2024 IL App (1st) 231542-U

No. 1-23-1542

Order filed September 30, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF J.P.,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Minor-Respondent-Appellee,	)	Juvenile Justice and Child Protection
	)	Department, Child Protection
(The People of the State of Illinois,	)	Division
	)	
Petitioner-Appellee,	)	
	)	No. 20 JA 1003
v.	)	
	)	
Charles P.,	)	
	)	Honorable Lisa M. Taylor,
Father-Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE MARTIN delivered the judgment of the court.
Presiding Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's orders where (1) the court's finding of parental unfitness was not against the manifest weight of the evidence, and (2) the termination of respondent father's parental rights was in the best interest of the minor. Trial counsel was not ineffective, where lack of visitation stemmed from the father's inactions and not the agency's misplaced belief he was barred from visitation.

¶ 2 Respondent Charles P. appeals from trial court's orders terminating his parental rights and granting the State the power to consent to the adoption of Charles's minor child, J.P. Following

adjudicatory and dispositional hearings, the trial court found Charles unfit to parent J.P. pursuant to three separate statutory grounds of the Adoption Act: (1) failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare; (2) failure to make reasonable efforts to correct the conditions that were the basis for the removal and/or failure to make reasonable efforts toward reunification during certain specific nine-month periods; and (3) evidence of intent to forgo parental rights as manifested by failure for a period of 12 months to (a) visit the child, (b) communicate with the child or agency, or (c) maintain contact with or plan for the future of the child, although able to do so. 750 ILCS 50/1(D)(b), (m), (n) (West 2020). The trial court terminated Charles's parental rights and placed J.P. in the guardianship of the Department of Children and Family Services (DCFS) with the right to consent to adoption.

¶ 3 Charles argues that he received ineffective assistance of counsel where his attorney failed to argue that he was prohibited from visiting J.P. because the caseworkers were under an erroneous belief that there was a no-contact protection order in place barring visitation. Charles additionally contends that both the court's determination as to each statutory ground of unfitness and the court's best interest determination were against the manifest weight of the evidence. He asks that we reverse the trial court's findings of unfitness and its order terminating his parental rights. For the following reasons, we affirm.[1]

¶ 4 I. BACKGROUND

¶ 5 Charles is the biological father of J.P., who was born November 29, 2016. On July 6, 2020, J.P. was taken into protective custody by DCFS. The next day, the State filed a Petition for Adjudication of Wardship and Motion for Temporary Custody, alleging that J.P. was neglected

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

pursuant to the Juvenile Court Act. (705 ILCS 405/2-3(1)(a), (b); (2)(ii) (West 2020)). Specifically, the State noted that Charles had an indicated report for substantial risk of physical injury/environment injurious to health and welfare by neglect. That indicated report stemmed from a violent May 29, 2020 domestic incident between Charles and his paramour, Kohneesha G., that occurred in the presence of J.P.[2] J.P. reported she was fearful of Charles, and J.P.'s biological mother reported a history of domestic violence by Charles. The motion was supported by an affidavit from DCFS investigator Dominique Cochran, who averred that the case came to the attention of DCFS due to a hotline call indicating that J.P.—while staying at a domestic violence shelter—made statements alleging "mama hit daddy." Cochran noted there was an open Order of Protection against Charles and there was some concern that J.P. was coached to make statements of abuse. Further, Charles also had prior DCFS history, along with an indicated case. Charles reported he had neither stable housing nor employment and could not care for J.P.[3]

¶ 6 Based on the facts alleged in the petition, the circuit court issued an order granting temporary custody of J.P. to the DCFS Guardianship Administrator. The court also entered an order allowing supervised day visits for J.P. and Charles, with in-person visits allowed subject to COVID-19 protocols. A finding on Charles's paternity was entered on October 22, 2020.

¶ 7 The court entered an order on December 2, 2020 following an adjudication hearing, finding J.P. to be neglected (injurious environment) due to ongoing domestic violence between Charles and Kohneesha in the home where J.P. resided. 705 ILCS 405/2-3(1)(b) (West 2020).[4]

[2]Throughout the record, Kohneesha is referred to either as paramour or wife. It is unclear if Charles and Kohneesha were legally married. For clarity, we will refer to her by her name.

[3]The affidavit indicated that J.P.'s biological mother was contacted but made no arrangements to retrieve J.P. She expressed concerns for her ability to adequately care for J.P. due to long working hours and her housing status.

[4]It is unclear from the record if Charles was present in court for this hearing.

¶ 8 A dispositional hearing was held on March 26, 2021. Charles was not present in court. Evidence indicated Charles had only been in contact with the caseworker a couple of times and had failed to participate in any services. The integrated assessment, which was admitted as evidence, noted that Charles had residential stability and was living with his girlfriend.[5] The January 2021 service plan noted that although Charles was "reportedly homeless," a diligent search had revealed that he appeared to reside in a home. The court found Charles unable and unwilling to care for, protect, train, or discipline J.P. A permanency planning hearing was held the same day, with a report indicating that Charles had one visit with J.P. on September 16, 2020, but he did not contact the agency for any further visitation. While the foster mother informed the agency that Charles contacted her in December to schedule a visit, he stopped responding to her emails and failed to inquire about further visits. The court set a goal for J.P. to return home pending status.

¶ 9 After a September 30, 2021 permanency hearing which Charles did not attend, the court changed J.P.'s permanency goal to substitute care pending termination of parental rights. Additional permanency hearings were held on March 29, 2022, and January 24, 2023. Charles was not present for either hearing, and the goal remained the same.

¶ 10 On February 3, 2023, the State filed a motion to permanently terminate Charles's parental rights and to appoint a guardian with the right to consent to adoption. The petition alleged that Charles failed to make reasonable efforts to correct the conditions which were the basis for the removal of J.P. pursuant to sections 1(D)(b), (m), (n) of the Adoption Act. 750 ILCS 50/1(D)(b), (m), (n) (West 2020). On July 31, 2023, the State filed a pleading specifying the nine-month time-periods they were relying on for lack of substantial progress, pursuant to the Adoption Act. 750 ILCS 50/1(D)(m) (West 2020). These time periods were: (1) March 26, 2021 through

[5]It is unclear from the record if this was the same paramour with whom Charles was involved in the domestic incident which brought this case into DCFS.

