

2020 IL App (1st) 191979-U

No. 1-19-1979

May 18, 2020

First Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST of L.K. and C.L., Minors,)	Appeal from the
)	Circuit Court of
Minors-Respondents-Appellees,)	Cook County.
)	
(The People of the State of Illinois,)	No. 12 JA 00816
Petitioner-Appellee,)	12 JA 00817
v.)	
H.K.,)	Honorable
Mother-Respondent-Appellant.))	Kimberly Lewis,
)	Judge Presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Griffin and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court has discretion to decide the order in which it will hear motions. DCFS's decision to remove an agency from handling a case following an unsuccessful mediation supports the trial court's finding that DCFS made reasonable efforts to achieve the permanency goals for the children at issue after a conflict arose between the mother and the agency. The mother's inability to provide a safe, appropriate home for her children after they spent more than five years in foster homes supports the trial court's finding that the mother failed to make reasonable progress toward return of the children to her custody.

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¶ 2 The trial court terminated H.K.'s parental rights with respect to two of her six children, L.K. and C.L. In this appeal, H.K. argues that the trial court improperly considered evidence not related to the time period at issue; the trial court should have decided the motion to remove the agency handling her case before hearing evidence on the petition to terminate parental rights; the court erred by finding that the Department of Children and Family Services (DCFS) made reasonable efforts to achieve the permanency goals; and the court erred by finding her unfit. We affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 H.K. gave birth to C.Y. in 2002, L.K. in 2005, and C.L. in 2009. H.K. met J.L. Sr. in 2010, and they had three children: J.L. Jr., A.L., and V.L., born in 2012, 2013, and 2014 respectively. H.K. first came to the attention of DCFS in 2011, when prosecutors charged her with endangering L.K. and C.L. She pled guilty to the charge. DCFS closed the file after four months because H.K. refused to cooperate with DCFS services.

¶ 5 In June 2012, before the births of A.L. and V.L., DCFS received a call alleging that J.L. Sr. committed an act of domestic violence against C.Y. DCFS took custody of H.K.'s children and placed them with relatives. At the temporary custody hearing, H.K. stipulated that J.L. Sr. beat and choked C.Y., causing C.Y. to lose consciousness. J.L. Sr. pled guilty to a charge of domestic battery and the court sentenced him to 24 months of probation. J.L. Sr. continued to live with H.K.

¶ 6 DCFS, through Universal Family Connection (UFC) and UFC's caseworker, Lisa Sterling, arranged H.K.'s visits with her children. Sterling reported that H.K. made reasonable progress in

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services. The trial court made L.K. and C.L. wards of the court due to their parents' neglect. The court established a goal of returning the children to H.K.'s care within 12 months.

¶ 7 In November 2013, the trial court granted H.K. unsupervised day visits with L.K. and C.L., at the discretion of DCFS, but the court added that the children should have no contact with J.L. Sr. H.K. and J.L. Sr. had custody of A.L., and the court returned J.L. Jr. to their custody in 2014. In June 2014, a car hit J.L. Jr., breaking his leg, as he played near a street. L.K. pulled J.L. Jr. out from under the car. DCFS took custody of J.L. Jr. and A.L., and directed H.K. and J.L. Sr. to place a fence around their home.

¶ 8 In November 2015, J.L. Sr. beat H.K. so severely that she spent six days in the hospital. He broke a bone in her back, several bones around her eye, and punctured a lung so that she needed a chest tube to breathe. Police arrested J.L. Sr. and a court sentenced him to 4 years in prison.

¶ 9 DCFS, in its plan dated February 2016, found that H.K. had made "Unsatisfactory Progress," noting:

"[H.K.] is currently homeless and has thus far refused to get a psychiatric evaluation at worker's request. And, she has no current source of income. [H.K.] also needs to attend domestic violence classes."

¶ 10 On July 9, 2016, Officer Keating of Cook County Forest Preserve saw H.K., sitting in a car leaning her head on the car's window. He knocked on the door of the car to find out whether she needed help. He saw three children in the car; there were diapers all over, the car smelled of urine. He called for emergency medical services. When the fire department took the children from the car, Officer Keating saw that the children "had defecated – the diapers – everything was pretty much filled all the way up their backs."

