2012 IL App (2d) 120189-U
No. 2-12-0819
Order filed December 17, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.W., a Minor,	)	Appeal from the Circuit Court
	)	of Lee County.
	)	
	)	No. 09-JA-15
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Nathan M.,	)	Daniel A. Fish,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in terminating respondent, Nathan M.'s, parental rights in his biological daughter, J.W. First, the trial court's finding that respondent was an unfit parent was supported by evidence that he failed to complete services that were based on legitimate concerns with his substance abuse, emotional and mental health, and history of violence, including domestic violence. Second, respondent's sole challenge to the trial court's best-interests ruling was that the court failed to articulate all pertinent statutory factors, but there is no requirement in statutory or decisional law that the trial court must present any rationale for its decision on best interests.

¶ 2 Respondent, Nathan M., appeals from the judgment of the trial court terminating his parental rights in his daughter, J.W. Respondent contests the trial court's finding that he is an unfit parent and that termination of his parental rights is in the best interests of J.W. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 1, 2009, J.W. and her half-brother, KU., were taken into protective custody. J.W., born on October 14, 2004, is the biological daughter of Alicia W. and respondent. K.U., born on February 17, 2006, is the biological son of Alicia and Coy U. (K.U. and Coy figure in the background of this case, but neither is the subject of this appeal.)

¶ 5 On July 6, 2009, the State filed a petition for wardship of J.W. The petition stated that J.W.'s biological father was unknown. The petition was amended on August 13, 2009, to state that respondent is the biological father of J.W. In the petition, the State alleged that J.W.'s environment was injurious to her welfare. First, the State asserted that Alicia and Coy have an extensive history of drug abuse, which threatened the welfare of J.W. and K. U., who were residing with Alicia and Coy. The State cited two specific reports of drug use in May 2008 and May 2009. The State's second main allegation of an injurious environment was that, on July 1, 2009, Alicia was found "lethargic" in her car in a restaurant parking lot. J.W. and K.U. "were running through the parking lot unattended." Two syringes were found in the car.

¶ 6 On July 9, 2009, a shelter care hearing was held, at which the court found probable cause to believe that J.W. and K.U. were neglected. The court placed guardianship of J.W. and K.U. in the Department of Children and Family Services (DCFS).

¶ 7 Respondent was residing in Florida when J.W. was taken into protective custody. The record contains a United States Post Office return receipt, dated July 15, 2009, and bearing what appears to be respondent's signature. The receipt is attached to a summons to appear on August 10, 2009. Respondent appeared in court on that date and was advised of the contents of the petition for wardship. The hearing on the petition was continued to December 7, 2009. On that date, respondent

stipulated to the allegations of neglect. On December 16, 2009, the court entered an order pursuant to section 2-21(2) of the Juvenile Court Act (Juvenile Act) (705 ILCS 405/2–21(2) (West 2010)) determining that J.W. was neglected because of an injurious environment, according to the criteria of section 2-3 of the Juvenile Act (705 ILCS 405/2-3 (West 2010)). On February 26, 2010, the court entered a dispositional order under sections 2-22 and 2-27 of the Juvenile Act (705 ILCS 405/2-22, 2-27 (West 2010)) determining that respondent was an unfit parent for reasons other than financial circumstances, and that it was in the best interests of J.W. that she be made a ward of the court. J.W. and K.U. were placed in the care of their maternal great aunt and uncle, Mary and Kent Scholl.

¶ 8 The first service plan for respondent was dated August 21, 2009. Six subsequent plans were dated, respectively January 1, 2010, May 5, 2010, November 4, 2010, January 28, 2011, July 14, 2011, and January 4, 2012. The trial court held permanency review hearings on May 10, 2010, July 12, 2010, November 1, 2010, May 9, 2011, and November 7, 2011. The May 2010 was the only review at which the court found that respondent was making reasonable efforts toward the return home of J.W. At the November 2011 permanency review, the court granted the State's request to change the permanency goal to substitute care pending termination of parental rights.

¶ 9 On November 21, 2011, the State filed a motion to terminate Alicia's and respondent's parental rights in J.W. There were five counts against each parent. As against respondent, counts I through V alleged, respectively, that he was an unfit parent because (I) he failed to maintain a reasonable degree of interest, concern, or responsibility as to J.W.'s welfare; (II) failed to protect J.W. from conditions within her environment that were injurious to her welfare; (III) failed to make reasonable efforts to correct, within nine months after the December 2009 adjudication of neglect, the conditions that were the basis for the removal of J.W.; (IV) failed to make reasonable progress

toward the return of J.W. to him within nine months after the December 2009 adjudication of neglect; and (V) failed to make reasonable progress toward the return of J.W. to him during any nine-month period after the end of the initial nine-month period following the December 2009 adjudication of neglect.

¶ 10 On April 5, 2012, Alicia signed consents to adoption of J.W. and K.U. by the Scholls.

¶ 11 On April 16, 2012, the trial court held a hearing on whether respondent was an unfit parent as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). The court considered the following three nine-month periods in assessing respondent's efforts: (1) December 16, 2009, through September 16, 2010; (2) September 16, 2010, through June 16, 2011; and (3) June 16, 2011, through March 16, 2012. For clarity, we arrange the evidence according to the requirements and goals set forth in the multiple service plans generated for respondent. When appropriate, we refer to evidence that was received into the court record at the various review hearings that preceded the April 2012 fitness hearing.

¶ 12 A. Evidence on Fitness

¶ 13 As a preliminary matter, we clarify what the record suggests as to why J.W. was not placed with respondent after she was taken into protective custody. Tasha Curry, one of respondent's caseworkers, testified at the November 2011 permanency review that a background check was done on respondent to see if he met "the standard for safety" required for placement. Respondent failed to meet that standard and, accordingly, was required to complete services.

¶ 14 The service plans required respondent to: (1) complete a substance abuse assessment and any recommended treatment; (2) complete Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) programs; (3) refrain from drugs and alcohol; (4) complete random drug screens; (5) complete

parenting classes; (6) complete an anger management program; (7) complete a domestic violence program; (8) complete "individual therapy" to address any "mental health issues [he] may have"; (9) maintain appropriate housing and employment; and (10) refrain from illegal or criminal activity. The requirement of a domestic abuse program is not specified in any of the plans, but is acknowledged in the testimony of respondent and his caseworkers, who refer to it variously as a "class," "course," or "assessment." The service plans also prescribe visits between J.W. and respondent.

¶ 15 The pertinent evidence on fitness, arranged by service, is as follows:

(1) *Complete a Substance Abuse Assessment and Any Recommended Treatment*

¶ 16 Chyaire Evans was respondent's caseworker from August 2009 to July 2010, at which time Curry succeeded her. Curry and Evans were employees of Catholic Charities, which contracted with DCFS to provide caseworker services in this matter. (During the pendency of the proceedings below, Catholic Charities became Youth Services Bureau, but for convenience we refer to the agency as Catholic Charities throughout.)

¶ 17 At the February 2010 dispositional hearing, Evans explained that the requirement of a substance abuse evaluation was imposed after respondent arrived at four or five visits with alcohol in his system. Another consequence of his alcohol consumption was that respondent was required to take a Breathalyzer test before visits with J.W. On the last Saturday prior to the dispositional hearing, respondent's blood alcohol level was "point 33." That reading was registered at 12:30 p.m. Evans noted that respondent's drinking was "the primary obstacle to [his] making progress in this case."

