2020 IL App (4th) 200016-U

NOS. 4-20-0016, 4-20-0017 cons.

FILED
November 4, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re Z.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-20-0016) Karen B., Respondent-Appellant).	Appeal from the Circuit Court of Adams County No. 18JA28
In re Z.B., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-20-0017) Norman B., Respondent-Appellant).	Honorable John C. Wooleyhan, Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Cavanagh concurred in part and dissented in part.

ORDER

¶ 1 *Held:* We grant the Office of the State Appellate Defender's motion to withdraw as appellate counsel and affirm the trial court's judgment finding both respondent parents unfit and concluding termination of their parental rights was in the best interests of the child.

¶ 2 The trial court of Adams County terminated the parental rights of respondents, Karen B. and Norman B., to their child, Z.B., who was born on March 12, 2018. Respondents appeal, and we have consolidated their appeals.

¶ 3 The Office of the State Appellate Defender (OSAD) moved to withdraw from representing respondents, contending a review of the record and the applicable law revealed there were no meritorious issues to be raised and any appeal would lack arguable merit. We denied the motion and ordered OSAD to either file briefs in support of these appeals or to renew its motion to withdraw. OSAD renewed its motion to withdraw, again with an accompanying explanatory brief. We notified respondents they had our permission to file responses to OSAD's original and renewed motions to withdraw. Neither they nor the State have done so. This is an expedited appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018), and we have substantially exceeded the 150-day deadline for the issuance of this order. Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Nevertheless, the unique nature of the motion to withdraw, the renewed motion to withdraw, and the protracted internal discussion of possible issues in this case (including a change of authorship) stalled our every effort to proceed expeditiously. Accordingly, we find good cause for being unable to comport with the time constraints of Rule 311(a)(5).

¶ 4 For the reasons stated below, we grant OSAD's motion and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Motion for the Termination of Parental Rights

¶ 7 The State contended, in the motion for the termination of parental rights, Karen B. was an "unfit person" for two reasons: (1) she had failed to make reasonable efforts to correct the conditions that were the basis for removing Z.B. from respondents (see 750 ILCS 50/1(D)(m)(i) (West 2018)) and (2) in the periods of July 3, 2018, to April 2, 2019, and February 26, 2019, to November 25, 2019, she failed to make reasonable progress toward the return of Z.B. (750 ILCS 50/1(D)(m)(ii) (West 2018)). The second amended nine-month period upon which the State chose

to rely for termination listed two nine-month time frames for the measurement of "efforts" and "progress": July 3, 2018, to April 2, 2019, and February 26, 2019, to November 25, 2019.

¶ 8 The State further alleged Norman B. was an "unfit person" for three reasons: (1) he had failed to make reasonable efforts to correct the conditions that were the basis of removing Z.B. from respondents (750 ILCS 50/1(D)(m)(i) (West 2018)); (2) in the periods of July 3, 2018, to April 2, 2019, and February 26, 2019, to November 25, 2019, he failed to make reasonable progress toward the return of Z.B. (750 ILCS 50/1(D)(m)(ii) (West 2018)); and (3) he was depraved based on having three felony convictions within the time specified by statute (750 ILCS 50/1(D)(i) (West 2018)).

¶ 9 B. The Parental Fitness Hearing

¶ 10 On November 25, 2019, the trial court held an evidentiary hearing on the issue of whether respondents were "unfit persons" as the State alleged in its motion for the termination of their parental rights.

¶ 11 1. *The Trial Court's Adjudication That Z.B. Was Neglected*

¶ 12 At the beginning of the parental fitness hearing, by request of the State, the trial court took judicial notice of the petition for adjudication, the order of findings and adjudication, and the dispositional order already entered in these cases—all of which were admitted without objection by respondents. In addition, the court took judicial notice of certified copies of the three felony convictions the State was using to establish the allegation of "depravity" as a basis for termination of Norman B.'s parental rights. These included: (1) a conviction for aggravated criminal sexual assault in Adams County case No. 90-CF-85 pursuant to a guilty plea on April 27, 1990, for which he received a sentence of 6 years in the Illinois Department of Corrections (DOC); (2) a conviction for unlawful possession of weapons by a felon in Adams County case No. 13-CF-

548 pursuant to a plea of guilty on May 1, 2014, for which he received a sentence of 2½ years in the DOC; and (3) a conviction for failing to register as a sex offender in Adams County case No.18-CF-130 pursuant to a plea of guilty on February 20, 2019, for which he received a sentence of 30 months' probation on May 17, 2019. The certified copies of convictions were admitted without objection.