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¶ 11 H.K. later regained custody and took the three children, J.L. Jr., A.L., and V.L., to a homeless center in September 2016. Michelle Dubil, the case manager who assisted H.K. at the center described the encounter:

"Client reported that she stayed in her car a couple times last week with her dogs and kids but now has a motel to stay at. *** Client's children were visibly dirty, with dirt on their arms, legs, and feet. Writer [Dubil] could not say how long they were this dirty, but the dirt was visible on their skin and the children had a bad odor to them. Writer noted that client's children entered the building with no shoes and left with no shoes. Client's children smelled strongly of urine both dog and human ***.

After writer walked client out of her office, client left her suitcase and bags on a shelf in the center. The bags were soaked in urine. Writer brought client[']s food pantry and clothing to her car and there only appeared to be one car seat, for three children. The children were not buckled in when client drove through the parking lot and they were jumping from the front seat to the back seat. Client also had 2 dogs in her car that continuously kept getting out of the car because they were not restrained."

¶ 12 Dubil made a hotline call to DCFS.

¶ 13 In October 2016, the State filed petitions to terminate H.K.'s parental rights with respect to L.K. and C.L. The State later amended the petition to allege that H.K. failed to maintain a reasonable degree of responsibility for the children's welfare, and she failed to make reasonable progress towards reunification in 8 separate 9-month periods: June 18, 2013, to March 18, 2014;

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March 1, 2014, to December 1, 2014; December 1, 2014, to September 1, 2015; September 1, 2015, to June 1, 2016; June 1, 2016, to March 1, 2017; March 1, 2017, to December 1, 2017; December 1, 2017, to September 1, 2018; and June 1, 2018, to March 1, 2019. Also in October 2016, the court changed the goal for DCFS from returning L.K. and C.L. home to substitute care pending a determination on the State's petition to terminate parental rights. DCFS explained, "the goal was changed in Court because [H.K.] failed to make reasonable progress in services since case opening 4 years ago."

¶ 14 In January 2017, H.K. filed a motion to remove the assigned agency, alleging that UFC failed to facilitate visitation between H.K. and her children, and Sterling failed to respond promptly to emails and phone calls from H.K. and her attorney. After a hearing, the trial court denied the motion in an order dated April 17, 2017.

¶ 15 H.K. moved to Rockford. Sterling found services for H.K. in the Rockford area. Before the children could visit H.K.'s home, Sterling needed to check the safety of the premises. Sterling scheduled with H.K. a visit for March 22, 2017. On March 22, 2017, Sterling drove to Rockford and met H.K. outside her home. H.K. did not permit Sterling to enter, and Sterling could not approve the home for visits.

¶ 16 On August 22, 2017, Officer Negri of the Rockford Police Department, responding to a call, met H.K.'s oldest child, C.Y., who said he had run away from H.K.'s home after an argument. Negri took C.Y. to H.K.'s home. He described what he saw:

"I immediately started smelling the house. It smelled strongly of like feces and animals as I was approaching.

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As soon as you opened the door, before I even stepped in it, I got hit in the face with a strong smell of feces, urine. It smelled like rotting food as soon as I walked into the living room, I would see feces, urine throughout the whole entirety of the floor.

*** There was a couch where [H.K.] said that Charles slept; that was his bed. The couch had no cushions on it. It was old. It looked like it had been chewed by the dog at one point. The only padding on it was like that thin brown foam. And then inside the couch there was feces inside of it.

* * *

[In the kitchen t]here was feces and urine all over the floor in there as well, dirty dishes piled up over the counters and sink. There was old food laying around. I looked through some of the cabinets. There didn't seem to be much substantial food for anybody to eat."

¶ 17 Negri contacted Rockford housing officials, who condemned the home and directed H.K. to move out. H.K. relocated to her mother's home in Des Plaines.

¶ 18 In August 2018, H.K. filed a second motion to remove UFC from the case. She withdrew the motion and signed a mediated agreement with UFC to resolve their dispute.