¶ 18 Evans testified that, though the first service plan was generated in August 2009, respondent had yet not completed the required substance abuse evaluation. Evans recognized that respondent told her that he was unable to afford an evaluation at Sinnissippi Center because he owed it a balance "from a previous case." Evans said that she could not "help him" with the balance, but noted that Catholic Charities was willing to accept an evaluation from another source such as Lutheran Social Services of Illinois (LSSI). Evans rated respondent's progress on his service plan as unsatisfactory for his failure to obtain a substance abuse evaluation.

¶ 19 Respondent testified that he was willing to undergo the substance evaluation but could not afford the $25 fee required by Sinnissippi. At the conclusion of the February 2010 hearing, the trial court directed Catholic Charities to assist respondent in finding a source for an evaluation, even if a "payment program" was necessary.

¶ 20 At the May 10, 2010, permanency review, Evans testified that respondent was "doing well" on services. Though, in her May 3, 2010, report to the court, Evans wrote that respondent had finished only half of his substance abuse assessment, she testified that she had since learned that he completed the entire assessment. In the May 2010 service plan, Evans wrote that respondent needed to address his potential substance abuse issues before he could enroll in therapy to address mental health issues. Evans testified that, though she was rating respondent's progress toward completion of services as unsatisfactory overall, she believed that he was "off to a good start."

¶ 21 Two months later, at the July 12, 2010, permanency review, Evans testified that Catholic Charities had not yet received any written proof that respondent completed a substance abuse assessment. Evans noted that she had spoken to the director at Sinnissippi, who recalled that respondent did undergo an evaluation there. The director, however, could not recall whether any

treatment was recommended and, moreover, was unable to locate respondent's file. Evans acknowledged that it was not respondent's fault that his file at Sinnissippi was misplaced.

¶ 22 At the November 1, 2010, permanency review, Curry testified that, though more than one year had passed since the first service plan was generated, Catholic Charities still had no documentation that respondent completed a substance abuse evaluation. Curry characterized the evaluation as "step one out of several services." Curry rated respondent's progress on his service plain as unsatisfactory for his failure to obtain an evaluation.

¶ 23 Respondent testified that he had documentation in his car that day to show that he completed a substance abuse evaluation at Sinnissippi the prior week. Respondent explained that it took him "two months to get into Sinnissippi." According to respondent, the evaluator found him to have a substance abuse problem based on his past underage drinking, and recommended outpatient treatment.

¶ 24 At the February 28, 2011, "court review" (not a permanency review), respondent testified that he had begun substance abuse treatment at Sinnissippi in Dixon. While the program was still ongoing, however, respondent obtained a job that made him unavailable to finish the program. Sinnissippi told respondent that he could go to Sterling to the finish the program. When respondent told Sinnissippi that he did not have transportation to Sterling, they replied that he needed to discuss the matter with Catholic Charities.

¶ 25 At the May 9, 2011, permanency review hearing, respondent acknowledged that he still had not completed a substance abuse treatment program. Respondent elaborated on the complications to which he alluded at the February 2011 court review. Respondent testified that he lived and Dixon and had begun a treatment program there consisting of daytime sessions on weekdays. Respondent

did not have a car, but was receiving rides from his grandmother. While the program was still in progress, respondent obtained a job at a lumber company. He worked daytime hours on weekdays and his employer was unwilling to accommodate his taking the daytime classes. Sinnissippi informed him that an evening treatment program was available at Sterling. Since, however, respondent's grandmother would not drive after 6 p.m., he stopped attending the Sinnissippi program. Respondent denied that Catholic Charities ever offered him transportation to the program in Sterling.

¶ 26 Cathy Zeier also testified at the May 2011 hearing. Zeier was Curry's supervisor at Catholic Charities. Zeier confirmed that respondent completed a substance abuse evaluation and was recommended for outpatient treatment. Respondent failed to attend the entire treatment program and was discharged on February 23, 2011. Zeier stated that, if a client is unable to drive himself to services, Catholic Charities can "sometimes" arrange for a case aid to transport him or can provide gas money to a driver whom the client arranges. Zeier testified that, to take advantage of these services, the client must inform the caseworker of the need. Zeier noted that Catholic Charities "rarely" hears from respondent.

¶ 27 At the close of the May 2011 hearing, the trial court determined that respondent's efforts toward J.W.'s return home were unreasonable. The court relied in part on respondent's failure to "return[] to treatment that was recommended."

¶ 28 At the final permanency review on November 7, 2011, Curry testified that she had no documentation that respondent re-enrolled in substance abuse treatment since his discharge from Sinnissippi in February 2011. Curry noted that, in the intervening months, Catholic Charities sent letters to respondent, and left him phone messages, for the purpose of rescheduling his substance

abuse treatment. Court Appointed Special Advocate (CASA) also sent respondent a certified letter regarding treatment, but respondent did not respond.

¶ 29 Curry added that, when she last spoke to respondent at an administrative case review (ACR) in July 2011, he reported that he was no longer employed.

¶ 30 Regarding respondent's lack of progress in obtaining substance abuse treatment, Curry wrote as follows in the service plan of January 4, 2012:

> "[Catholic Services] has finally received all records from Sinnissippi regarding [respondent's] substance abuse treatment. Records report that [respondent] voluntarily discontinued services after 4 sessions and his file was closed on 2/23/11. Staff reports that no other records exist regarding [respondent]. Subsequently, [respondent] refused an invitation by [Catholic Charities] and CASA to attend a staffing to allow [respondent] night sessions to accommodate his reported work schedule. However, during the July ACR, [respondent] indicated that he is no longer employed. [Respondent] also indicated that he will not return to Sinnissippi because staff 'knows him and does not like him.' [Catholic Charities] sent a letter out to [respondent's] home later that week inviting him to contact the agency for services at LSSI. [He] did not respond."

¶ 31 Respondent testified at the November 2011 hearing to the efforts he had made since the May 2011 permanency review to complete substance abuse treatment. Respondent explained that, when he attempted to re-enroll in Sinnissippi's substance abuse program (from which he had withdrawn earlier that year because of employment), Sinnissippi told him that he needed to pay $480 before beginning the program again. Catholic Charities agreed to pay the $480, but did not make the payment until August. While he waited for the Catholic Charities to make the payment, respondent

spoke with Michael Tucker of the Adult Education Association about receiving substance abuse treatment from him. According to respondent, DCFS told him that it would not accept work from Tucker.

¶ 32 Respondent stated that, after several months, Catholic Charities paid Sinnissippi the $480. After the payment was made, however, respondent did not return to Sinnissippi, but rather went to LSSI. Respondent testified that he had a "substance abuse evaluation" scheduled for LSSI on November 14, 2011.

¶ 33 The guardian *ad litem* introduced into evidence a March 2, 2011, certified letter to respondent from Vanessa White of CASA. In the letter, White asks respondent to arrange an appointment with the staff of CASA, Sinnissippi, and Catholic Charities "to clarify the status of [his] progress at Sinnissippi." Respondent admitted that he did not respond to the letter. Respondent stated that he would not go back to Sinnissippi because they "kicked [him] out *** for getting a job," and now had a "conflict of interest." Respondent also complained that Sinnissippi was judging him based on his past actions. Respondent confirmed that he intended to follow through with the evaluation he scheduled with LSSI. Respondent denied that he had "delayed *** all these months for any reason other than financial."