¶ 13 The adjudicatory order entered by the trial court in this case on July 3, 2018, found Z.B. to be a neglected minor within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2018)) in that, before she was taken into protective custody, Z.B. was in an environment injurious to her welfare and that the neglect was "inflicted" by the mother. In support of its finding of child neglect, the court cited the following facts: "prior history of [the Illinois Department of Children and Family Services (DCFS)] and court involvement by [Karen B.] and cannabis use and noncompliance with services at the time of this minor's birth." Specifically, Karen B. had her parental rights terminated as to two other children previously and Z.B. was born substance-exposed, testing positive for cannabis at birth.

¶ 14 2. *Dispositional Order*

¶ 15 The dispositional order entered August 13, 2018, indicated Norman B. failed to appear. Although the case had been open since March 15, 2018, Norman B. did not complete his integrated assessment until June 4, 2018. He was offered services since the case began. Both parents were found unfit due to "lack of full engagement in services," and Karen B. had a further finding of "continued substance abuse." The trial court made a specific finding that both the service plan and services were appropriate. The dispositional order noted respondents were informed of their right to appeal the finding or order of the court. No appeal was taken.

¶ 16 3. *Integrated Assessment*

¶ 17 People's exhibit No. 4 in the parental fitness hearing was the report of an integrated assessment. In June 2018, according to the report, respondents were interviewed by Shari Robesky, a permanency worker of DCFS, and Marilyn H. Hea, whom the report describes as an "NIU-IA Screener." Caseworker Sonya Mallory and her supervisor, Robesky, signed the assessment.

¶ 18 a. Karen B.

¶ 19 In their report of the integrated assessment, Mallory and Robesky describe Karen B.'s prior history with DCFS. Z.B. is the fourth child to be removed from her care by DCFS. In 2013, because of severe mental health problems and her use of illegal drugs, Karen B. lost her parental rights to two children, K.F. and S.F., who were two and three years old at the time. Karen B. was addicted to methamphetamine, and she suffered from untreated borderline personality disorder, depression, anxiety, and schizophrenia. In 2015, in the presence of her third child, Z.F., who was five months old at the time, Karen B. overdosed on Latuda, an antipsychotic drug, and Aleve, an anti-inflammatory drug. Also in Z.F.'s presence, Karen B. got into a physical fight with her paramour when he tried to take the pills away. In 2017, Z.F. was taken into protective custody when Karen B. tested positive for benzodiazepines, marijuana, and methamphetamine. Like Z.B., Z.F. had been born substance-exposed, testing positive for marijuana at birth.

¶ 20 It appears that, over the years, Karen B.'s behavior could be extreme and impulsive when she was on narcotics and off her antipsychotic medications. For instance, in 2014 or 2015, when a paramour threatened to leave her, she banged her head on the walls of the family home and threatened to kill herself. In 2016, while wielding a kitchen knife, Karen B. tore the door off the oven. In 2017, the year she lost custody of Z.F., Karen B. "was involved in several short[-]term

and unstable romantic relationships" and "lived in 4 homes in 45 days." For months at a time, she would be off her psychotropic medications, substituting methamphetamine and other illegal drugs.

¶ 21 In the past, Karen B. either did not cooperate with the substance abuse and mental health services that DCFS had recommended to her, or her cooperation was fleeting and inconsistent. Consequently, DCFS perceived Z.B. to be at the same risk of harm as the previous three children.

¶ 22 b. Norman B.

¶ 23 Although Norman B. was not the biological father of Z.B., he signed a voluntary acknowledgement of paternity, which is not in the record. See 750 ILCS 46/305(a) (West 2018) (providing that "a valid voluntary acknowledgment filed with the Department of Healthcare and Family Services, as provided by law, is equivalent to an adjudication of the parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent"). Norman B. said he and Karen B. had been together for over a year. They married two days after DCFS took protective custody of Z.B. The assessment noted he was "a registered sex offender with an extensive criminal history."

¶ 24 i. *His Criminal Record*

¶ 25 At the time of case opening, Norman B. was a registered sexual predator who had violated his registration requirements four times in the year prior to the filing of the petition in this case—three times apparently for failing to report and once for living within 500 feet of a restricted area. He had numerous convictions, beginning with aggravated criminal sexual assault in 1990, for which he received a sentence of six years. Contrary to his report that he was 17 years old and the victim was 13 years old, the records reveal he was 18 years old and the victim was 12 years old when he sexually assaulted her. As was noted in the integrated assessment, "[h]e minimized

his criminal history, notably changing the age of his victim of sexual assault to that of a teenager in his report, seeming to try to change the perception of his crime. He has spent a significant amount of time in the [DOC], returning to criminal behavior when released." He had two burglary convictions in addition to residential burglary, and he was sentenced to DOC for 4 years for burglary in 1996, 15 years for a separate burglary also in 1996, and 7 years in 2005 for residential burglary. He also had a conviction for felony possession of a firearm as a convicted felon, for which he received a prison sentence of 2½ years in 2013. His admitted gang affiliations began in 1991 and lasted until 2003 and included the Gangster Disciples, Northsiders, Aryans, and Kings. He told the evaluator that before his current employment as a commercial fisherman for two years (although Karen B., his wife, said he was unemployed) and collecting and selling scrap metal "for a time," "he lived on his 'criminal takings.' "

¶ 26 ii. *Whether He Had a Drug Addiction*

¶ 27 To quote from the integrated assessment, Norman B. "denied having any personal problems with substance abuse[ ] and said that the extent of his use [was] having smoked marijuana in high school." We note, however, his 2017 conviction of possessing drug paraphernalia, although the nature of the paraphernalia is not indicated.