¶ 19 On February 24, 2019, the foster mother caring for H.K.'s five youngest children brought J.L. Jr. to the emergency room at Metro South Hospital. Dr. Monika Beszka, who treated J.L. Jr. in the emergency room, transferred J.L. Jr. to University of Chicago Hospital for more specialized treatment. Dr. Beszka directed a nurse at Metro South to call DCFS to report the possibility of

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child abuse. DCFS removed all five of H.K.'s children from the foster mother's care and placed them in different homes, pending DCFS investigation into the possibility of abuse.

¶ 20 The foster mother explained to DCFS that she left the children in the care of the foster mother's mother and sister (both caregivers approved by DCFS), and when she returned they told her J.L. Jr. had fallen and hit his head, but he got up and continued playing. J.L. Jr. complained of a headache, so the foster mother gave him Tylenol and put him to bed. He got up a few hours later and complained that his head hurt even worse, and then he vomited. The foster mother promptly brought him to Metro South.

¶ 21 H.K. filed a third petition to remove UFC in February 2019. She added a request for a finding that DCFS had not made reasonable efforts to achieve the permanency goals the court set. She alleged that J.L. Jr. sustained two serious injuries while in the care of the foster mother. She again alleged that Sterling and UFC failed to respond promptly to emails and telephone calls from H.K. and her attorney. The court decided to hear the motion to remove UFC together with the State's petition to terminate H.K.'s parental rights.

¶ 22 On March 20, 2019, in the combined hearing on the petition and the motion, Raymond Wilson reported to the court that UFC handed over to SOS Children's Villages, the agency for which Wilson worked, all their paperwork concerning H.K., J.L. Jr., A.L., and V.L. H.K. had no further need to deal with UFC, as SOS would handle all her services.

¶ 23 Sterling testified that H.K. successfully completed parenting classes twice, engaged in psychotherapy and took the prescribed medications for much of 2018, but she stopped taking them by February 2019. H.K. participated in domestic violence counseling in 2015. H.K. consistently denied drug use, but she often refused to allow testing of her urine. A urine test in November 2017

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came back positive for THC, although H.K. said she had not used marijuana for many years. H.K. often refused to follow DCFS recommendations for other services.

¶ 24 Sterling testified that in 2018, H.K. called DCFS to complain that L.K., then 13, stayed out "way past curfew, 10:00, 11:00, wearing inappropriate clothing, saggy pants" Sterling saw L.K. confront H.K. about the call, and H.K. said she called because she was "concerned about his well-being." H.K. told L.K. to "stop acting black." (DCFS classifies H.K. and L.K. as white, and the foster mother as black.) H.K., speaking to L.K. then used an extremely offensive racial slur to refer to L.K.'s foster mother. L.K. and C.L. asked UFC to stop their visits with H.K. The DCFS investigation into the allegations against the foster mother closed with no findings of abuse or neglect by the foster mother. L.K. and C.L. returned to their foster mother's home. Sterling testified that L.K. "was ecstatic. He said, 'We are finally going home.' " C.L. was also "excited and relieved" that they were returning to their foster mother's home.

¶ 25 On cross-examination, Sterling admitted that UFC reprimanded her for failing to communicate with H.K. and H.K.'s attorney. She admitted that she received a call from a housing advocate who tried to contact her in October 2018 about housing for H.K., and she did not respond until January 2019.

¶ 26 The trial judge asked the Cook County Juvenile Court Clinic to investigate the case and provide information to help the judge decide the petition to terminate parental rights. Specifically, the judge asked:

"1. *** a) What are the protective factors and parenting strengths that suggest [H.K.] would be able to adequately care for, parent, and protect [J.L. Jr., A.L., and V.L.]? b) What are the risk factors and parenting weaknesses that suggest [H.K.]

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would be unable to adequately care for, parent, and protect [J.L. Jr., A.L., and V.L.]?

2. What is recommended to decrease the risk factors and parenting weaknesses, and to assist the family in achieving a goal of Return Home?

3. *** [W]hat is the likelihood that [H.K.] will be able to make the gains necessary to achieve a goal of Return Home?"

¶ 27 The clinic reported:

"[H.K.] made some progress with her services. *** She indicated she is employed at a home rehabilitation crew, but there were no pay stubs to confirm this ***.