¶ 34 At the April 16, 2012, fitness hearing, Curry noted that respondent still had not completed substance abuse treatment. Curry acknowledged that respondent was claiming transportation issues as a restriction on his treatment options. Curry maintained, however, that on three occasions Catholic Charities offered respondent transportation to appointments for services; in one instance, respondent declined the offer, and on the remaining occasions he did not respond. Curry noted specifically that she and CASA both sent letters to respondent asking to arrange a meeting to discuss

the possibility of respondent attending, with transportation assistance, evening treatment classes that Sinnissippi was offering. Although CASA received a certification that respondent signed for the letter it had sent, respondent never made contact to arrange the treatment. According to Curry, Catholic Charities had case aids available to take clients to appointments. Curry was not positive, however, that a case aid would have been available three nights per week to take respondent to treatment sessions at Sinnissippi.

¶ 35 Curry acknowledged that respondent completed an "evaluation" at LSSI instead of pursuing further options with Sinnissippi. Curry claimed that respondent, contrary to his requirement to keep his caseworker informed of his progress on services, never told her that he was going to LSSI.

¶ 36 Kelly Burrow, a substance abuse counselor, testified that she conducted respondent's substance abuse assessment at Sinnissippi. She diagnosed respondent with alcohol and cannabis dependency. Her conclusion was based on various data, including respondent's admission to alcohol and cannabis use. Burrow referred respondent to outpatient treatment consisting of six sessions. Respondent attended only one session. When Sinnissippi failed to hear from him after 30 days, they closed his file. Burrow testified that Sinnissippi can arrange assistance for clients who cannot provide their own transportation to its programs.

¶ 37 Respondent testified that, though he did not complete all sessions of the Sinnissippi treatment program, he "fe[lt] [he] finished it," and "[i]n his eyes [he] already proved to them that [he] wasn't an alcoholic." When Catholic Charities informed him that his partial attendance of the program at Sinnissippi was not enough to satisfy that element of the service plan, respondent went to LSSI. Respondent claimed that Catholic Charities approved his going to LSSI. According to respondent, he sat for an "evaluation" at LSSI about eight months ago, since the final permanency

review in November 2011. The evaluator at LSSI was Jane LaFever at LSSI. Because of a paperwork delay at LSSI, the evaluation was completed only a week ago, and respondent did not yet have the chance to pick it up from LSSI. Respondent claimed that he knew part of the content of the evaluation, but his testimony was conflicting. At one point, respondent claimed that the evaluation said that he did not need to complete the program at Sinnissippi. At another point, respondent claimed that all he knew about the evaluation was that he did not need "anger management" (respondent claimed that the evaluation addressed not only his substance use but also his anger issues).

¶ 38 LaFever, an alcohol and drug abuse counselor at LSSI, testified that she met respondent on November 14, 2011, for a substance abuse evaluation. LaFever did not complete her written evaluation until February 2012. The delay was due to the fact that one of respondent's former treatment providers did not provide requested information until late January 2012. LaFever diagnosed respondent with alcohol and cannabis dependency, and recommended outpatient treatment. LaFever denied that she addressed anger management issues with respondent.

(2) *Complete AA and NA Programs*

¶ 39 Respondent admitted at the April 2012 fitness hearing that he did not complete Alcoholics Anonymous or Narcotics Anonymous. He gave no explanation for his failure.

(3) *Refrain from Drugs and Alcohol*

¶ 40 At the April 2012 fitness hearing, Curry did not directly allege that respondent was consuming alcohol. She recalled, however, that respondent stated in his intake assessment (included in the report that Evans prepared for the February 2010 dispositional hearing) that (in Curry's paraphrase) "he used alcohol and was going to use." We note that Curry likely was referring to

respondent's statement in that assessment that "his current drinking occurs on weekends and *** he is not experiencing any problems from his drinking." As Evans explained at the February 2010 dispositional hearing, respondent's consumption of alcohol led early in the case to the requirement that he take a Breathalyzer test before visits with J.W. We note that, as the case proceeded below, there was no further mention of Breathalyzer results.

¶ 41 Throughout the proceedings below, the State made no allegation that respondent was using drugs. Curry testified at the April 2012 fitness hearing that there she had no "direct evidence" of drug use by respondent, though she did note that he missed several random drug tests. Respondent denied at the fitness hearing that he has a drug or alcohol problem. He also claimed that he does not use drugs. Asked whether he was using alcohol, he replied, "[H]ardly at all. I don't drink really. I quit drinking."

¶ 42 LaFever, in her substance abuse assessment completed in February 2012, wrote that respondent reported that, for 3 to 4 months while he was 21 (he was born in 1982), he drank 15 beers and 3 mixed drinks per weekend, and for the remainder of the year drank 12 beers "once a week." Respondent claimed that, once he was arrested for aggravated battery, his use decreased to three beers each Sunday. Respondent further reported that he smoked 1 marijuana blunt per day while he was 16 and smoked 2 blunts per day while he was 18. While he was 20, he "[d]ecreased to weekends for a while [and] then returned to 2 blunts a day." Respondent stated to LaFever that his last consumption of alcohol was on November 13, 2011, when he had six beers while watching a football game. His last use of marijuana was in October 2010.

(4) *Submit to Random Drug Tests*

¶ 43 At the July 12, 2010, permanency hearing, Evans testified that she had not been able to arrange any drug tests with respondent. First, respondent had not provided a phone number where he could be reached readily. Evans had to leave messages with respondent's mother, and he typically would return the call in a day or two. Second, Evans said it was difficult to arrange a drug test given respondent's work schedule. He worked from 7 a.m. to 7 p.m. six days a week, but LSSI was open only to 5 p.m. Evans acknowledged that respondent offered to take a drug test following the last court appearance, but the test "didn't happen." Evans noted that she had tried to arrange a drug test for respondent at LSSI in Dixon but was not successful.

¶ 44 At the April 16, 2012, fitness hearing, Curry testified that respondent did not attend the two drug tests she scheduled or the two drug tests that Evans scheduled. Curry explained that, in order to schedule a drug test, Catholic Charities would obtain the client's schedule from LSSI. Catholic Charities would then notify the client by "letter" or "conversation" that it would be phoning the client to provide the date and time of the test. The client would receive 24-hour notice of the drug test. According to her notes, Curry scheduled tests for August 25, 2010, and September 1, 2010. Curry inferred that she was able to leave a message for respondent both times, as her practice was not to schedule a drug test unless she could leave a phone message. Curry currently maintained a calendar on which she recorded the date and time of phone notifications, but probably did not begin that practice until 2011, subsequent to the two drops she scheduled for respondent.

¶ 45 Curry testified that her next attempt to contact respondent regarding drug tests was to send him a letter, in November 2010, asking for his work schedule so that she could arrange drug screens. (Curry did not testify whether this further attempt at contact was successful.)

¶ 46 Also at the April 2012 fitness hearing, Curry was asked whether she recalled respondent's offer at a prior court appearance to take a drug screen immediately afterward at the probation department. Curry did not recall respondent's offer, but noted that, if the test had taken place, Catholic Charities would have needed respondent's consent to acquire the test records from the probation department. Because Curry saw no record that the test or consent had been obtained, she assumed that respondent's proposal "did not ever come to fruition."