December 26, 2021; (2) December 26, 2021 through September 26, 2021; and (3) September 26, 2021 through June 26, 2021.[6]

¶ 11 On August 24, 2023, the trial court conducted a virtual termination of parental rights hearing by way of Zoom. The State entered into evidence four exhibits: (1) a March 12, 2021 integrated assessment report (IAR), (2) a July 20, 2021 service plan (3) a July 22, 2022 service plan, and (4) a January 10, 2023 service plan.

¶ 12 A. Exhibits

¶ 13 1. IAR

¶ 14 The IAR consisted of findings following two interviews with Charles (on February 20 and 21, 2021) and an interview with J.P. and her foster mother. The IAR noted that Charles's understanding as to why the case was opened was because Kohneesha was physically and verbally abusive towards him. Charles often went off topic during the interview and was difficult to redirect. When J.P. was 15 months old, J.P.'s biological mother dropped her off at Charles's house and she never came back to pick J.P. up. Thereafter, Charles began a romantic relationship with Kohneesha. Kohneesha helped raise J.P. and their shared daughter. Charles accused Kohneesha of being physically and verbally abusive towards him but refused to explain further. He later referenced events where Kohneesha hit him in the head with a bottle, pulled a knife out on him, and verbally assaulted him. Charles seemed to be unable to accept responsibility for the domestic violence in the home. Kohneesha obtained an Order of Protection against Charles following a May 28, 2020 incident in which he stuck his foot in the door and forced Kohneesha to the floor. Charles was unemployed at the time of the interview and noted that his criminal history makes it difficult

[6]While this appears to be a scrivener's error regarding the years, both parties agree that the mistake was not brought to the attention of the circuit court and the time periods were not specifically laid out at the termination hearing.

for him to find employment. The IAR indicated that a LEADS check revealed a criminal history including 21 charges and 8 convictions (for assault, dangerous drugs, larceny, and robbery). Charles reported he was living with his girlfriend and that they have a strong relationship.

¶ 15 Charles was not involved in any services due to his lack of contact with the caseworker. Charles explained that he struggled to keep a phone due to financial restrictions but was willing to participate in any services the agency felt necessary. He admitted that he had allowed his daughters to stay in a home exposed to domestic violence for too long, but he was reluctant to leave because he did not want DCFS involved. Charles was familiar with services that could address his needs and specifically requested individual therapy. Charles's "stability of housing currently has no known risks," as he was living with his girlfriend. Due to his separation from J.P., Charles was not familiar with J.P.'s current needs. Charles stated that the most challenging thing about parenting was "getting [J.P.] to understand that he was in a toxic marriage which created a toxic household." Further, he stated it hurt him that J.P. referred to Kohneesha as "mom" and he did not understand why J.P. would make statements like "mommy doesn't love you, she hit you," but would then say, "I love mommy, I can't wait to see her."

¶ 16 Charles referred to himself as J.P.'s "protector" and stated J.P. must have been coached to make sexual abuse allegations against him[7]. He later explained that J.P. may have made allegations because when she was in the bath, he would clean her all over her body. He elaborated that when J.P. was in common areas of the home without all of her clothing on, he would cover his eyes and tell her he "did not want to see that." J.P. would laugh in response. Charles also speculated the allegations may have arisen from him putting J.P. in pampers at night, but "panties" during the

[7]As noted in the IAR, as of January 29, 2021, there were pending allegations that Charles had sexually abused J.P. J.P. stated Charles had touched her nightgown, was in her bed for a long time, and touched her underwear. She also told Charles that he was the "monster in her bed."

day. When Charles was informed that J.P. was exhibiting trauma responses—such as defecating on herself—Charles continued stating someone must have told J.P. to make allegations against him. These responses led the caseworker to believe that Charles may struggle putting J.P.'s needs before his own.

¶ 17 Charles believed he and J.P. were best friends and he could not understand why phone calls were restricted between him and J.P. According to J.P.'s foster mother, J.P. told Charles that she does not love him, but Charles responded that she was confused and continued to seek J.P.'s assurances of love. The caseworker noted that Charles appears to lack the ability to absorb negative feedback regarding his behavior and J.P.'s feelings towards him. Charles's prior caseworker deemed Charles's interactions with J.P. to be inappropriate and had correspondingly shortened their calls to five minutes. The foster mother reported that Charles had stopped responding to emails about scheduling calls with J.P., but Charles countered that the foster mother was ignoring his emails. Charles had not had any contact with J.P. since before Christmas. As for J.P.'s interview, the caseworker indicated the central themes of J.P.'s answers were "mommy hit daddy" and "I do not like daddy." At times, J.P. would take long pauses, change the subject, or refuse to answer when questioned about Charles. The foster mother reported J.P. stated things such as "daddy hits Pookie," "Pookie needs me," and "Daddy is a monster."[8] Additionally, J.P. used to defecate on herself and smear it on the walls, was terrified of bathing, and is anxious of men and hyper-focuses on them.

¶ 18 Charles did not have consistent responsiveness and cooperation with his former caseworker. The current caseworker had been unable to contact Charles until January 2021 because he did not return calls or texts. As of February 2021, Charles was cooperating in that he

[8]"Pookie" is J.P.'s younger half-sister.

asked what services he needed to complete to regain custody of J.P. The caseworker noted that Charles said he will participate in any services necessary for reunification, but that he has a history of inconsistency regarding his involvement. Charles was recommended several services—parent education and coaching, preferably by participating in the Nurturing Parenting Program (NPP); domestic violence assessment and treatment; individual therapy; sexual offender evaluation assessment[9]; supervised visitation; JCAP assessment; and consideration of child-parent psychotherapy. As of March 12, 2021, the prognosis for Charles's and J.P.'s reunification was poor.