¶ 28 iii. *Whether He Had Any Mental Health Problems*

¶ 29 In 1991, at age 20, Norman B. was hospitalized in the psychiatric unit of Menard Correctional Center for threatening to kill himself. His reported reason for wanting to commit suicide was that he did not want to be in a maximum-security facility. The suicide threat was, he said, a ploy to try to get out of maximum security. He had never been diagnosed with any psychological disorder. He was receiving no mental-health treatment and was taking no psychotropic medication currently.

¶ 30 During the integrated assessment, however, Norman B. acknowledged he had taken psychotropic medication, which he knew to be Cinquain and Vistaril, in the past for two months. He also described how he experiences a "flashback" if he smells certain paint that reminds him of prison, he "avoids cemeteries as they remind him of losses from the past," he "is detached from people with whom he should be close in his opinion," and he "reported problems with both short- and long-term memory." He said he had problems with irritability and anger outbursts, believes himself to be "hypervigilant," and sometimes struggles with appointments and calendar management. He said he has problems with "trusting authority figures" and can be rigid in his thinking and acknowledged having problems with authority. He also reported living in four homes in the past five years. Based on this information, the evaluators concluded:

> "[Norman B.'s] problematic interpersonal traits impact his judgment and ability for safe care of an infant's wellbeing and needs. He does not appear to understand the impact of his behavior on his parenting, judgment, and his seemingly self-oriented interpersonal disposition could impact his ability for attunement with a child's needs. It is unclear if he presents with sexual risks to [Z.B.] and further assessment will be needed."

The evaluators expressed concern about his significant amount of time in the DOC, his "extensive and versatile history of criminality," and what they considered "discrepancies in his reporting of substance abuse and employment" from other sources, which led them to believe he was not completely honest during the interview. As a result of the integrated assessment, DCFS recommended an assessment for possible individual psychotherapy, rehabilitative services or life

coaching, a psychosexual risk evaluation, a substance abuse assessment, and later, parenting classes.

¶ 31 4. *Respondents' Progress Toward Achieving the Goals in the Service Plans*

¶ 32 a. Karen B.'s Progress

¶ 33 The progress Karen B. made during the six-month period of August 2018 to February 2019 was evaluated in the next service plan, dated February 20, 2019 (People's exhibit No. 7). A "[d]esired [o]utcome," a goal, in the service plan of August 27, 2018, had been for Karen B. to "be in good mental health in order to have her daughter returned home" (to quote from the service plan). Another related goal had been for Karen B. to abstain from unprescribed drugs. She was in a dual program at Transitions of Western Illinois (Transitions) to help her reach both the mental health and drug-rehabilitation goals. But in the February 2019 service plan, caseworker Megan A. Ramirez rated Karen B.'s progress as unsatisfactory in achieving those dual goals.

¶ 34 The evaluation (People's exhibit No. 7) gives reasons for this unfavorable rating. A request for a psychological evaluation of Karen B. "was denied," Ramirez noted, "due to [Karen B.'s] lack of participation in services." To quote Ramirez further, Karen B. "ha[d] been closed out of case management/home based services and had not made any progress with her mental health counselor." Though still a patient of "Dr. John" (presumably, Dr. John Bejoy of Transitions), Karen B. "self[-]report[ed] that she [did] not take her medication as prescribed." Also, the doctor's office reported that, because Karen B. had missed appointments, she would lack refills of her prescribed medication. Although she "had attended at least two appointments [at Transitions] during this reporting period, she [was] not consistent with scheduling, attending[,] or following the recommendations of Dr. John." One such recommendation was to refrain from narcotics. Karen B. was supposed to "notify Transitions or DCFS if [a] relapse occur[red]." Ramirez wrote: "[She]

did admit to a relapse with marijuana well after she had already been using. [She] has also failed all of her toxicology screens; therefore[,] the state of her sobriety is unknown."

¶ 35 To sum up Karen B.'s progress in the dual program, Ramirez wrote:

> "[She] was referred to Transitions dual diagnosis program and was enrolled in their program during the time of the last [annual case review] in August 2018. [She] was enrolled in the substance abuse program from April 2018 to August 2018 and then again in October 2018 until November 2018. [She] has a pattern of completing the intake and getting started in the program, but always fails to follow through. She no[-]shows for appointments or cancels and re-schedules. Her substance abuse counselor, Trey Sexton, noted that [Karen B.] has made no progress in this area due to her lack of participation. *** [Karen B.] has been asked to complete urine analysis [10] times during this reporting period and has failed to attend all of them."