¶ 47 In the January 4, 2012, service plan, Curry wrote that respondent "does not make himself available or agree to be provided transportation to drug screenings."

¶ 48 Respondent testified at the November 9, 2009, status hearing that, at the last court date, he was told to take a drug test in Rockford. He claimed that he lacked transportation to Rockford. Respondent then stated that he was willing to take a drug test at the courthouse.

¶ 49 At the May 9, 2011, permanency review, respondent was asked about Curry's statement in her May 9 permanency report that he was refusing drug tests. Respondent denied that he ever refused to take a drug test, and claimed that he had not been asked to take a drug test in over a year.

¶ 50 At the April 4, 2012, fitness hearing, respondent recounted two occasions where he was given notice of a drug drop. In 2009, Evans phoned to say that he needed to come to Sterling in an hour to take a drug test. At the time, respondent was working in Roscoe. Respondent told Evans that he did not have transportation to Sterling. On another occasion, Catholic Charities sent a notice to his old address. By the time the current occupant delivered the mail, the date for the test had passed.

¶ 51 Respondent reiterated that he offered at a prior court appearance to take a test immediately afterward at the probation department, but the test did not "take place."

(5) *Complete Parenting Classes*

¶ 52 Respondent completed parenting classes on April 19, 2010.

(6) *Complete an Anger Management Program*

¶ 53 The service plans state that respondent "demonstrates lack of impulse or anger control." The intake assessment incorporated into the report prepared for the February 2010 disposition hearing states that respondent has "a history of anger and inappropriate and damaging expression of his rage." Respondent reported that he "[could not] recall when he wasn't angry."

¶ 54 There was evidence of instances where respondent lost his temper with caseworkers. Evans testified at the November 9, 2009, status hearing that, during a recent visit at a McDonald's restaurant, respondent became angry and banged his fist on his mother's car when the case aid asked him to take a Breathalyzer. Respondent testified that he became angry during that incident because the case aid had made her request in front of J.W. and other restaurant patrons. Respondent's service plans state that he made angry phone calls to Catholic Charities and was abusive toward staff. Curry testified to an occasion where respondent became angry on the phone and hung up on her.

¶ 55 Regarding respondent's progress toward completing the anger management program, Evans testified at the July 12, 2010, permanency hearing that respondent had not yet completed it. Evans noted that respondent was still trying to determine how much the program would cost. Evans was sure that Catholic Charities would pay for the program.

¶ 56 The matter of payment was raised again at the November 7, 2011, permanency hearing. Respondent testified that he had attempted since the last permanency hearing to enroll in an anger management program at Sinnissippi, but was told by them that he owed $480 because he had withdrawn from its substance abuse treatment program earlier that year. Catholic Charities

subsequently paid the fee, in August 2011. Respondent did not explain why he had not enrolled in the program at Sinnissippi since the fee was paid.

¶ 57 At the April 2012 fitness hearing, respondent admitted that he still had not completed an anger management program. Respondent no longer mentioned a fee issue, but rather claimed that LaFever's evaluation at LSSI covered not only drug and alcohol usage, but also anger issues. When respondent told LaFever that his service plan required "anger management," LaFever said, "[T]hat all depends on me because I'm the one that makes that decision if you have an anger problem." Because LaFever determined that he had no anger problem, respondent did not enroll in a course.

(7) *Complete a Domestic Violence Course*

¶ 58 Again, this requirement was not specified in the service plans, but was mentioned in the testimony of Evans and Curry, who refer to it variously as a "course," "class," or "assessment." The requirement was, presumably, based on respondent's multiple convictions for battery, aggravated battery, and domestic battery. Respondent admitted at the April 2012 fitness hearing that he failed to complete a domestic violence course. According to respondent, however, LaFever told him that it was her decision whether he needed a domestic violence course. LaFever determined that respondent had no such need.

(8) *Complete Individual Therapy to Address Any Mental Health Issues*

¶ 59 Respondent's service plans state that his "emotional/mental health interferes with [the] provision of adequate child care or supervision." In his intake assessment, respondent reported that he was once hospitalized for psychiatric care after threatening suicide, had once been diagnosed with Attention Deficit Disorder with Hyperactivity (ADHD), and is frequently angry.

¶ 60 Respondent never completed the required therapy, but there was evidence at some points in the proceeding that he had financial obstacles. At the July 12, 2010, permanency review, there was evidence that respondent was required to pay a fee before enrolling in therapy at Sinnissippi, that he could not afford the fee, and that Catholic Charities intended to pay the fee but was still attempting to determine the amount. At the November 2011 permanency hearing, respondent claimed that he had attempted to enroll in services at Sinnissippi but could not because he owed them a fee for withdrawing from substance abuse treatment earlier that year. Catholic Charities subsequently paid the fee, in August 2011. Respondent did not specifically mention therapy as one of the services in which he had he had attempted to enroll, but even so, he failed to explain why he had not arranged for therapy since the fee was paid in August.

¶ 61 At the April 2012 fitness hearing, Curry noted that respondent had not completed therapy as of the January 4, 2012, service plan. Even as of the fitness hearing, respondent still had not undergone therapy. Respondent gave no explanation at the April 2012 hearing for this failure.

(9) *Maintain Appropriate Housing and Employment*

¶ 62 Respondent consistently claimed employment at the hearings below, but the caseworkers frequently asserted that he was not submitting proof of employment. Respondent claimed at one hearing that he was not able to provide Curry proof of employment because he could not contact her. In the final (November 1, 2011) service plan before the fitness hearing, Curry wrote that respondent had not provided proof of employment.

¶ 63 As for housing, respondent initially lived with a family member and then moved in with a girlfriend. Curry noted in her service plans, and testified at the April 2012 fitness hearing, that she was unable to consider respondent's current dwelling as a venue for visits with J.W., or for possible

placement of J.W., because respondent had not answered her requests to visit the home or her request for information on who was living there so that she could perform background checks.

(10) *Refrain from illegal or criminal activity*

¶ 64 Between 1999 and 2006, respondent was convicted of battery, aggravated battery, domestic battery, obstructing justice, and telephone harassment. Respondent was charged twice with battery during these proceedings, based on incidents in March and November 2011.

(11) *Visitation*

¶ 65 Curry testified at the April 2012 fitness hearing that respondent's visits with J.W. have gone well. Respondent typically brings other family members such as his grandmother, mother, and niece Naomi. J.W. is very "engaged" and "excited" during visits and "really loves" when Naomi is there. Respondent and J.W. are "comfortable" with each other. Curry's only concern was that respondent missed several visits and failed to call ahead to confirm several others (though it appears that preparations for a visit would proceed even where respondent failed to confirm). On at least three occasions, respondent claimed that he did not receive the monthly visitation calendar that Curry would send. According to Curry, respondent would change his residence without informing Catholic Charities.

¶ 66 On whether respondent showed interest in J.W. aside from visitation, Curry testified that respondent did not inquire of Catholic Charities regarding J.W.'s school activities, conferences , field trips or activities, or her doctors' appointments.