* * *

[H.K.] did not have the means to manage her emotional functioning. Historically, she punched walls or doors, even though she was injured when doing so; she continued to do this once or twice a week. *** Her response to emotional functioning measures indicated she was 'emotionally overwhelmed.'

[A psychologist] indicated that [H.K.'s] poor judgment of the past has related to a combination of emotional and personality factors, which require ongoing treatment and support. *** While capable of functioning adaptively and managing herself and others in the home, she 'requires support for her emotional and personality struggles that can impair this area.'

Her being emotionally overwhelmed could have an impact on her thought processing, judgment, impulse control and frustration tolerance. She did not have

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effective outlets for her emotional difficulties, which leads to an internal buildup of emotion, and becoming overwhelmed.

* * *

In terms of parenting strengths, [H.K.] demonstrated her love and affection for the children [J.L. Jr., A.L., and V.L.] during the visit ***. The children appeared excited and happy to see Ms. K, and all of them looked to her for attention and affection. *** She appeared to manage her time between the children and was able to manage all three of the children's needs throughout the visit ***. [H.K.'s] participation in parenting classes and her performance on measures related to parenting knowledge, shows her understanding of positive parenting techniques as well. ***

*** [H.K.'s] level of insight related to why the case initially came to DCFS and her inability to achieve the goal at this point, is rather low, as she has continued to state it was due to her ex-paramour's actions. During interviews ***, she expressed little responsibility for her case remaining open with DCFS. She spent much of the interviews noting difficulties with her caseworker that have prevented the case from moving forward. Her lack of accountability is problematic, as it continues to prevent her from progressing in the case to result in achievement of a Return Home goal.

[H.K.'s] history of domestic violence with [J.L. Sr.], and questions related to their ongoing relationship, is another risk factor in this case. *** It is very

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important for her safety and the children's safety, for [H.K.] to maintain her distance from [J.L. Sr.]; however, given these varying accounts, it is difficult to trust that [H.K.] will maintain such distance, especially when [J.L. Sr.] is released from prison. This would present a[n] increased risk of harm to the children ***.

*** [H]er failure to comply with random urine screens is also concerning and suggestive of substance use."

¶ 28 H.K. told the clinic that she had not used marijuana since 2005. The clinic recommended random toxicology screenings. A mental health assessment indicated H.K. "began processing her trauma history based on domestic violence, and 'has taken responsibility for being unable to keep her children safe while in the maladaptive/violent relationship.' " H.K. participated in the Nurturing Parent Program and interacted well with her children, but "she struggled to accept feedback from her caseworker."

¶ 29 The clinic reported on H.K.'s continuing services, and found "the likelihood that [H.K.] will be able to make the gains necessary to achieve a goal of Return Home [for J.L. Jr., A.L., and V.L.], is moderate at this time."

¶ 30 The trial court issued its order resolving the petition in September 2019. The court made extensive findings of fact, carefully considering "elements that may have related to any communication issues and the like that were asserted *** relative to the agency." The court stated:

"The case came in in part due to the deplorable conditions and that seems to be relative to housing as well as care, cleanliness as to the children in her care.

*** She refused to do drops relative to her marijuana usage. I believe the one that they did do was positive and with that said there were issues relative to

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inappropriate remarks, inflammatory remarks of an ethnic nature or racial nature that were made and that her children learned of in part and so that affected the possibility of reunification as well as it got to the point where her sons did not want contact any longer.

*** In terms of the testimony relative to the injuries ***, the [allegations of abuse] were unfounded *** relative to any reports in terms of culpability of the foster parent in the injuries that were suffered by [J.L. Jr.].

*** The matter was transferred to University of Chicago who has a much more comprehensive program and expertise in the field of child welfare and child abuse for which the findings were that there was no child abuse in that matter. ***

*** [L.K. and C.L.] very much want to live long term with the foster parent[] at this juncture and while it is not the end all and be all *** it's something that the Court gives strong consideration to especially based on their ages and how long the case has been in the system ***. Unfortunately, based on the last statements they made, they do not want contact with the natural mother.