Thus, there was some minimal progress by Karen B. For instance, she completed the intake and got started in the program. But Karen B.'s progress, Ramirez concluded, had been less than reasonable. Her attendance had been spotty, drug-testing had been nonexistent, and generally there was a lack of follow-through.

¶ 36 Nor did Karen B.'s progress improve much with time. Ramirez reported that, as of the next evaluation date, August 26, 2019, Karen B. still "ha[d] not attended any substance abuse treatment during this period," she had admitted using marijuana and methamphetamine during the previous two months, and she had failed to show up for five out of seven toxicology screens. Also,

she persisted in her refusal to take the prescribed psychotropic medications and had not seen "Dr. John" since January 2019. Her progress was no better during the second nine-month period from February 26, 2019, to November 25, 2019.

¶ 37 b. Norman B.'s Progress

¶ 38 The service plan of August 27, 2018 (People's exhibit No. 5), set the goals for Norman B. He was to obtain a substance-abuse evaluation and cooperate with any recommended services. But during the six-month period of the service plan (August 2018 to February 2019), his progress toward that goal was, in the opinion of the caseworker, unsatisfactory because although he was aware of the need to obtain a substance-abuse evaluation throughout the entire six months for which he was being evaluated, he chose to wait until February 2019, the very end of the evaluation period, to do so. He was provided two different options in either Preferred Family Health Care or Transitions, neither of which he attended.

¶ 39 This delay in undergoing the assessment was not the only point of dissatisfaction. Norman B. had attended only 2 out of 10 drug screenings, although the 2 he attended were negative.

¶ 40 The August 27 service plan also recommended mental-health services in order for him to "achieve an appropriate level of understanding of mental illness and how this affects parenting and relationships." Just as with the previous recommendation, this was first established on March 13, 2018, so Norman B. was aware of it shortly thereafter, although it was not formally approved until the dispositional order of August 13, 2018. Although he attended a mental-health assessment on June 15, 2018, he failed to return on June 21 for a scheduled appointment with a therapist in spite of the fact, as noted in the service plan, "[f]rom the beginning of the family case worker [*sic*] informed [Norman B.] that he needed to get services started." He was rated

unsatisfactory as of the July 31, 2018, evaluation date because he had not engaged in services and had not returned since missing the June 21 appointment. This resulted in an "unsatisfactory" finding with regard to his cooperation with DCFS and service providers as well.

¶ 41 Norman B. was also directed to obtain an assessment for any need for sexual perpetrator services due to his previous conviction for aggravated criminal sexual assault of a 12-year-old girl. In the August 27 service plan, he was rated as unsatisfactory due to his failure to obtain the assessment. A referral had been made on his behalf at the Community Resource and Counseling Center in Paxton, Illinois, at no cost to him; however, as of the evaluation date, he had failed to attend. The August client service plan revealed he never completed sexual perpetrator treatment for his sex offense in the past and was unsuccessfully discharged back then. As a result, DCFS wanted a current risk assessment. He was rated unsatisfactory as of July 31, 2018, for his failure to engage in any of the recommended services.

¶ 42 The next service plan was that of February 15, 2019 (People's exhibit No. 7). This service plan also indicated Norman B. was to complete "a substance abuse assessment and follow recommendations, parenting education, a sex offender evaluation[,] and recommended treatment and cooperate with DCFS." He did little, if anything, to meet these goals. And progress he made was rated "unsatisfactory." For example, the summary portion of the plan noted Norman B. had been referred to the Transitions dual-diagnosis program, went for an initial intake in June 2018, and did not return until February 5, 2019, when he completed an initial intake—11 months after case opening and after newborn Z.B. was placed into foster care. Once assigned a mental-health counselor, he attended one appointment since the intake. The service plan also indicated he denied any substance use and was not recommended for substance abuse treatment. He attended parenting classes with Addus and had two classes remaining at the time of the evaluation. The service plan

noted, "[h]e has not made progress toward completing these classes since November 2018" and had begun them six months ago. "Addus is in the home weekly and has completed these sessions with [Karen B.] but [Norman B.] did not attend.

¶ 43 The February 2019 service plan reported he finally attended the sex offender evaluation in November 2018, five months after the integrated assessment, eight months after case opening, and at the same time the court suspended visitation for noncompliance. He was assessed at low risk to reoffend and was not recommended for subsequent treatment. Per the plan report, "[h]e does not believe that he has any issues that need to be resolved, that the issues are solely with his wife." The service plan reported Norman B. was attending court hearings for charges stemming from his sex offender status and his failure to register as a sex offender.