¶ 67 In the January 2012 service plan, Curry described respondent's compliance with visitation requirements:

> "Visitation is scheduled monthly due to a goal change. Visitation between [J.W.] and respondent is appropriate when it occurs. [Respondent] often cancels without contacting the agency or shows up late to visits stating that he was unaware that the visit was to occur. The agency must note that [respondent] is mailed a copy of his visitation calendar and the agency attempts to contact [him] by phone (in the event the schedule wasn't created the previous month). However, [respondent] maintains appropriate supervision of his daughter, enjoys playing and joking around during visits. He also makes plans prior to visitation to provide meals. [Respondent] is the only parent in this case [who] is currently providing a stable and consistent location ([g]randparents[']home), in which to visit. [Respondent] does not consistently call [J.W.], [or] send letters or gifts."

¶ 68 We note that Curry's claim to have difficulty communicating with respondent regarding visitation was just one aspect of an ongoing exchange of accusations between the caseworkers and respondent. Evans and Curry testified repeatedly throughout the proceedings that respondent was not providing current contact information. Curry claimed that she was forced to send certified mail to verify whether respondent was still living at a particular address, and to convey messages to respondent through the case aid who supervised J.W.'s visits. Curry claimed at the April 2012 fitness hearing that, despite regular attempts, she had contact with defendant only once in the prior 18 months. (Respondent claimed at the same hearing that he spoke with Curry a total of only three times while she was his caseworker.) Curry remarked that respondent's failure to communicate impeded his completion of services. For instance, when the Sinnissippi daytime program became unfeasible for respondent, he was sent a certified letter asking him to contact Catholic Charities and other agencies to arrange for completion of his substance abuse treatment. Respondent did not reply.

¶ 69 Consistent with her testimony, Curry stated in the January 2012 service plan that respondent "faile[d] to make regular contact with [her] in regards to services or [J.W.]," and "faile[d] to provide up to date information *** to allow coordination of services and prompt scheduling of visits."

¶ 70 Respondent reciprocated Curry's accusations with an equally forceful charge that she never answered her phone and never returned his calls. Respondent further claimed that he did timely notify Curry of address changes. These irreconcilable factual claims between the caseworkers and respondent presented a sheer issue of credibility.

¶ 71 We should also note how the communication issues might have affected respondent's understanding of what the service plans required. Respondent claimed that Curry never reviewed the service plans with him. Curry contradicted him on this. Moreover, respondent acknowledged that his attorney reviewed all of the plans with him, and that he "knew what [he] had to do through the service plan[s] *** to get [J.W.] returned to [him]." Respondent even insisted at one point that he did not need Curry in order to understand the content of the plans. Respondent further testified that, in his opinion, he complied with all service plans.

¶ 72 B. The Trial Court's Ruling on Fitness

¶ 73 At the close of the evidence, the court noted that it was considering the following three nine-month periods in assessing respondent's efforts: (1) December 16, 2009, through September 16, 2010; (2) September 16, 2010, through June 16, 2011; and (3) June 16, 2011, through March 16, 2012. The court found that the State had failed to prove counts I (failure to show reasonable degree of interest), II (failure to protect), or III (failure to make reasonable efforts to correct conditions that led to removal). On count I, the court said:

> "There was evidence and questioning regarding visits, calls, whether or not there [were] letters, other communications with [J.W.], whether or not financial support was provided, food, clothing, education, housing and compliance for the service plan. All these are but one factor. *** I did not hear any real explanation as to what [respondent] was advised initially and how he was supposed to go about remaining active and showing the active degree of interest and [whom] he could contact. There [were] discussions about—there has been testimony I believe that this could be done by contact [with] the foster parents[,] but there was no information that that was, in fact, conveyed to [respondent], nor the fact that the foster parents were willing to be the go[-]between in terms of all these things from doctors appointments to school conferences, to dentist trips, that they're wiling to undertake that."

¶ 74 Regarding count II, the court noted that respondent was living in Florida when J.W. was taken into protective custody, and that there was no evidence that he knew her environment was hazardous. Similarly, on count III, the court observed that respondent was not the cause of the conditions that led to the removal of J.W.

¶ 75 On counts IV and V, the trial court began its discussion by noting respondent's testimony that (in the trial court's paraphrase) he had "trouble communicating with [Curry]" and that she "never sat down and explained the service plan[s] with him." The court noted that, though Curry testified that it was the policy of Catholic Charities to review service plans with clients, she did not identify any meeting(s) with respondent in which she reviewed the specific terms of the plans and provided timetables for completion. The court likewise noted Evans' and Curry's complaints that respondent did not communicate adequately with them. As for their complaint that respondent failed to provide current contact information, the court stated that

> "there was no testimony that [Catholic Charities or other agencies] initially obtained the correct address and phone numbers for [respondent] so they could contact the parents [or] that they explained to [respondent] that it was [his] responsibility to advise the worker of any change in address or phone numbers."

The court remarked further on the caseworkers' claims that respondent did not communicate properly:

> "There was testimony that [respondent] did not cooperate with the [caseworkers]. That he did not return phone calls, did not respond to letters. [There was] testimony that there [were] letters that were sent out, however, there [were] no copies of those letters introduced or certifications of mailings which [were] discussed, no evidence of calendars or logs or memos memorializing phone calls or responses or lack of response. Those, in fact, were discussed and said [to] exist, [but] they were not offered. So we have [on] one side [caseworker] testimony and we have [respondent's] on the other side[,] which tend to contradict each other as to what was done here. The standard in this case is clear and convincing evidence[,] so it makes it difficult."

¶ 76 The court then remarked, that, "in spite of the foregoing," he "went back and reviewed the testimony of [respondent]." The court continued:

¶ 77 "[Respondent's] testimony was that I have the service plans, I know what to do, I was aware what I needed to do in the service plans to get my child back. [Respondent] testified he was aware he needed to go to alcohol and substance abuse treatment, A.A. and N.A. meetings, attend anger management, domestic violence classes, individual therapy[,] and submit random urine drops for drug and alcohol testing. During his testimony[,] respondent

admitted that he did not satisfactorily complete these requirements in the service plan[s] in any of the three nine-month periods that I outlined. These facts, these admissions by [respondent], I believe establish by clear and convincing evidence that he failed to make reasonable progress towards the return of the child in any of the three nine-month periods *** [.]"

¶ 78 The trial court scheduled a best-interests hearing.

¶ 79 C. Evidence on Best Interests

¶ 80 The best-interests hearing was held on June 11, 2012. Curry testified that J.W. is currently residing with her maternal great aunt and uncle, Mary and Kent Scholl, their biological children, and K.U., J.W.'s half-brother. The Scholl home has adequate space, and the Scholls provide J.W. proper food and clothing. J.W. feels safe in their home. She has a strong bond with K.U. and does not want them to be separated. J.W. has developed friends in the neighborhood and at school. She is excelling academically and is involved in extracurricular activities. The Scholls take an active interest in J.W.'s schooling. Curry testified that J.W. is in counseling where she is learning to build positive peer relationships and is also discussing her relationship with her biological parents. According to J.W.'s counselor, the sessions are "very positive" and there will be no need for further services.

¶ 81 According to Curry, J.W. has never said that she wants to live with respondent. Curry herself has not told J.W. that she may never see respondent again, but the Scholls have, and according to them J.W. is content with that possibility. From Curry's own observations, J.W., though limited in her understanding because of her age, recognizes "the permanency of living with [the Scholls] if the

case were to close on termination." Curry added that the Scholls would be open to visits by respondent as long as terms are agreed on.