¶ 19 2. July 2021 Service Plan

¶ 20 The plan noted that Charles did not seem to fully understand the safety threats present for J.P., nor did he fully acknowledge them. Charles had not attended the previous court hearings but had recently been making consistent contact with the caseworker, who had made a referral to Sankofa Safe Families for individual therapy and NPP. On July 20, 2021, Sankofa reported that Charles had refused services. There had been no visitation or phone contact with the minor. The agency had "made the critical decision that no visitation is allowed at this time," citing two separate allegations of sexual molestation, which were both deemed unfounded. J.P. expressed to her caseworker that she does not want to visit with Charles. The plan noted that Charles had unsatisfactory progress, had not maintained consistent contact with the caseworker, and had denied individual services. The plan noted that a caseworker completed a referral for domestic violence services on April 15, 2021, and that Charles was not eligible for a sexual offender evaluation since the allegations were deemed unfounded.

¶ 21 3. July 22, 2022 Service Plan

[9]Pending outcome of the abuse allegations, it was recommended he engage in evaluation and follow all recommendations stemming therefrom.

¶ 22 The plan noted that the caseworker had received the case in November 2021 but had never spoken to the parents. Charles had not maintained contact with the agency, had previously denied services, and the case's permanency goal had changed on September 30, 2021 to termination of parental rights. Accordingly, Charles was responsible for the financial cost of services. The plan noted that Charles was "reportedly homeless."

¶ 23 4. January 10, 2023 Service Plan

¶ 24 As it related to Charles, the service plan was substantially similar in substance to the July 2022 service plan.

¶ 25 B. Termination of Parental Rights Testimony

¶ 26 Ahkea Stewart, caseworker for One Hope United, was J.P.'s caseworker from July to November 2022. Prior to Stewart's assignment, J.P.'s mother was assessed for services, but the mother was neither engaged in any services nor did she have any contact with Stewart.[10] Charles was also assessed for services—NPP, parenting class, individual therapy, substance abuse assessment, random urine drops, and domestic violence services—which were outstanding at the time Stewart was assigned to the case. Stewart did not refer Charles to any services, because the referrals were already in place when she took over the case. These services remained outstanding at the time the case was transferred from Stewart in November 2022. Stewart had no contact with Charles during her tenure on the case, and Charles neither visited with J.P., nor did he send any cards, gifts, or letters to his daughter.

¶ 27 On cross-examination, Stewart testified that she only had the case for four months and "completed those screen packets." Additionally, Stewart believed she may have attempted to contact Charles via a direct phone call, but she did not attempt to contact Charles's attorney.

[10]J.P.'s biological mother's parental rights were also terminated at this hearing. She is not a party to this appeal.

Stewart agreed that she did not do a diligent search for Charles during her tenure on the case and instead relied upon the phone number and address provided in the "screen packet." She briefly spoke with One Hope United caseworker Deborah Holmes-Thomas regarding Charles's case and Stewart believed that Holmes-Thomas had done a diligent search for Charles. Holmes-Thomas had also informed Stewart that Charles was an individual experiencing homelessness, and Stewart was aware that Charles did not have a steady address but did have an address he utilized for mail. Stewart did not know if One Hope United had at any point attempted to assist Charles in obtaining stable housing. On redirect examination, Stewart clarified that when she was assigned the case in July 2022, J.P.'s goal had already been changed to termination of parental rights.

¶ 28 Holmes-Thomas testified that she was originally assigned J.P.'s case at some point in 2020 but went on medical leave. When she returned in November 2022, the case was reassigned to her. Charles was assessed for services and was referred to "nurturing parent classes, therapy, JCAP assessment, individual therapy, domestic violence and a sexual offender evaluation." Holmes-Thomas first had contact with Charles in March 2023, when she referred him to a NPP class. She sent a letter to Charles listing the agency's recommended services, with provider locations, and informed him that the agency would no longer pay for services since the permanency goal had changed. Prior to the March 2023 contact, Holmes-Thomas had done diligent searches for Charles, which had resulted in a few potential addresses. Letters were sent to these addresses, but Holmes-Thomas was unsure if Charles's contacting her was a result of the letters or if he had received her number from the agency's front desk. At some point after the letter was sent, Charles telephoned her to inform her that one of the providers no longer offered the NPP. She let Charles know that if the NPP is not offered, generally the "regular parenting class" will suffice. At this point, Charles did ask about visiting J.P., but Holmes-Thomas stated she did not schedule any visits at that time

because there was a no-contact order in place. At no time during her tenure on the case did Charles ever visit with J.P., nor did he ever send any cards, letters, or gifts to his daughter. When questioned regarding the basis of the no-contact order, Holmes-Thomas stated that "[i]t was something about I think the mother accused him of touching her, I'm not sure where. But, this is what she accused him of touching her and then, he [*sic*] was defecating and smearing it on the wall and different things like that." She further stated that this was the impetus for the sexual offender evaluation referral and that Charles never completed the evaluation.

¶ 29 On cross-examination, Holmes-Thomas noted that Charles had done an integrated assessment, which was the basis for the referred services listed in the January 2023 service plan. She was unsure if Charles had received a sexual offender evaluation referral but stated she had referred him to NPP and domestic violence classes. Holmes-Thomas believed that Charles stayed in a shelter and her diligent searches had returned an address, but she could not recall the name of the shelter. While she did not know if anyone else from One Hope United had offered Charles housing assistance, she stated Charles had "sworn" to her that he lived in a shelter, and "they" were going to find him an apartment. At the time she was reassigned the case, she did not offer Charles the assistance of a housing advocate because the permanency goal had been changed. She informed Charles that he could "Google some apartments and then talk to the shelter again or have the case manager contact me, so we can discuss what they do as far as finding [Charles] an apartment." It was Holmes-Thomas's understanding that the shelter would look for an affordable apartment for him, but she never spoke to his case manager. While she did call the case manager several times, he never returned her calls. She contacted Charles to inform him that she had not heard back from his case manager.

¶ 30 On redirect examination, Holmes-Thomas reiterated that when Charles first contacted her

in March 2023, the goal on J.P.'s case had already been changed to termination of parental rights. At the close of Holmes-Thomas's testimony, the State rested on its proofs for unfitness. The guardian *ad litem* (GAL) did not present any additional unfitness evidence. Charles then requested a continuance, which the court granted.