¶ 44 By the evaluation date of the plan, February 19, 2019, Norman B. recently completed the substance abuse assessment to which he was referred in June the previous year. He completed it on February 5, 2019. The 2 of 10 drug screens he was asked to conduct were negative. Although he was still asked to complete random drug screens, the other tasks for substance abuse were discontinued. He was rated "unsatisfactory," both for waiting until just before the evaluation date to get the substance abuse assessment and for failing to attend the majority of his drug screens.

¶ 45 Regarding mental-health services, the service plan noted these were considered necessary for "understanding mental health diagnosis and symptoms for himself and spouse, mental health stability impact [*sic*] on parenting and relationships, addiction and use affects on parenting and relationships, codependency, health boundaries and communication." This was also a recommended service he knew about since case opening, but since he failed to follow up with the June 2018 appointment and had just completed the assessment on February 5, 2019, DCFS

was unable to measure his progress. His cooperation with DCFS and service providers was also "unsatisfactory" for the same reasons—failure to participate in recommended services.

¶ 46 Visitation was suspended by the court in November 2018 due to the failure of both parents to participate in services. The plan indicated that although Norman B. had been participating in parenting classes since July 2018, he had not yet finished, and he was "not diligent in scheduling and attending sessions." It also revealed Norman B. did not attend the sexual offender evaluation until November 2, 2018.

¶ 47 By the next family service plan (People's exhibit No. 8), dated August 26, 2019, although Norman B. had attended a total of four sessions with a counselor at Transitions, a dual-diagnosis program, he failed to appear several times when scheduled, then he did not respond until he received a letter of intent to discharge in May 2019. He failed to show for his last scheduled appointment in July and made no effort to schedule another appointment by the time of the report. Transitions reported he "has not made any true progress in treatment." The service plan indicated he stated that he was "voluntarily participating in mental health services to comply with DCFS and d[id] not believe that he needs or would benefit from these services." When discussing mental health services, the report said he had not been consistent, had attended four appointments over the entire six-month reporting period and exhibited "very little insight into his wife [*sic*] mental illness, substance abuse, how that effects their relationship or ability to parent safely."

¶ 48 The August 2019 plan also indicated he still had two parenting classes to complete with Addus and made no progress toward doing so in spite of the fact they were "reaching out to Mr. [B.] regularly to try and set up appointments." In fact, the last time he had spoken with the Addus worker was February 2019, six months before. The service plan also indicated that during the pendency of the case he had been sentenced to 30 months of probation in May 2019 for failing

to register as a sex offender. Because of his failure to complete community service on a misdemeanor charge for criminal trespass to state land, he was ordered to spend weekends in the Adams County jail. By the time of the report, he failed to do so and had a contempt hearing set for October 2019. He had another contempt hearing set in October 2019 for the 2017 charge of possession of drug paraphernalia.

¶ 49 By the August 2019 service plan the goal had been changed from "return home" to "substitute care pending court decision on termination" on June 11, 2019, with a termination hearing set for September 2019. The plan concluded: "Norman and Karen [B.] have made minimal efforts to participate in services and have not made substantial progress." It also noted "his lack of participation in services over the last six months." This service plan covered the majority of the second nine-month period included in the State's motion for termination of parental rights.

¶ 50 5. *The Termination Hearing*

¶ 51 The first caseworker, Sonya Mallory, who was also the first to testify, said both parents' lack of participation and cooperation with services resulted in a reduction of visitation from three to two times per week during the initial reporting period. Megan Ramirez, the caseworker responsible for People's exhibit No. 7, the February 15, 2019, service plan covering from February to August 2019, rated Norman B. unsatisfactory overall for all services except the sex offender evaluation, which he ultimately obtained in November 2018. She said she rated him unsatisfactory for "substance abuse" because he went the entire reporting period without obtaining an evaluation and then did so in February 2019. He also missed several drug screens, which were discontinued under this service and made a part of his mental-health services instead. By the time of this plan, she changed the goal from "return home" to "pending status" because of the court's permanency order of February 7, 2019. Ramirez also evaluated the following plan of

August 2019 (People's exhibit No. 8). Norman B.'s remaining goals were still rated "unsatisfactory," and by this time, DCFS and the State were proceeding toward termination. Ramirez testified about how, throughout the pendency of the case, she spoke with Norman B. about the importance of cooperation and participation in services. She also talked about attending her monthly visits at the home. In April 2019, Transitions sent Norman B. a letter indicating they were going to discharge him for failing to attend. In June 2019, he drove away as she arrived for the visit. Since he did not attend, Ramirez texted him several times during the month of June to set up a home visit, yet he never responded. At the July 2019 visit, he was playing video games when she arrived and never stopped playing during the entire visit, so she spoke only with the mother.