¶ 82 Curry testified that, since the permanency goal was changed in November 2011 to substitute care pending termination of parental rights, respondent's visits have been reduced from weekly to monthly. In the entire proceeding, respondent was offered 94 total visits and attended 52. There were 2 cancellations, 4 "no-shows," 18 "non-confirmed visits," and 29 visits were missed for "failure of [respondent] to schedule or follow up with scheduling." There were several months where respondent made the majority of scheduled visits, but most months he did not. Curry noted that respondent does not call her "in between the scheduled visits as to how [J.W.] is doing." In Curry's estimation, respondent was no closer today to receiving J.W. back than he was three years ago. J.W. needs permanency, and it is in her best interests that respondent's parental rights be terminated.

¶ 83 Mary Scholl testified that J.W. has been living with her and her husband since July 2, 2009. Also in the home are the Scholls' two biological children and K.U. The house has enough space for all of them, and the Schools have plenty of food and clothing for J.W. J.W. is "very comfortable" in the home and has a "loving relationship" with the whole family. She has a strong "mother-daughter bond" with Scholl. Also, J.W. is so emotionally close with K.U. that they are "inseparable" from each other. Scholl is in close contact with J.W.'s teachers and social worker. Regarding her and her husband's schedules, Scholl testified that she is a high school secretary/receptionist and finishes work early enough each day to meet J.W. at the school bus after school. Scholl's husband, who also works, "sees [J.W.] off to school" in the morning. Scholl does not work summers. Scholl noted that day care is available in their community in case they need to place J.W. there in the mornings.

¶ 84 According to Scholl, though J.W. loves respondent, she has never said that she wants to live with him. Scholl does not believe that J.W. has spent enough time with respondent "to feel that comfort level." Scholl denied that her conversation with J.W. about her future with respondent occurred as Curry described in her testimony. Scholl does not recall the exact words she used, but she essentially told J.W. that there was "a possibility that all of her dad's rights would be taken away like her mother's." Scholl believed that, given J.W.'s need for love and stability, it was in her best interests that the Scholls adopt her. Scholl remarked that her foremost concern at the moment was to protect J.W. Alicia's visits were recently terminated. If the Scholls adopted J.W., they would allow no visits from either Alicia or respondent. They reasoned that J.W. has been "put through a lot of emotional stress," with her parents coming "in and out of [her] [life]." Scholl seemed to leave open the possibility, however, of future visits from respondent.

¶ 85 Respondent testified to his relationship with J.W. before he moved to Florida. Respondent was not "regularly" in J.W.'s life because he saw her only when Alicia allowed it. When respondent saw that Alicia "was on drugs and *** running around and passing [J.W.] off everywhere," he tried to hire an attorney but could not afford it. (Elsewhere, respondent testified that if "[he] would have known [Alicia] was on drugs[,] [he] would have called DCFS," but he "didn't know [until] the very end when DCFS took her the first time.") As respondent was finding it difficult, perhaps because of his "background," to find employment in Illinois, he moved to Florida. He wanted to "get a career going" and earn enough money to hire an attorney. Respondent lived in Florida from February to August 2009. He admitted that he did not give J.W. any financial support during that period. Respondent moved back to Illinois when he received a phone call from the State that J.W. was taken into protective custody. Respondent saw it as "an opportunity to get [J.W.] back." Respondent

stated that he loves J.W. and that she calls him "daddy" during visits. Though respondent recognized that the Scholls have provided a "loving home" for J.W., he was concerned that they might let Alicia back into J.W.'s life.

¶ 86 Respondent testified that he has two jobs and works six days a week. Respondent did not say how many total hours per week he works, but stated that he works 12 hours on each of the 3 days per week that he works both jobs.

¶ 87 Respondent testified that his most recent visit with J.W. was two weeks ago at the home of Diana Angleton, his mother. Respondent swam with J.W. in Angleton's pool. The visit lasted three hours. During the visit, J.W. asked respondent why they do not see each other more, and he replied that the court does not allow it.

¶ 88 Angleton testified that respondent had sporadic involvement with J.W. before he moved to Florida. Alicia would let respondent see J.W. when it was "convenient" and would drop J.W. off "at a moment's notice." Respondent "took care of [J.W.] a lot." Angleton and respondent were reluctant to give Alicia money because they had "heard things about" her and did not want the money used for an improper purpose. Before respondent moved to Florida, he was attempting to get custody of J.W. Respondent was not "neglecting his daughter" in moving to Florida, but rather was hoping to get employment in order to earn enough money to hire an attorney.

¶ 89 Angleton testified that she has observed respondent during visits since most of them occur at her house. Respondent is "wonderful" with J.W. He plays and communicates well with her, and disciplines her when necessary. J.W. has strong relationships with other members of the family, especially her cousin Naomi.

¶ 90 D. The Trial Court's Ruling on Best Interests

¶ 91 At the close of the evidence, the trial court ruled that it was in J.W.'s best interests that respondent's parental rights be terminated. The court said:

> "These cases are never easy for anyone involved with them, and certainly, as everyone has agreed here, it is not what is in the best interest for [Alicia], or [respondent], or any of their family members, but what's in the best interests *** for [J.W.]. It's been clearly established that the Scholl household has provided an environment in which [J.W.] has thrived and done well and is a loving household, that there, in fact, is a bond that has grown between [J.W.] and [the Scholls], and their children, that they have created a relationship there with the school, with people in the school, and that clearly the permanency and stability that they provide is in [J.W.'s] best interest here. Certainly[,] it is difficult to terminate the parental rights here and clearly the situation is that prior to the child coming into custody of the State, [Angleton] testified about the fact that they were afraid to provide any money to [Alicia] because they, quote, heard things about [her], end quote. Obviously, there [were] concerns *** about [Alicia], *** and no evidence as to what, if any[,] action they took in that regard. For—because of that—as well as the relationships and mostly because of the relationships that [have] been established by the foster parents and the children[,] I find that it's in the best interests of [J.W.] that [respondent's] rights be terminated in this case.

¶ 92 Respondent timely appeals.

¶ 93 II. ANALYSIS

¶ 94 Section 2-29 of the Juvenile Act (705 ILCS 405/2-29 (West 2010)) prescribes a bifurcated procedure for termination of parental rights. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1148 (2009). The

State must first prove that the parent is unfit. *Id.* at 1148-49. If the State meets that burden, then it must establish in a separate hearing that it is in the best interests of the child to terminate parental rights. *Id.* at 1149. As the fitness and best-interests inquiries involve distinct concerns, they must be addressed in separate hearings to avoid prejudice to the parent. *In re D.R.*, 307 Ill. App. 3d 478, 484 (1999). Respondent challenges the trial court's determinations at both the fitness and best-interests stages. We address the challenges in turn.