In terms of the assertion that Family Counseling was not provided, based on the testimony in terms of moving to that level of therapy, it would need to be deemed clinically appropriate and it would also take into consideration whether or not the children are actually going to engage in that therapy."

¶ 31 The trial court found that the State proved H.K. unfit to parent L.K. and C.L. because she failed to maintain a reasonable degree of responsibility for their welfare (750 ILCS 50/1(D)(b)

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(West 2018)) and she failed to make reasonable progress towards return of the children to her care in the 9 month periods from March 1, 2017, to December 1, 2017; from December 1, 2017, to September 1, 2018; and from June 1, 2018 to March 1, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)). The court terminated H.K.'s parental rights to L.K. and C.L., and appointed Janet Ahern of DCFS as guardian with the right to consent to adoption of L.K. and C.L. The court added in its order, as it had added in all previous permanency orders, a finding that DCFS "made reasonable efforts in providing services to facilitate achievement of the permanency goal." H.K. now appeals.

¶ 32

II. ANALYSIS

¶ 33 On appeal, H.K. argues that the trial court (1) should not have considered evidence about conduct that took place more than 12 months after the adjudication of wardship in 2013; (2) should have decided the motion to remove the agency before hearing evidence on the State's petition for termination of parental rights; (3) erred in repeatedly finding that DCFS made reasonable efforts to achieve the permanency goals; and (4) erred by finding H.K. unfit to parent L.K. and C.L.

¶ 34

A. 12-month Limit

¶ 35 H.K. relies on *In re K.B.*, 314 Ill. App. 3d 739 (2000) for her argument that the court should have limited the evidence to the first 12 months following the adjudication of wardship. The General Assembly amended section 50/1(D) of the Adoption Act in 1999. The *K.B.* court applied the pre-amendment statute. For cases arising after the amendment took effect, on January 1, 2000, the amendment "added a provision permitting a finding of unfitness where the parent fails to make reasonable progress during any nine-month period after the initial nine-month period." *In re D.F.*, 208 Ill. 2d 223, 234 (2003). The trial court correctly considered evidence of H.K.'s failure to make

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reasonable progress in the three 9 month periods at issue, from March 1, 2017, to December 1, 2017; from December 1, 2017, to September 1, 2018; and from June 1, 2018 to March 1, 2019.

¶ 36 B. Hearing on Removal Motion

¶ 37 The trial court noted that the allegations in the motion to remove UFC as the agency assigned to manage her services affected the determination of fitness to parent. The court decided to hear evidence related to the petition to terminate parental rights together with evidence related to the removal motion. “The trial court has discretion over the order of presentation of evidence.” *Affatato v. Jewel Companies, Inc.*, 259 Ill. App. 3d 787, 795 (1994). We agree with courts in other jurisdictions that have held that the court also has discretion to decide the order in which to hear the motions the parties present. “[T]he order of procedure of the district court is largely within its discretion, which may be exercised, among other things, with a view to economy of its time.” *Gurney v. Steffens*, 43 P. 241, 241 (Kan. 1896). “[W]hen two or three motions are presented to a court, it has discretion to decide the order in which it would consider and decide them.” *Hoptowit v. Spellman*, 753 F.2d 779, 782 (9th Cir. 1985).

¶ 38 The court here considered the evidence of the conflict between Sterling and H.K., and considered the effect of the conflict on H.K.’s progress towards reunification with L.K. and C.L. The court did not abuse its discretion by hearing the evidence on the motion at the same time as it heard the evidence on the petition.

¶ 39 C. Reasonable Efforts

¶ 40 H.K. argues that the trial court erred in making the many findings of reasonable efforts, and the court erred in its rulings on her multiple motions for removal of the agency. The guardian *ad litem* points out that H.K. waived most of these arguments. H.K. did not object at the time of

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the findings of reasonable efforts in orders from 2013 through 2018. See *D.F.*, 208 Ill. 2d at 238. H.K. has not included a transcript of the hearing on her first motion to remove the agency, a motion denied by order dated April 17, 2017. We must presume that the evidence presented at the hearing supports the trial court's ruling. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). H.K. withdrew her second motion to remove the agency, so we have no ruling to review. The third motion to remove the agency, filed in February 2019, became moot in March 2019 when DCFS assigned a new agency to manage H.K.'s case. The motion did not raise any grounds for concluding that UFC mishandled communication and contact with L.K. and C.L., as it charged only failures to provide services for H.K. and to respond to H.K. and H.K.'s attorney.