¶ 52 Norman B. testified the delays in initiating referrals for assessments or treatment were all due to his work schedule as a commercial fisherman. At the outset of the case, Karen B. had indicated Norman B. was unemployed, and there were months where he claimed he was unable to work due to the river being too high. He disputed the number of parenting classes left to complete. He acknowledged having missed some of the home meetings but had no idea how many. On cross-examination, he acknowledged having only recently engaged in mental-health services.

¶ 53 At the conclusion of the evidence, the trial court found both parents unfit under section 50/1 of the Adoption Act (750 ILCS 50/1 (West 2018)) for failing to make "reasonable efforts" and "reasonable progress" within the specified nine-month periods. The court elected not to address the paragraph of the State's motion alleging Norman B.'s depravity for the three felony convictions.

¶ 54 6. *The Best-Interests Hearing*

¶ 55 At the subsequent best-interests hearing the trial court found it was in the best interests of the child that Karen B. and Norman B.'s parental rights be terminated. The minor, now just short of two years of age, had been in foster care since shortly after her birth. Her needs were being met and she has bonded to her foster parents, who have committed to adoption. Visitation for the parents had been suspended since November 2018 and never reinstated because neither parent ever fully engaged or completed services. With no evidence to indicate when, if ever, they could be reunited, the court found, "the People have shown today by a preponderance of the evidence that it would be in the best interest of the minor because of the possibility of permanency to have the rights of the natural parents be terminated."

¶ 56 Respondent parents appealed.

¶ 57 II. ANALYSIS

¶ 58 There are two steps to the involuntary termination of parental rights. First, the State must prove, by clear and convincing evidence, that the parent is an "unfit person" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). 705 ILCS 405/2-29(2) (West 2018); *In re M.I.*, 2016 IL 120232, ¶ 20, 77 N.E.3d 69. If the State proves that the parent meets one of the definitions of an "unfit person" in section 1(D), the trial court will hold a subsequent and separate hearing in which the State must prove, by a preponderance of the evidence (*In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004)), that the proposed termination of parental rights would be in the child's best interests. 705 ILCS 405/2-29(2) (West 2018); *M.I.*, 2016 IL 120232, ¶ 20.

¶ 59 When a parent appeals the trial court's findings that he or she is an "unfit person" and that terminating parental rights is in the best interests of the child, we do not retry the case but, instead, we limit ourselves to deciding whether the court's findings are against the manifest weight

of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323-24 (2008). This is a deferential standard of review. A finding is against the manifest weight of the evidence only if the evidence "clearly" calls for the opposite finding. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 60 A. Karen B.

¶ 61 We need not review both of the parental unfitness findings that the trial court made against Karen B. See 750 ILCS(D)(m)(i), (D)(m)(ii) (West 2018). Meeting only one of the cited definitions in section 1(D) of the Adoption Act would make her an "unfit person" (see *In re M.S.*, 302 Ill. App. 3d 998, 1002, 706 N.E.2d 524, 528 (1999)), and we find sufficient evidence that she failed to make reasonable progress. See 750 ILCS 50/1(D)(m)(ii) (West 2018).

¶ 62 In a case of failure to make reasonable progress, there is (1) a parental deficiency that produced or could produce a finding of child neglect or abuse (see 750 ILCS 50/1(D)(m)(ii) (West 2018); 325 ILCS 5/8.2 (West 2018)) and (2) a failure by the parent, during a specified nine-month period after the adjudication of child neglect or abuse, to make reasonable progress in correcting that parental deficiency (see 750 ILCS 50/1(D)(m)(ii) (West 2018)). Karen B.'s untreated psychological conditions and her abuse of methamphetamine and other drugs were parental deficiencies that could—and, in fact, did—produce a judicial finding of child neglect. A reasonable trier of fact could take the view that, during the nine-month periods the State pleaded, Karen B. failed to make reasonable progress in remedying those parental deficiencies. See *Prater v. J. C. Penney Life Insurance Co.*, 155 Ill. App. 3d 696, 701, 508 N.E.2d 305, 308 (1987). Therefore, by finding Karen B. to be an "unfit person" under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)), the trial court did not make a finding that was against the manifest weight of the evidence. See *A.W.*, 231 Ill. 2d at 104.

¶ 63 B. Norman B.

¶ 64 The same is true for Norman B. If properly proven by clear and convincing evidence, any one of the grounds enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1 *et seq.* (West 2018)) and enumerated by the State in its motion is sufficient for a finding of unfitness. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940 (2002).