¶ 95 A. Unfitness

¶ 96 Section 50/1(D) of the Adoption Act (705 ILCS 405/1(D) (West 2010)) sets forth multiple grounds on which a parent may be found unfit, but the State need prove only one ground in order to establish parental unfitness (*In re Konstantinos H.*, 387 Ill. App. 3d 192, 203-04 (2008)). A finding of parental unfitness must be supported by clear and convincing evidence. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). As the trial court's determination of parental unfitness involves factual findings and credibility assessments to which the trial court is best suited, a reviewing court will not set aside a finding of unfitness unless it is against the manifest weight of the evidence. *Id.* A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented. *Id.*

¶ 97 The trial court found two grounds for unfitness. The first was that respondent failed to make reasonable progress toward the return of J.W. within nine months after the adjudication of neglect, that is, between December 16, 2009, and September 16, 2010. See 750 ILCS 50/1(D)(m)(ii) (West 2010). The second was that respondent failed to make reasonable progress toward the return of J.W. during any nine-month period after the end of the initial nine-month period following the

adjudication of neglect on December 16, 2009. The two periods relevant to the second finding were (1) September 16, 2010, through June 16, 2011, and (2) June 16, 2011, through March 16, 2012.

¶ 98 "Whether a parent has made reasonable progress toward the return of the child is determined objectively by the amount of movement toward the goal of reunification." *In re C.M.*, 319 Ill. App. 3d 344, 357 (2001). Reasonable progress exists when "the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such quality that the court, in the near future, will be able to order the child returned to parental custody." *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). As an objective standard, "reasonable progress" is measured without regard to the parent's individual capacities. *In re D.D.*, 309 Ill. App. 3d 581, 589 (2000).

¶ 99 The evidence amply supports the trial court's finding that respondent failed to make reasonable progress. At the outset, we note that the court appeared to reject, as unsupported by documentary proof, the State's allegation that respondent chronically failed to communicate with Catholic Charities and other agencies. The rejection was qualified, we believe, by the court's subsequent finding that respondent failed to complete required services, as the alleged noncompliance involved in many instances respondent's failure to communicate with the agencies.

¶ 100 Beginning in August 2009, respondent was assigned approximately ten services (excluding visitation) arranged by subject area. In the 28-month period between December 16, 2009, and April 16, 2012, respondent completed only one service: parenting classes. In May 2010, Evans testified that respondent was "off to a good start" because he had completed a substance abuse evaluation and parenting classes. That month, the trial court found respondent's efforts to be reasonable. By November of that year, however, respondent still had completed only the substance abuse evaluation

and parenting classes, and the trial court found that his efforts were unreasonable. Respondent finished no more services for the duration of the proceeding. Some of his failures he attempted to justify, while others he was silent about. As we explain below, the reasons he did offer were justifiably rejected by the trial court. Therefore, even if we believed that respondent made reasonable progress in the first few months following the December 2009 adjudication of neglect, we would still conclude that he did not make reasonable progress in any nine-month period following the initial nine-month period.

¶ 101 We address the services individually, beginning with the services relating to respondent's substance abuse, as his caseworkers particularly emphasized their importance. For instance, at the February 2010 dispositional hearing, Evans opined that respondent's consumption of alcohol was the greatest impediment to his progress. Curry wrote in her service plans, and testified in court, that the services relating to respondent's substance use were the threshold to other services. Respondent's admissions and conduct lent credence to the caseworkers' concerns. Respondent came to visits with alcohol in his system, and on one occasion registered an astounding .33 daytime blood alcohol concentration. In his LSSI evaluation, he described heavy alcohol consumption, and admitted to use of alcohol and cannabis during the pendency of this proceeding, contrary to the terms of his service plans. In the course of this case, respondent was twice diagnosed with alcohol and cannabis dependency and recommended for treatment, which he never completed. We acknowledge that respondent's attendance at the daytime Sinnissippi treatment program had to yield to his new employment opportunity with inflexible daytime hours. Respondent testified that the only alternative offered to him was an evening program in Sterling, which he lacked transportation to attend. Curry, however, contradicted respondent's testimony that he was not offered transportation assistance.

There was also evidence of attempts by Catholic Service and CASA to meet with respondent to discuss further treatment options. One attempt took the form of a certified letter sent to respondent's home. A copy of the letter was introduced into evidence. Respondent signed for the letter but did not respond to it.

¶ 102 Instead of engaging with the agencies on treatment options, respondent arranged for a second substance abuse evaluation. Respondent was evaluated by LaFever of LSSI. LaFever's diagnosis was the same as Sinnissippi's: alcohol and cannabis dependency. Respondent testified at the April 2012 fitness hearing that LaFever had completed the evaluation just days before and that he was not able to obtain a copy prior to the hearing. At one point in the hearing, respondent claimed that he knew the evaluation concluded that it was unnecessary for him to complete the treatment program at Sinnissippi, but at another point he claimed not to know what the evaluation said about his substance use (he claimed that all he knew was that LaFever told him that he did not need to complete an anger management program). It is irrelevant, however, what respondent knew about the LSSI evaluation in time for the April 2012 hearing, as respondent had failed to communicate with the agencies over treatment options once the daytime program at Sinnissippi proved unfeasible. Respondent claimed that he had Catholic Charities' permission to arrange the LSSI evaluation, but Curry testified that respondent never told her he was going to LSSI. Respondent claimed that he proved to Sinnissippi that he had no substance abuse problem and that Sinnissippi judged him on his past alone. The trial court evidently determined that respondent's attending the LSSI evaluation did not satisfy the service plan. The court could rightly conclude that respondent was delaying matters and was in denial over his substance abuse dependency.

¶ 103 Respondent also failed to complete AA and NA programs, and gave no explanation for it. Curry testified that respondent also failed to complete any of the four random drug tests that she and Evans scheduled. At one hearing, respondent denied that he ever refused to take a drug test, but at another hearing recalled one occasion where he received notice of a drug test but had to decline because he lacked transportation. Involved here are credibility determinations on which we defer to the trial court. As to respondent's credibility before *us*, we point out this remark: "[Respondent] offered on the stand to drop at probation immediately after court, but the agency *declined*" (emphasis added). The most that the record indicates is that respondent's proposed test never occurred. The reason it did not take place is suggested nowhere. Counsel should be careful in the future to ensure that his representations accurately reflect the record.

¶ 104 Respondent failed as well to complete anger management and domestic violence courses. These were not arbitrary requirements, but appropriate in light of respondent's history of violent crime including domestic violence, his admission to frequent anger and destructive behavior, and his episodes of anger toward caseworkers. According to respondent, LaFever told him during his LSSI evaluation that she would determine whether he needed to undergo anger management and domestic violence courses. Respondent claimed that he did not undergo these services because LaFever found them unnecessary. LaFever specifically denied that she spoke to respondent about anger issues, and she never testified that her substance abuse evaluation strayed into issues of domestic violence. This was yet another credibility determination that we have no cause to upset.

¶ 105 Respondent also did not complete therapy to address any mental health issues. This, too, was an appropriate service given respondent's admission that he was hospitalized for psychiatric care, was once diagnosed with ADHD, and is frequently angry. There was testimony early in the

proceeding that respondent was unable to enroll in therapy because he owed Sinnissippi a fee. At the April 2012 fitness hearing, there was no longer any mention of a fee, yet respondent still had not completed therapy.

¶ 106 Respondent failed as well to refrain from illegal or criminal activity, but was charged twice with battery in two separate incidents. Respondent thus continued to display the violent tendencies that had marked his past.

