the turbulent relationship between Victor and respondent, we cannot find that it was against the manifest weight of the evidence for the juvenile court to determine that it was in Victor's best interest to terminate respondent's parental rights. Similarly, with regard to Yuliette, her strong bond with her foster family demonstrates that it was not against the manifest weight of the evidence for the juvenile court to find that it was in her best interest to terminate respondent's parental rights.

In her reply brief, respondent places heavy reliance on a recent report filed by the public guardian. On February 16, 2011, the public guardian filed a motion on behalf of the children for leave to file a report to the court, which we granted on February 23, 2011. In the report, the public guardian claims that Yuliette no longer lives in the foster home of Jeannette S., as she did at the time of the best interest hearing. Instead, Yuliette is currently residing with her

godmother's adult daughter.[5]

Respondent argues that since Yuliette is no longer in the same foster home, the juvenile court's decision that it was in her best interest to terminate respondent's parental rights was against the manifest weight of the evidence. However, respondent points to no authority that would allow us to consider the current status of the children in determining the propriety of the juvenile court's decision at the time of the best interest hearing. Absent such authority, we must consider the facts as they existed before the juvenile court. See *People v. Gonzalez*, 268 Ill. App. 3d 224, 229-30 (1994) (documents concerning conviction that did not take place until trial was over would not be considered, since defendant could not supplement record with documents that were not before the trial court); *Mid-State Savings and Loan Ass'n v. Illinois Insurance Exchange, Inc.*, 175 Ill. App. 3d 265, 268 (1988) (matters that were not considered by the trial court will not be considered by a reviewing court by way of a motion to supplement the record on appeal); *People v. Carroll*, 49 Ill. App. 3d 387, 396 (1977) (record on appeal could only be supplemented with information that was before the trial court). As noted, based on the facts in the record, the juvenile court's determination that it was in Yuliette's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

Alexey

Respondent also argues that the juvenile court's determination that it was in Alexey's best interest to terminate her parental rights was against the manifest weight of the evidence. Respondent's arguments concerning Alexey focus on his placement in the group home as

[5] Victor and Alexey's wishes and housing situation have not significantly changed.

opposed to a foster home. Respondent also claims that Alexey's desire to terminate parental rights is "clearly" based on the termination of parental rights as to his siblings and his "desire not to be left out."

Respondent essentially argues that since Alexey is in a group home and not in a preadoptive placement in a foster home, there is no benefit to terminating respondent's parental rights. However, Kurian's testimony suggests that one benefit to terminating parental rights would be giving Alexey a sense of closure. All of the expert testimony and reports indicate that Alexey "desperately craves to be with a family" and desires to remain with Yuliette and Victor. Kurian testified that visits with respondent caused Alexey confusion and uncertainty regarding his future, leading to the suspension of visits after March 2010. Moreover, Alexey was more concerned with maintaining a relationship with his siblings than he was with respondent. While remaining in a group home may not be an ideal situation, the juvenile court heard all of the testimony, including testimony from Alexey, and determined that termination was "the better alternative." See *In re B.S.*, 317 Ill. App. 3d at 665.

Additionally, we do not find that Alexey's motives for desiring adoption compel a finding that it was not in his best interest to terminate parental rights. While respondent claims that Alexey's motives are clear, we are not in the position to determine the motivation behind Alexey's wishes, as we are limited to examining a cold record. The juvenile court was present for all of the testimony, including testimony from Alexey, and had the benefit of all of the reports and service plans entered into evidence. Moreover, the same judge presided over the case through all of the permanency hearings and the termination proceedings, and was quite familiar

with all of the parties involves. We defer to the juvenile court regarding the determination of Alexey's motives and the weight to afford them. See *In re D.F.*, 201 Ill. 2d 476, 499 (2002) ("A reviewing court***must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.").

We also find it persuasive that the juvenile court did not immediately make a best interest determination due to concerns about Alexey's emotional stability. Instead, the court ordered another report to assist in the best interest determination. It was only after receiving the CCJCC report that the court found that it was in Alexey's best interest to terminate parental rights "so that Alexi [*sic*] may achieve the consistency and predictability in his life that is crucial for his normal development." Based on the juvenile court's careful consideration prior to making a decision and evidence in the record that Alexey needed permanence, we find that the court's determination that termination was in Alexey's best interest was not against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, we find that the juvenile court's finding that respondent was unfit under sections 1D(b) and (m) of the Adoption Act was not against the manifest weight of the evidence. We further find that the juvenile court's decision that it was in the children's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

Affirmed.