¶ 31 The Zoom hearing resumed on August 29, 2023, with Charles's attorney seeking to admit two exhibits—a June 2023 behavior assessment and a letter indicating Charles's status as an individual experiencing homelessness. The State and GAL objected to the exhibits' admission as irrelevant, with the GAL also objecting because the exhibits were neither certified nor delegated. The court excluded the admission of the documents due to a lack of authentication but noted that it had reviewed the documents.

¶ 32 Charles then took the stand. When questioned if he knew why he was at the hearing, he responded "I just recently – well, I'm getting like bits and pieces; I just recently found out some of the things maybe like a few minutes ago. Then I got more of the information a few days ago when we were here at trial." Upon reminder that there is a child protection case pending, Charles stated that "until now I have been kept out of the loop," and that he "didn't know what was going on." Charles testified that his daughter was in the foster care system and that an agency contacted him regarding J.P. Charles could not recall when the agency first reached out, but guessed it might have been three years prior, sometime in the summer. At that time, no one from the agency went over recommended services with Charles. Approximately eighteen months after, he was first contacted by Holmes-Thomas. She wanted to "know where [Charles] had been and what was going on with [him]." Charles informed Holmes-Thomas that he was still experiencing homelessness and was struggling, trying to find resources. Holmes-Thomas did not at that time offer any services.

¶ 33 Six months later, Charles again spoke with Holmes-Thomas, and he informed her he was frustrated, did not know where to find the required classes, was still experiencing homelessness, and that all the referred locations were in either Southern or Central Illinois. Holmes-Thomas offered no housing assistance, nor did she offer any opportunities to contact a housing advocate. Charles averred that he "constantly" informed "everybody" that he was experiencing homelessness. The services Charles was referred to were not immediately accessible to him, as they were in McHenry County; DeKalb, Illinois; and Champaign, Illinois. While there was one located in Chicago, the provider informed Charles that they did not offer any of Charles's required classes. The agency did not offer Charles a bus card or transportation assistance, instead telling him that he "was on [his] own. The agency didn't provide that type of thing and, like every other parent, I have to just find a way." He was never offered any housing assistance or transportation help during the entire tenure of his case. The agency reached out to Charles "maybe three times" in three years. Charles attempted "several times" to connect with the agency and called them and his counsel's law firm "constantly."

¶ 34 Charles was experiencing homelessness when J.P.'s case began, and he continued experiencing homelessness for approximately three and a half years. He is in the Chicago Homeless Database System, has a "formal letter from 10 South Kedzie," and receives all his mail at a North St. Louis shelter. Charles received two letters from his case manager from the AIDS Foundation. The letter Charles received on June 23, 2023 was the same letter he attempted to admit as an exhibit prior to his testimony. When questioned regarding this letter, the State objected, arguing that Charles's lack of housing was irrelevant to the proceedings. Defense counsel argued that it was relevant if Charles did not receive proper services from the agency to address his lack of housing. The court reiterated that it had already ruled the documents inadmissible. Further, the

court noted that the relevance of the documents was a moot point since the court accepted his testimony as true, as there had been nothing to rebut his testimony.

¶ 35 After a brief recess for Charles and his attorney to convene in a "break-out room," court resumed. Charles testified that he "put forth a lot of effort just to contact even my lawyer; somebody that would help me understand what's going on about what to do to present myself to show that I want to be a part of my child's life." He alleged that his attorney "didn't call [him] back for like a year and a half." Last, Charles reiterated that he does not feel like he received adequate services throughout the duration of this case and feels as if he had "no voice," with the court "working around" him. On cross-examination, Charles agreed that J.P. was in his care and custody in the year 2020 when the case was first indicated. When questioned if the allegations of abuse and neglect stemmed from when J.P. was in his care, Charles responded that the did not "even know where it came from." He averred that he and J.P. were very close and love each other. The first time he heard about "this" was a few months ago. Charles again conceded that J.P. was taken from his custody. Charles then rested his case, as to unfitness.

¶ 36 In rebuttal, the State recalled Holmes-Thomas, who testified she has been employed at One Hope United for nineteen years and has done diligent searches for Charles every six months during the pendency of this case. She sent letters to every address that came up under Charles's name during those searches. The letter detailed the services Charles was supposed to be involved in and informed him that the agency would no longer pay for services. She also did a "wider Web check" and sent the address of the shelter where Charles was purportedly staying to DCFS so she could inform Charles of every service provider in his area. The first time she successfully had contact with Charles was March 2023, when there was a termination of parental rights filing pending in court. On cross-examination, Holmes-Thomas reiterated that the agency no longer makes service

referrals once the goal is changed to termination of parental rights.

¶ 37 The State then asked the court for a finding of parental unfitness as to Charles under grounds (b), (m), and (n).[11] The State observed that the onus was on Charles to engage in the services recommended through the integrated assessment, to stay in contact with the agency, and to attempt to reunify with J.P. The GAL adopted the State's argument and further noted that both caseworkers testified that Charles did not engage in any of the recommended services, despite diligent searches having been made to maintain contact with Charles. Neither did Charles visit with J.P. Defense counsel argued that Charles's chronic lack of housing affected his ability to maintain contact with the agency and that despite being on notice, the agency failed to provide Charles with adequate services such as housing assistance and transportation services. In rebuttal, the State argued that it had met its burden of proof with clear and convincing evidence that Charles was unfit and argued that the nine-month statutory period is not tolled when an individual is experiencing homelessness.

¶ 38 The court then found Charles unfit under grounds (b), (m), and (n). 750 ILCS 50/1(D)(b), (m), (n) (West 2020). The court recognized both Charles's status as an individual experiencing homelessness and the challenges presented to Charles due to this status. However, the court based its finding on Charles's testimony that J.P. was in his care when she was brought into custody. Despite his housing status, this fact indicates that Charles had knowledge of the proceedings from the beginning of the case and could have engaged in services. The court additionally noted that if Charles had made himself available in 2020 to be evaluated, the agency could have assisted with his housing status.

¶ 39 Thereafter, the hearing shifted from Charles's unfitness towards J.P.'s best interests. The

[11]Although the State initially included ground (c), the State quickly corrected the error, noting that it would "reserve (c)."