¶ 107 The evidence on visitation both favored and disfavored respondent. In her service plans and testimony, Curry related that respondent conducts himself well with J.W., who is engaged and excited during visits. Respondent often brings family members, including a cousin that J.W. plays well with. Curry also noted, however, that respondent missed several visits. Respondent attributed some of this to poor communication by Catholic Services. The conflicting testimony was symptomatic of an ongoing trade of accusations over who was failing to communicate.

¶ 108 Even aside from Curry's concerns regarding visitation, there was sufficient evidence that respondent failed to make reasonable progress. In 28 months, respondent completed 1 of out of 10 services grouped by subject area. The sheer numerical shortfall is striking, but even more important is that the unfinished services were designed to address troubling aspects of respondent's history such as his substance abuse, anger problems, and violence, including domestic violence.

¶ 109 Respondent faults the trial court for "disregard[ing] the evidence that the agencies totally failed [him]." He means his testimony that his caseworkers failed to return his calls, did not review service plans with him, and failed to notify him of visits. The trial court acknowledged the mutual complaints of lack of communication in this case and ultimately relied on respondent's admission that he was aware of what his service plans required and, hence, had no excuse for failing to comply.

Respondent, however, points out that he further testified that he believed he *did* comply with the plans. He concludes that, while he "may have had an idea what was required of him, he really had no understanding of how to accomplish it." We assume that the trial court considered respondent's entire testimony and concluded that he did not misunderstand the service plan, but rather knowingly refused to comply. Indeed, it is implausible that respondent could have believed that, once Sinnissippi found him to have substance dependency and the agencies asked him to cooperate in arranging treatment, he could simply disregard their request and instead seek a second opinion from LSSI on whether he was substance dependent. Equally implausible is that respondent could have believed that the LSSI evaluator had authority to relieve him of his obligation under the service plan to undergo anger management and domestic violence programs. LaFever in fact denied that she discussed anger issue with respondent, and her testimony describing the substance abuse evaluation gave no suggestion that she also discussed domestic violence issues with respondent. Finally, respondent gave no indication how he could have credibly believed that he complied with the requirements of therapy, AA and NA programs, abstaining from alcohol and drugs, and refraining from criminal activity.

¶ 110 We again caution counsel for respondent about some of his representations to us. Counsel asserts that respondent testified "that he was not notified by DCFS that [J.W.] was taken." Relatedly, he asserts that the State "put[] [his] child in foster care without even contacting him first." Respondent in fact testified that, while living in Florida, he was notified both by a friend and by the State that J.W. had been taken into custody. Moreover, the record reflects that respondent was issued a summons to appear at the August 2009 hearing on the petition for wardship of J.W. The record does not indicate whether respondent was notified by the State *before* J.W. was taken into protective

custody, but, even so, respondent cannot flatly state that he "was not notified by DCFS that [J.W.] was taken."

¶ 111 For the foregoing reasons, we conclude that the trial court did not err in finding that respondent failed to show reasonable progress and, accordingly, adjudicating him an unfit parent.

¶ 112 B. Best Interests of the Child

¶ 113 At the fitness stage, "the parent's past conduct is under scrutiny." *In re D.M.*, 336 Ill. App. 3d 766, 771-72 (2002). In contrast, at the best-interests stage, the court "focuses upon the children's welfare and whether termination would improve the child's future financial, social and emotional atmosphere." *Id.* The court "cannot rely solely on fitness findings to terminate parental rights." *Id.* The statutory factors governing best-interests determinations include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures, and the value of the least disruptive placement alternative for the child; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010). The State must prove by a preponderance of the evidence that it is in the best interests of the child to terminate parental rights (*In re D.T.*, 212 Ill. 2d 347, 366 (2004))) and the trial court's determination will be overturned only if against the manifest weight of the evidence (*In re Austin W.*, 214 Ill. 2d 31, 51-2 (2005); *In re B.B.*, 386 Ill. App. 3d 686, 698-99 (2008)).

¶ 114 Respondent's argument here is narrow. He asserts that, because the trial court's "almost cursory" ruling "focused solely on the relationship J.W. has with the foster family," and ignored the

other statutory factors, "a remand is called for." As authority for his notion that the trial court was required to discuss all of the statutory factors, respondent cites language from the supreme court in *D.T.* In *D.T.*, the court addressed the fundamental procedural question of whether the State should be held to an evidentiary burden in best-interests proceedings or whether instead the trial court's best-interests ruling should be judged under a simple " 'sound discretion' " standard. *D.T.*, 212 Ill. 2d at 353-54. The court held that the State should bear an evidentiary burden in best-interests hearings and that the proper burden is preponderance of the evidence, not clear and convincing evidence. *Id.* at 358, 366. Near the beginning of its analysis, the court used the language on which respondent relies. We highlight that language and place it in context:

> "The State and the [guardian *ad litem*] reason that the difficulty and delicacy of a best-interests decision requires that such decision rest within the trial court's discretion. They argue that imposition on the State of a 'traditional' or 'formalistic' standard of proof, like the preponderance standard adopted by the appellate court, will only impede the trial judge's decision.
>
> Although we agree that *determination of a child's best interests presents a difficult and delicate task, requiring a nuanced analysis of the statutory factors*, we disagree that the difficulty of the task facing the trial court justifies relieving the petitioner—here, the State—of its burden to demonstrate its entitlement to the relief it seeks. We also disagree with the suggestion that 'sound discretion' is some sort of 'nontraditional' standard of proof. 'Sound discretion' is simply not a standard of proof—traditional, nontraditional, or otherwise." (Emphasis added.) *Id.* at 354-55.

The court's concern in *D.T.* was to determine the proper standard for judging best-interests rulings. The highlighted language was the court's recognition that the appropriate standard will require deference to the trial court, as a best-interests analysis involves a balanced and sensitive consideration of multiple factors. The court was not concerned to set parameters on the trial court's oral or written rulings. There is a line of decisions holding that the trial court's ruling on best-interests need not meet any standards of thoroughness or specificity, and that the reviewing court is not bound by what, if any, rationale the trial court gives. See *In re Joshua K.*, 405 Ill. App. 3d 569 (2010), withdrawn and republished at 947 N.E.2d 280, 293, 349 Ill. Dec. 643, 656 (2010) ("The trial court is not required to explicitly mention each [statutory factor] *** while rendering its decision," and "[i]n fact, the court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision"); *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55 (2010) (same); *In re Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004) (same). We know of no contrary holding among the appellate courts or any contrary statutory provision. Moreover, we see nothing in *D.T.,* or any other supreme court decision, that may be read as inconsistent with the *Joshua K.* line of decisions.

¶ 115 Respondent, whose concern is with the formal aspects of the trial court's decision, does not present an argument on the ultimate propriety of the court's ruling. He refers to evidence only to demonstrate what the trial court failed to consider. The evidence he cites concerns solely J.W.'s relationship with him and his family. There were, of course, numerous other considerations for the trial court, including, but not limited to, (1) respondent's failure to complete services based on legitimate concerns about his substance abuse, anger problems, and history of violence, including domestic violence; (2) respondent's recent convictions for battery; (3) J.W.'s close relationship with

the foster family, her development of friends in the community, and her academic success; and (4) J.W.'s contentment with the prospect of living permanently with the Scholls. We see no formal or substantial error in the court's best-interests determination.

¶ 116 III. CONCLUSION

¶ 117 For the foregoing reasons, we affirm the judgment of the trial court terminating respondent's parental rights.

¶ 118 Affirmed.