¶ 41 The trial court in its order entered in September 2019, after H.K. requested a finding that DCFS had not made reasonable efforts, expressly found that DCFS had made reasonable efforts to achieve the permanency goal. H.K. timely appealed the order. We review the finding to determine whether the manifest weight of the evidence demands a different finding. *In re Jennifer W.*, 2014 IL App (1st) 140984, ¶ 48.

¶ 42 Sterling admitted that H.K. participated in most services DCFS recommended. H.K. had psychotherapy, she completed parenting classes twice, and she completed domestic violence counseling. But Sterling had difficulty finding local services for H.K. in Rockford, and H.K. did not use all the services Sterling arranged. Conflicts between H.K. and Sterling, reflected in H.K.'s 2017 and 2018 motions to remove UFC, led to the mediation agreement signed in October 2018. Sterling admitted that she did not respond to a call from a housing advocate for three months, and UFC reprimanded her for failing to respond promptly to H.K. and to H.K.'s attorney. DCFS removed UFC from its duties as H.K.'s case manager in March 2019. H.K. presented no evidence

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and raised no issues concerning the new agency. L.K. and C.L. have received good care and adapted well to their foster home.

¶ 43 We find that DCFS took appropriate steps in view of the conflict between H.K. and Sterling, first by bringing the conflict to mediation, then by removing the agency a few months later when the mediation agreement failed. UFC's efforts on behalf of DCFS aided in achieving the court-set goal of providing substitute care pending resolution of the State's petition to terminate H.K.'s parental rights. The finding in the September 2019 order that DCFS made reasonable efforts to achieve the permanency goal was not against the manifest weight of the evidence.

¶ 44 D. Fitness

¶ 45 H.K. contends that the trial court erred by finding her unfit to parent L.K. and C.L. We again apply the manifest weight of the evidence standard to the court's finding. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259-60 (2004). H.K. emphasizes UFC's failures. The trial court appropriately considered the evidence of the failures, and the difficulties H.K. sometimes faced in trying to participate in services. However, the agency's "failure does not shield the actions of the parents from scrutiny. When official action frustrates parental efforts, their fitness will be judged by actions which show their intent, rather than by their ultimate success." *In re S.B.*, 348 Ill. App. 3d 61, 67 (2004).

¶ 46 The trial court found that H.K., and not DCFS, bore responsibility for the deplorable condition of her homes. H.K., not DCFS, bore responsibility for the acts, including offensive racist remarks, that led L.K. and C.L. to ask to end visitations with H.K. H.K., not DCFS, bore responsibility for the exposure of the children to J.L. Sr.'s domestic violence, especially because H.K. allowed J.L. Jr. to stay in her home with her children after his exceptionally violent assault

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on C.Y. In 2015, the children saw the result of J.L. Sr.'s even more violent assault on H.K. Although the Cook County Juvenile Court Clinic reported that H.K. has some strengths as a mother, the court appropriately emphasized L.K.'s and C.L.'s need for permanence and stable parenting, and the exceptional length of time for which they remained in legal limbo. See *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991). The finding of unfitness is not contrary to the manifest weight of the evidence.

¶ 47

III. CONCLUSION

¶ 48 The trial court did not abuse its discretion by hearing evidence on the motion for removal of UFC at the same time as it heard the petition for termination of parental rights. H.K. waived objection to most of the trial court's findings that DCFS made reasonable efforts to achieve the court's permanency goals. The September 2019 order finding reasonable efforts to achieve the permanency goal of substitute care pending resolution of the State's petition to terminate H.K.'s parental rights, was not contrary to the manifest weight of the evidence. The finding of unfitness, based on the years in which H.K. failed to provide a safe home for her children, is not contrary to the manifest weight of the evidence. Accordingly, we affirm the judgment of the trial court.

¶ 49 Affirmed.