¶ 65 The trial court found Norman B. had failed to make reasonable progress. A statutory ground of parental unfitness is the "[f]ailure by a parent *** to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor ***." 750 ILCS 50/1(D)(m)(ii) (West 2018). Section 1(D)(m)(ii) of the Adoption Act further provides:

> "If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act [(325 ILCS 5/8.2 (West 2018))] to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication [of child neglect or abuse]." 750 ILCS 50/1(D)(m)(ii) (West 2018).
>
> Though the dissent disagrees, our supreme court in *In re C.N.*, 196 Ill. 2d 181, 214, 752 N.E.2d 1030, 1049 (2001), stated emphatically that the parental deficiency addressed by the service plan could have nothing to do with the condition that

occasioned the child's removal. It could be a parental deficiency discovered after the child's removal—during the integrated assessment, for instance. See *C.N.*, 196 Ill. 2d at 213.

¶ 66 There, the supreme court said,

> "We reject the narrow view that a court may only look to the situation that triggered the minor's initial removal, or the conditions existing at the time custody is taken, in measuring a parent's progress under section 1(D)(m) of the Adoption Act." *C.N.*, 196 Ill. 2d at 213.

The *C.N.* court pointed to the broad scope of investigations authorized by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2016)) and how service plans are not related only to conditions triggering removal, explaining,

> "[O]ther serious conditions, existing at the time the child is removed, may become known only after removal, following further investigation of the child, parent and family situation. As one court observed, '[W]hat may appear to be a momentary lapse in parental judgment can turn out to be a symptom of more profound emotional, psychological, or even psychiatric problems which impair the performance of parental duties,' but which come to light only with further investigation." *C.N.*, 196 Ill. 2d at 214 (quoting *In re C.S.*, 294 Ill. App. 3d 780, 789, 691 N.E.2d 161, 167 (1998)).

The court further explained it is the service plan itself which "must reasonably relate to 'remedying a condition or conditions that gave rise *or which could give rise* to any finding of abuse or neglect.' " (Emphasis in original.) *C.N.*, 196 Ill. 2d at 214 (quoting 325 ILCS 5/8.2 (West 1998)).

The court discussed how service plans, although of great significance, may include "administrative directives unrelated to remedying a condition which would prevent return of the child" and which could never form the basis for termination. *C.N.*, 196 Ill. 2d at 215. However,

> "the benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17.

It went on to note the service plan was an integral part of the statutory scheme, compliance with the service plan was intimately tied to the parent's progress toward the return of the child, and failure to make reasonable progress included the failure to substantially fulfill the terms of the plan. *C.N.*, 196 Ill. 2d at 216-17.

¶ 67 The clear import of this language is to point out how parents cannot pick and choose which parts of a service plan to follow and disregard others they think do not apply to them. Often, it is the parent's failure to participate or cooperate which frequently evidences a larger problem, since one might assume a parent would normally be willing to follow any reasonable service directive in order to obtain the return of his or her child.

¶ 68 The trial court's finding Norman B. failed to make reasonable progress was not manifestly erroneous. Both the service plans and the testimony of the caseworkers indicated Norman B. either did not obtain evaluations necessary to assess his need for services or failed to follow through once an evaluation was conducted. By the August 2019 service plan, they noted

"his lack of participation in services over the last six months." Further, they indicated he exhibited "very little insight into his wife [*sic*] mental illness, substance abuse, [or] how that affects their relationship or ability to parent safely." As noted above, it was clear from the integrated assessment that DCFS was concerned about how,

> "[Norman B.'s] problematic interpersonal traits impact his judgment and ability for safe care of an infant's wellbeing and needs. He does not appear to understand the impact of his behavior on his parenting, judgment, and his seemingly self-oriented interpersonal disposition could impact his ability for attunement with a child's needs. It is unclear if he presents with sexual risks to [Z.B.] and further assessment is needed."

¶ 69 Throughout the service plans the caseworkers mentioned the services were, to a large part, intended to assist Norman B. to better understand the issues Karen B. faced with both her addiction and mental-health issues. The point of services was not only to aid Norman B. to become a parent (since he had never parented a child before) but to address some of the issues he professed during the integrated assessment and learn proper coping behaviors to deal with Karen B.'s more severe problems if they intended to remain together and parent Z.B. Instead, even when confronted with the loss of visitation, Norman B. did not attempt to engage.

¶ 70 Of the services recommended, the mental-health evaluation was arguably the most significant since it was designed to help "achieve an appropriate level of understanding of mental illness and how it affects parenting and relationships" according to the client service plan of February 2019. As the plan noted, the issues he was to address in mental-health counseling included "understanding mental health diagnosis and symptoms for himself and spouse, mental

health stability impact [*sic*] on parenting and relationships, addiction and use affects on parenting and relationships, codependency, healthy boundaries and communication." Based upon the reports in the plan, Norman B. had not completed the initial intake for 11 months after case opening and by the evaluation date of the plan, he had attended one appointment with a mental health counselor. Norman B.'s opinion, as expressed to the caseworkers, was that "he does not believe that he has any issues that need to be resolved, that the issues are solely with his wife." This is arguably what prevented him from investing in the mental-health counseling specifically intended to help him learn to deal with her issues and how they impacted their ability to safely parent Z.B., as well as address his own issues he declined to accept. By August 2019, 17 months after the case opened and a full year after the dispositional hearing approving the service plan and recommended services, Norman B. had only attended four Transitions counseling sessions, was considered to have "not made any true progress in treatment," and admitted he was "voluntarily participating in mental health services to comply with DCFS and did not believe that he needs or would benefit from these services."