State recalled Holmes-Thomas, who testified that J.P., who is seven[12], has been placed with the same non-relative licensed foster parent since the case began in 2020. She testified J.P.'s foster home is a safe and appropriate setting, and there have been no signs of abuse, neglect, or corporal punishment at any time. J.P.'s medical, dental, vision, and hearing are all up to date and she is in individual therapy, as recommended by the agency. J.P. has a rare blood disease called cyclic neutropenia, which makes her extremely fatigued. J.P.'s foster mother has guardianship over a young woman who is away at college, and she also fosters an infant. J.P. and her foster mother have a very strong, close bond and J.P. calls her "mommy." J.P. attends the same school where her foster mother teaches, she is involved in many extracurricular activities and goes on many vacations with her foster mother. Holmes-Thomas stated that a termination of parental rights is in J.P.'s best interests because (1) neither biological parent has taken any steps over three years to contact the agency and work towards reunification, (2) Charles has not had any visits with J.P. in three years, (3) there are concerns regarding what J.P. has expressed to her therapist and the agency, and (4) the parents have not complied with any services. On cross-examination, Holmes-Thomas testified that J.P. is developmentally on target and is an "A" student who does very well in school.

¶ 40 J.P.'s foster mother, Tyffanie B.T., testified that J.P. is six and has been in her care for three and a half years. Tyffanie is a single parent and has another foster child who is eleven months old. J.P. likes the infant and "thinks she's kind of loud when she cries." J.P. gets along well with Tyffanie's daughter who is away at college. J.P. calls the older daughter her "big sister" and misses her a lot. J.P. has a relationship with Tyffanie's extended family and thinks of them as her own

[12]Throughout the record there are many instances where J.P.'s age, as testified to by different individuals, does not match up with her date of birth. This is seen again in appellant's brief where it states that J.P. is nine. As she was born on November 29, 2016, she would have been six years old on the date of the hearing and she is currently seven years old.

family. J.P. is engaged in many activities outside of school—gymnastics, swimming, African Heritage, dance, piano, voice, and book co-ops. Tyffanie wants permanency for J.P. She wants to adopt J.P. because she loves her, has been her mom for a long time, and because J.P. deserves a forever story, "to be honest she needs it."

¶ 41 Following brief closing arguments, the trial court again reiterated its acknowledgment of Charles's significant, long-standing history of experiencing homelessness. Ultimately, the court ruled that, although it is "very difficult and unfortunate," the totality of the evidence indicates it is in J.P.'s best interests to terminate Charles's parental rights and "that one of the most significant factors is that this minor was taken from dad's care…there was notice to dad and an intent to make some corrections and possibly to have received assistance with the condition of being homeless." The court appointed a Guardian with the right to consent to adoption and entered a new permanency order with a goal of adoption. The court's written order indicated that it found Charles unfit under four statutory grounds, (b), (c), (m), and (n).[13] That same day, Charles filed a timely notice of appeal.

¶ 42 We note that this appeal was accelerated pursuant to Supreme Court Rule 311(a) (eff. July 1, 2018). Pursuant to that rule, the appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Here, Charles filed his notice of appeal on August 29, 2023. Thus, our disposition was due on January 26, 2024. See Ill. S. Ct. R. 311(a)(4), (5) (eff. July 1, 2018). On November 9, 2023, Charles's counsel filed a motion pursuant to *Anders v. California*, 386 U.S. 738 (1967), requesting leave to withdraw as counsel. On April 12, 2024, this court denied that

[13]The People's supplemental petition did not include the allegation that Charles was unfit under ground (c). The oral pronouncement of the court did not include this ground, and the oral ruling takes precedence over the written order. See *People v. Ransom*, 2024 IL App (4th) 230506, ¶¶ 89-91 (noting that when there is a clear conflict between the oral and written orders, the oral ruling controls).

motion without prejudice. Thereafter, on April 22, 2024, Charles's counsel filed an opening brief. Following three extension requests, the appellees' briefs were filed on July 18 and 19, 2024, and the case became ready on August 7, 2024. We find these reasons to constitute good cause for this decision to issue after the timeframe mandated in Rule 311(a).

¶ 43 II. ANALYSIS

¶ 44 Charles argues on appeal that he received ineffective assistance of counsel where his attorney failed to argue that he was barred from visiting J.P. because the caseworkers were under an erroneous belief that there was a no-contact protection order in place prohibiting visitation. Charles additionally contends that both the court's determination as to each statutory ground of unfitness and the court's best interest determination were against the manifest weight of the evidence. The State and Office of the Public Guardian counters that Charles's ineffective assistance claim lacks merit and that the court's determinations regarding Charles's parental rights and J.P.'s permanency goal were supported by the manifest weight of the evidence.

¶ 45 The Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2020)) and the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2020)) govern the proceedings for termination of parental rights. *In re D.F.*, 201 Ill. 2d 476, 494 (2002). "Illinois policy 'favors parents' superior right to the custody of their own children.' " *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 19. This is because our courts recognize that parental rights and responsibilities are of deep import and should not be terminated lightly. *In re C.P.*, 191 Ill. App. 3d 237, 244 (1989). The involuntary termination of parental rights is a two-step process. 705 ILCS 405/2-29(2) (West 2020); *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 20. First, the trial court must determine whether a parent is unfit and, second, the court must determine whether termination of parental rights is in the child's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63.

¶ 46 A. Finding of Unfitness

¶ 47 The State must first establish, by clear and convincing evidence, parental unfitness as delineated in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2020). Only one listed ground of unfitness need be proven to support a finding that a parent is unfit. *In re A.R.*, 2023 IL App (1st) 220700, ¶ 64. We review the trial court's dispositional decision under a manifest weight of the evidence standard. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *People v. Sanchez*, 2021 IL App (3d) 170410, ¶ 25 (citing *People v. Deleon*, 227 Ill. 2d 322 (2008)); *In re Marriage of Yabush*, 2021 IL App (1st) 201136, ¶ 28. It is well established that we defer to the trier of fact since " 'the trial court is in a superior position to assess the credibility of witnesses and weigh the evidence.' " *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 66. We will not substitute our judgment for that of the fact finder. *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011).

¶ 48 1. Interest, Concern, or Responsibility

¶ 49 Charles first argues that the trial court's finding of unfitness pursuant to section 50/1(D)(b) was improper where (1) there is a "dearth of testimony" regarding the period of July 2020 through July 2022 such that the State could not meet its burden to demonstrate unfitness, and (2) his status as an individual experiencing homelessness excuses his lack of interest, concern, or responsibility as to J.P.'s welfare.

¶ 50 Section 50/1D(b) of the Adoption Act provides for a finding of unfitness where a parent has failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare. 750 ILCS 50/1D(b) (West 2020). "The language of ground (b) is disjunctive, meaning that failing to maintain a reasonable degree of any of the elements may be considered on its own

as a basis to declare a parent unfit." *Interest of Y.F.*, 2023 IL App (1st) 221216, ¶ 34. Our supreme court has held that the plain and ordinary meaning of subsection 50/1(D)(b)'s phrase "failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" intrinsically "includes all situations in which a parent's attempts at maintaining a reasonable degree of interest, concern, or responsibility are inadequate, regardless of whether that inadequacy seems to stem from unwillingness or an inability to comply." *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 26. Further, the unfitness ground contains no implied state of mind requirement. *Id*. ¶ 27. Instead, a court must consider a parent's circumstances when determining whether a parent demonstrated reasonable interest, concern, or responsibility. *Id*.

¶ 51 Circumstances that warrant consideration include the parent's difficulty in obtaining transportation to visit their child, the parent's poverty, any actions and statements of others that hinder or discourage visitation, and if a parent's failure to visit was motivated by a need to cope with other aspects of life or by true indifference to, and lack of concern for, the child. *Id.* ¶ 28. Whether a parent has complied with the directives of a service plan is also relevant to the court's determination. *In re J.O.*, 2021 IL App (3d) 210248, ¶ 36. " 'The issue is whether a parent maintained concern, interest and responsibility as to his or her child's welfare that, under the circumstances, was of a *reasonable* degree.' " (Emphasis in original.) *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 28 (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 280 (1990)); see also *Interest of Y.F.*, 2023 IL App (1st) 221216, ¶ 34 (the analysis focuses on the reasonableness of a parent's efforts, not the parent's success). A parent's circumstances, such as poverty or unstable housing status, neither "necessarily or automatically redeem[s] a parent's failure to demonstrate reasonable interest, concern, or responsibility," nor do they require a different standard of reasonableness. *Cf. Id*. ¶ 29 (father with intellectual disability). Dependent upon the content, tone, and frequency of

contacts, either letters, telephone calls, or gifts may demonstrate a reasonable degree of concern, interest, or responsibility in cases where personal visits with the child are somehow impractical. *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 28. However, simply demonstrating some interest or affection towards their child neither makes a parent fit nor their efforts reasonable. *Interest of Y.F.*, 2023 IL App (1st) 221216, ¶ 34.

¶ 52 An allegation of parental unfitness pursuant to ground (b) does not contemplate a specific time frame. Rather, in considering the allegation, the trial court is required to consider evidence of the parent's conduct across the entire period from the loss of custody through the date of the fitness hearing. See 750 ILCS 50/1(D)(b) (West 2020); *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 26. Here, the State was required to prove, by clear and convincing evidence, that Charles demonstrated an unreasonable degree of interest, concern, or responsibility as to J.P.'s welfare between his loss of custody on July 6, 2020, and the fitness hearing that was held on August 24, 2023.

¶ 53 Charles argues that the State failed to introduce any evidence regarding the time period between July 6, 2020 and July 2022. Instead, he claims the only evidence presented was the testimony of caseworkers Stewart and Holmes-Thomas, who testified relevant to the time period after July 2022. Charles contends that, since little can be gleaned from the record, the State was unable to have met its burden without calling Charles's earlier caseworkers. However, the evidence admitted at trial included both testimony and exhibits—the March 2021 IAR and service plans covering the period from July 2021 through January 2023. These exhibits were admitted without any objection from Charles and were rife with information regarding the two-year period from July 2020 to July 2022. Accordingly, the State met its burden of presenting evidence for the entire 37-and-a-half-month period.

¶ 54 Charles further asserts that his lack of interest, concern, or responsibility is excused by his

status as an individual experiencing homelessness. Specifically, Charles alleges that his lack of housing and transportation were barriers that prevented him from engaging in treatment, and contacting or visiting J.P. The relevant inquiry becomes whether Charles's circumstances provided a valid excuse for his failure. *In re M.I. v. J.B.*, 2016 IL 120232, ¶ 29.

¶ 55 We find they do not. Charles's failure both to visit regularly—or at all—with J.P. and to keep in contact with the agency was not caused primarily by obstacles beyond his control. Rather, Charles made voluntary decisions to distance himself from J.P. For example, when Charles was inclined to do so, he attended visitation (prior to late September 2020). Although he was not present at prior dispositional court dates or permanency hearings, he was so inclined as to appear for the unfitness and best interest hearings in August 2023. He voluntarily participated in the integrated assessment in early 2021 and expressed his willingness to do whatever was necessary to reunite with J.P., but he also repeatedly failed to have consistent contact with his caseworkers from July 2020 through March 2023. Charles did not participate in any of the ordered programs, except for the integrated assessment, which detailed that Charles was, as of March 2021, living in stable housing with a paramour. Further, the admitted service plans plainly indicate that Charles was given a referral for NPP and individual therapy at Sankofa Safe Families in July 2021. Sankofa shortly thereafter contacted the caseworker on Charles's case to inform her that Charles had refused services. On cross examination, caseworker Stewart admitted that she had never inquired if any DCFS services or guidelines were offered for individuals experiencing homelessness, and did not provide Charles any transportation services. However, she also testified that she was only the caseworker for four months and that, by the time she was assigned, the permanency goal had already been changed. Further, Charles made zero contact with the agency during the time Stewart was assigned the case. It is clear from the evidence admitted—and Charles's own testimony—that

he was well aware that J.P. had been removed from his care and there was an active case pending with DCFS. Taking into consideration the above, we find that evidence of Charles's sporadic and nonexistent visitation and his refusal to comply with the agency's recommended services sufficiently supports the trial court's finding of unfitness.