¶ 71 Based on this evidence, we cannot conclude the trial court's finding of unfitness under section 50/1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2018)) was against the manifest weight of the evidence. The State suggests we could affirm the trial court on the third count of unfitness alleged in their termination motion—depravity of respondent father based on the three prior felony convictions admitted into the record. The trial court declined to address this count because of its finding of unfitness based on "lack of reasonable efforts" and "lack of reasonable progress." Having affirmed the trial court's "lack of reasonable progress" finding, we decline to accept the State's invitation. See *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830

N.E.2d 508, 514 (2005) ("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.").

¶ 72 C. Best Interests

¶ 73 Counsel finds no viable grounds for appeal of the best-interests determination by the trial court, and we agree. Having proven the unfitness of the parents by clear and convincing evidence, the testimony at the best-interests hearing revealed the minor child, now almost two years of age, had resided in foster care her entire life. Her foster parents had committed to adoption, were providing for all her needs, and she was thriving in their care. Considering the need for permanency, the trial court concluded termination was in Z.B.'s best interests, and we agree.

¶ 74 III. CONCLUSION

¶ 75 We therefore find the motion by OSAD is well-taken and grant the motion to withdraw. We find, based on this record, there are no viable grounds for appealing either the finding of unfitness or best-interests determination. The judgment of the trial court is affirmed.

¶ 76 Affirmed.

¶ 77 JUSTICE CAVANAGH, concurring in part and dissenting in part:

¶ 78 I concur that, in finding Karen B. to be an unfit person, the circuit court did not make a finding that was against the manifest weight of the evidence.

¶ 79 I respectfully dissent, however, with respect to the findings that Norman B. was an "unfit person" on the grounds of either a failure to make reasonable efforts to correct the conditions that were the basis for removing the child (750 ILCS 50/1(D)(m)(i) (West 2018)) or a failure to make reasonable progress (*id.* § 1(D)(m)(ii)).

¶ 80 The conditions that were the basis for removing the child related solely to Karen B. and were beyond Norman B.'s power to correct.

¶ 81 As for the alleged failure by Norman B. to make reasonable progress, it is true that Norman B. failed to complete many of the services. But I struggle to see any proof that, at the end of the nine-month periods, there existed an unremedied child-neglectful condition to which those uncompleted services "reasonably related." See 325 ILCS 5/8.2 (West 2018); see also 750 ILCS 50/1(D)(m)(ii) (West 2018) (providing that the service plan must have "been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act [(325 ILCS 5/8.2 (West 2018))]"); *C.N.*, 196 Ill. 2d at 215-16. It is true, for instance, that Norman B. failed to attend most of the toxicology screens, but the State's own evaluation determined him to be in no need of substance abuse services. Likewise, the State's own evaluation determined him to be at low risk of sexually reoffending. Even though Norman B. failed to complete the final parenting class, he did well in visitations, and the record appears to be devoid of evidence that he ever neglected a child in his care. He failed to attend psychotherapy sessions, but the record appears to be devoid of any competent professional opinion that he had a psychological disorder which incapacitated him from safely caring for a child. See 750 ILCS 50/1(D)(p) (West 2018). I am unaware of any evidence that either of the two signers of the integrated assessment, Mallory and Robesky, was a psychiatrist or a clinical psychologist. See *id.*

¶ 82 I acknowledge that, as the State pleaded, Norman B.'s three felony convictions raise a statutory presumption of depravity (*id.* § 1(D)(i)). But the circuit court expressly did not reach the issue of whether he was depraved. I would remand the case so that the circuit court can decide that remaining factual issue. See *People v. Kennedy*, 39 Ill. App. 3d 323, 325 (1976). There is a factual issue here in that Norman B. presented *some* evidence of a willingness and ability to behave morally. See *In re P.J.*, 2018 IL App (3d) 170539, ¶ 13.

After the State proved the three requisite convictions, Norman B. took the stand and acknowledged and accepted Z.B. as his daughter, even though DNA evidence had shown her not to be his biological daughter, and he described his industriousness as a commercial fisherman. Also, he testified to his efforts to help Karen B. obtain outpatient treatment and reunite with the family and his unwillingness to give up on her. Granted, witnesses can be believed or disbelieved, and it is far from clear that these glimmerings of a moral sensibility would be enough to rebut the statutory presumption or ultimately result in a finding in Norman B.'s favor on the issue of depravity. Nevertheless, this is a factual issue which I believe needs to be decided for this case to reach a sound resolution.