¶ 56 Nonetheless, Charles maintains that his circumstances were not considered by the trial court. The record belies Charles's assertions. The court acknowledged Charles's circumstances when deciding whether his failure to visit J.P. established a lack of reasonable interest, concern, or responsibility as to her welfare. The court noted Charles's testimony that he lacked stable housing, but also highlighted that Charles's failure to consistently attend visitation, call J.P., or interact with any of the caseworkers was due to choice rather than circumstance. Consequently, we find that the court's determination was not against the manifest weight of the evidence.

¶ 57 Although the court's finding that Charles violated ground (b) is sufficient on its own to support a finding that Charles is unfit, *In re J.O.*, 2021 IL App (3d) 210248, ¶ 33, we will nonetheless briefly address Charles's other unfitness arguments.

¶ 58 2. Intent to Forgo Parental Rights

¶ 59 Charles next contends that he should not have been found unfit under section 50/1(D)(n) since his caseworkers failed to return his calls and were working under an erroneous assumption that he was barred from visitation.

¶ 60 Ground (n) provides for a finding of unfitness where there is evidence that a parent intends to forego their parental rights

> "as manifested by a failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing

so by an agency or by court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so." 750 ILCS 50/1(D)(n) (West 2020).

¶ 61 The record in this case indicates that Charles last visited with J.P. in September 2020. He did not again attempt to visit with J.P., communicate with J.P., or maintain contact with J.P. until March 2023—a period of time extending well beyond 12 months. Charles testified that he "constantly" called the caseworkers at One Hope United but that he was unable to reach anyone, and no one ever called him back. However, there is contrary evidence in the record, where the service plans, IAR, and the caseworker's testimony all reflected Charles's inconsistent or nonexistent attempts to communicate with the agency. They detailed numerous unreturned calls and texts to Charles and long periods with no contact from Charles whatsoever.

¶ 62 As detailed *supra*, despite efforts on behalf of the caseworkers and the foster mother, Charles voluntarily stopped visiting with J.P many months before there were any sexual abuse allegations or corresponding restrictions on visiting with J.P. Charles's last visitation/call with J.P. was on September 16, 2020. The first sexual abuse allegation was raised in January of 2021. Charles did not inquire about phone calls or visitation again until a full two and a half years after his last visit. Holmes-Thomas's March 2023 erroneously held belief that there was a no-contact order in place had no bearing on the earlier period when Charles simply chose not to engage. It does not excuse Charles's voluntary withdrawal from visitation, calls, and contact with J.P. between September 16, 2020 and March 2023. Further, while Charles's testimony that he was experiencing homelessness went largely unrebutted, there was information in the IAR and subsequent service plans that indicated that Charles was living with his girlfriend in stable housing in March of 2021. This period of time was within 12 months of September 16, 2020. Therefore,

the trial court's determination that Charles was unfit pursuant to ground (n) is not against the manifest weight of the evidence.

¶ 63 3. Efforts and Progress

¶ 64 Charles next argues a finding of unfitness pursuant to ground (m) was improper when he did not receive any referrals for recommended services until 2023 and the referred locations were well outside his geographical range, especially when taking into consideration his housing status and lack of transportation.

¶ 65 Section 1(D)(m) of the Act provides for a finding of unfitness where a parent has failed either (1) to make reasonable efforts to correct the conditions which were the basis for the removal of the child from them or (2) to make reasonable progress toward the return of the child to them within nine months after the adjudication of neglect or abuse under the Juvenile Court Act, or after an adjudication of dependency under the Juvenile Court Act, and/or within any nine month period after said finding. 750 ILCS 50/1(D)(m) (West 2020).

¶ 66 "Illinois courts have defined 'reasonable progress' as demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re A.R.*, 2023 IL App (1st) 220700, ¶ 70 (quoting *In re D.D.*, 2022 IL App (4th) 220257, ¶ 38). We have explained that "reasonable progress exists when the trial court 'can conclude that * * * the court, in the *near future*, will be able to order the child returned to parental custody.' " (Emphasis in original.) *Id*. ¶ 64 (quoting *In re D.D.*, 2022 IL App (4th) 220257, ¶ 38). "Reasonable progress" is measured by an objective standard. *Id*.

¶ 67 We will look specifically at the nine-month time period between March 26, 2021 through

December 26, 2021.[14] Charles asserts that his testimony regarding the lack of accessible services offered to him went unrebutted. He claims any reasonable compliance with his service plans was impossible given his lack of housing and access to transportation. However, his contention is clearly contradicted by the record. As detailed *supra*, the July 2021 service plan which was admitted into evidence at trial plainly indicates that Charles was given a referral for NPP and individual therapy at Sankofa Safe Families in July 2021. The caseworker was later informed by Sankofa that Charles refused any services from them. There was no testimony provided that Sankofa was outside of Charles's geographic location. Indeed, Charles testified that the only service referrals he received were those from Holmes-Thomas in March of 2023—when the permanency goal had already been changed to termination of parental rights and he was obligated to cover the expense on his own. But the record clearly demonstrates that he had refused the same services two years earlier from Sankofa.

¶ 68 Even when given support, Charles failed to make any demonstrable steps towards returning J.P. to his care, and he was subsequently rated as making unsatisfactory progress on his service plans. To be sure, for over two years following the court's adjudication of neglect, Charles failed to make *any* efforts or progress—reasonable or otherwise. While we recognize that Charles attempted more recently to make efforts (although those were still very inconsistent), "a parent does not have an unlimited period of time in which to make reasonable efforts or progress toward regaining custody of their children." *In re Grant M.*, 307 Ill.App.3d 865, 871 (1999). The record clearly supports that Charles has displayed neither continuous effort nor a desire to care for J.P. Accordingly, we find that the evidence clearly and convincingly supported the trial court's finding

[14]While the two subsequent nine-month periods were incorrectly dated in the State's filing, the record reflects the relevant time periods were likely December 26, 2021 through September 26, 2022 and September 26, 2022 through June 26, 2023. Nevertheless, as we have affirmed on multiple grounds, there is no reason to address these two nine-months periods.

that Charles failed to progress towards reunification with J.P.

¶ 69 B. Best Interest Finding

¶ 70 Charles next challenges the court's finding that it was in J.P.'s best interest to terminate his parental rights. Charles concedes that the record demonstrates that J.P. has bonded with her foster mother, calls her "mommy," has all of her needs met, has a safe and appropriate residence, and that the placement gives J.P. a stable home. He nonetheless argues that because he "simply fell through the gaps," it was error for the court to rely upon the lack of testimony regarding J.P.'s relationship with Charles. The GAL and State disagree and maintain that the court's finding was proper.

¶ 71 After a trial court has deemed a parent to be unfit, the court must then conduct a second hearing to determine if termination of the parental rights is in the child's best interest. 750 ILCS 405-2-29(2) (West 2020); *In re D.F.*, 201 Ill. 2d at 495. At this phase, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the minor's best interest. *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16. A reviewing court will not reverse a trial court's decision to terminate parental rights unless it is contrary to the manifest weight of the evidence. *In re M.C.*, 2018 IL App (4th) 180144, ¶ 35. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16. "A trial 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 Jaron Z.*, 348 Ill. App. 3d 239, 263 (2004).

¶ 72 In the present case, the evidence adduced demonstrated that J.P. has resided with her foster mother since she was approximately three and a half years old. She has bonded strongly with her foster mother, calls her "mommy," has a strong connection with the foster mother's elder daughter, and spends time with her foster mothers' extended family members and considers them family. J.P. is engaged in many activities outside of school—gymnastics, swimming, African Heritage, dance, piano and voice lessons, and book co-ops. Tyffanie testified that she wants to adopt J.P. because she loves her and has been her mother for a long time. She stated that J.P. needs permanency and deserves a forever story, "to be honest she needs it."

¶ 73 Holmes-Thomas testified that J.P.'s foster home is a safe and appropriate setting, with no signs of abuse, neglect, or corporal punishment. She stated she believes that adoption is in J.P.'s best interest since (1) neither biological parent has taken any steps over three years to contact the agency and work towards reunification, (2) Charles has not had any visits with J.P. in three years, (3) she had concerns regarding what J.P. has expressed to her therapist and the agency, and (4) the parents have not complied with any services.

¶ 74 We acknowledge Charles's statements at trial that he believes he and J.P. love each other and are close. We further recognize that Charles feels as if the system failed him. But the paramount issue nonetheless remains what is in the best interest and welfare of J.P. And the record here reflects that Charles was inconsistent in his interactions with the caseworkers. J.P. was taken from Charles's care and custody. He was undoubtedly aware that there was an active case and that he needed to take specific actions to move toward reunification. Additionally, J.P. made it clear on numerous occasions in 2020 (when Charles was still somewhat involved in her life) that she was uncomfortable interacting with Charles and would get upset if he was mentioned. He chose to take no steps towards building a stronger, healthier relationship with J.P.

¶ 75 The trial court appropriately considered all the evidence presented and the statutory best interest factors, and reiterated its acknowledgment of Charles's significant, long-standing history of experiencing homelessness. The court acknowledged that while it is "very difficult and unfortunate," the totality of the evidence indicates it is in J.P.'s best interests to terminate Charles's parental rights and "that one of the most significant factors is that this minor was taken from dad's care…there was notice to dad and an intent to make some corrections and possibly to have received assistance with the condition of being homeless." Considering the evidence and the best interest of J.P., we find the trial court's order terminating Charles's parental rights was not against the manifest weight of the evidence.

¶ 76 C. Ineffective Assistance of Counsel

¶ 77 Last, Charles argues he received ineffective assistance of counsel when his attorney failed to correct Holmes-Thomas's erroneous testimony that there was a no-contact order in place and further failed to "invite the court's attention to this glaring conflict." Charles argues his failure to visit J.P. is not proof of unfitness because he offers a reasonable explanation—that Holmes-Thomas made visitation impossible. Because Charles's counsel failed to articulate this argument, he contends, counsel's performance was deficient, and he was prejudiced. Had this argument been presented to the court, Charles avers he would not have been found unfit under sections 50/1(D)(b) or (n). The GAL and State argue that Charles's ineffective assistance claim is meritless where he has failed to demonstrate prejudice and has not overcome the presumption of sound trial strategy.

¶ 78 "Although there is no constitutional right to counsel in abuse and neglect proceedings, a statutory right to counsel is granted under the Act." *In re A.R.*, 2022 IL App (3d) 210346, ¶ 26. Ineffective assistance of counsel claims in parental rights proceedings are assessed pursuant to the

standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Id*. To demonstrate ineffective assistance, Charles must establish both that counsel's performance was deficient and that he was prejudiced by the substandard representation. *Id*. Specifically, Charles must show that "counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.' " *People v. Cathey*, 2012 IL 111746, ¶ 23 (quoting *Strickland*, 466 U.S. at 694). If prejudice cannot be established, the ineffective assistance claim necessarily fails. See *People v. Cherry*, 2016 IL 118728, ¶ 31 (failure to establish either prong precludes a finding of ineffectiveness). A reviewing court must be highly deferential in its scrutiny of counsel's performance. *Strickland*, 466 U.S. at 689. "Counsel's conduct is presumed to be the product of sound trial strategy, and respondent bears the burden of overcoming this presumption." *In re Charles W.*, 2014 IL App (1st) 131281, ¶ 32.

¶ 79 Charles is unable to overcome this presumption. Charles admits that he "failed to engage in visitation" with J.P., but claims this failure is solely because Holmes-Thomas prohibited him from visitation. According to Charles, he was "pleading" for visitation but was barred because of the caseworker's incorrect belief there was a no-contact order in place which prevented visits. He argues that if his attorney had corrected Holmes-Thomas on her erroneous assumption, he would not have been found unfit. However, as explained in detail *supra*, the record rebuts Charles's claim that he was pleading for visits with J.P. The record is replete with examples of Charles's willful failure to engage in visits or communication with J.P. from September 2020 until March of 2023. Charles has failed to rebut the presumption that his attorney's choice not to highlight these facts was a matter of sound trial strategy. Consequently, Charles is unable to demonstrate that he received ineffective assistance of counsel.

¶ 80 III. CONCLUSION

¶ 81 Based on the foregoing reasons, we affirm the trial court's orders.

¶ 82 Affirmed.