Illinois Official Reports

Appellate Court

In re M.W., 2019 IL App (1st) 191002

Appellate Court Caption	*In re* M.W., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. Justin W., Respondent-Appellant).
District & No.	First District, Fourth Division No. 1-19-1002
Filed	October 31, 2019
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 15-JA-742; the Hon. Patrick Murphy, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Thomas M. O'Connell, of Schaumburg, for appellant. Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg and Ashlee Cuza, Assistant State's Attorneys, of counsel), for the People. Charles P. Golbert, Public Guardian, of Chicago (Kass A. Plain and Christopher Williams, of counsel), guardian *ad litem*.

Panel PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion.
Justices Lampkin and Reyes concurred in the judgment and opinion.

OPINION

¶ 1 The instant appeal arises from orders finding that respondent, Justin W., was unfit to parent 4-year-old minor M.W. and that it was in the minor's best interest to terminate his parental rights. On appeal, respondent challenges both the finding of unfitness and the best-interest finding and claims that he was not afforded the opportunity to demonstrate his fitness to parent the minor because he was not served with notice of the proceedings until the termination proceedings were imminent. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 Minor M.W. was born on July 17, 2015, to mother Lezli O.; the mother is not a party to the instant appeal. On July 28, 2015, the State filed a petition for adjudication of wardship, asking for the minor to be adjudicated a ward of the court; the State also filed a motion for temporary custody on the same day. In the adjudication petition, the minor's father was listed as one of three men: Robert H., Melvin W.,[1] or "Justin Unknown." The adjudication petition claimed that the minor was neglected due to an injurious environment under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2014)) and was abused due to a substantial risk of physical injury under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2014)). The facts underlying both claims were the same. According to the petition, the minor's mother and Melvin W. had a prior indicated report for substance misuse and substantial risk of harm. They also had two minors who were not in their care or custody and another minor who was in the temporary custody of the Department of Children and Family Services (DCFS); the mother also had two other minors in DCFS custody in Will and Du Page Counties, with findings[2] having been entered in those cases.

¶ 4 The petition alleged that on February 16, 2015, the minor's sibling presented with an altered mental status and was hospitalized, testing positive for illegal substances. The mother stated that Robert H. used illegal substances and that she had last used them in October 2014; Robert H. tested positive for illegal substances on March 2, 2015. The petition further alleged that Melvin W. had threatened Robert H. with a handgun and had attempted to shoot him in January 2015, with "back and forth threats of violence with a handgun" between the two. The petition also alleged that there was "an extensive on-going issue of domestic violence" between the mother and Melvin W. The mother had not cooperated with being assessed for services, but Melvin W. had been assessed for services, and recommendations were pending. The

[1]The "W." in M.W.'s name is the same surname as Melvin W.'s and is not the same surname as respondent's.

[2]The petition does not specify whether the findings were findings of neglect or abuse or both. However, the affidavit documenting DCFS efforts states that the mother's parental rights with respect to both children were terminated.

petition alleged that on July 20, 2015, a temporary guardian was appointed for the minor in Kane County, with the temporary guardian and the mother attempting to complete guardianship for the minor in order to avoid DCFS involvement. Finally, the petition alleged that there were multiple putative fathers for the minor and that paternity had not been established.

¶ 5 On the same day, based on the allegations contained in the petition for adjudication of wardship, the juvenile court found probable cause that the minor was neglected and that immediate and urgent necessity existed to support her removal from the home. The court granted temporary custody of the minor to the DCFS guardianship administrator.

¶ 6 On December 9, 2015, Melvin W. was ruled out as the minor's father based on a DNA test, and the juvenile court entered a finding regarding paternity to that effect. On the same day, the court entered an order ordering service by publication to "Justin Unknown."

¶ 7 On April 26, 2016, the State filed an affidavit for service by publication indicating that each named respondent could not be found within the state or left the state and could not be located. The State also filed a notice of publication for "Justin 'unknown last name' (Father), Unknown (Father), respondents, and to All Whom It May Concern," giving notice of the proceedings, as well as a certificate of publication showing publication in the Chicago Tribune on June 14, 2016.

¶ 8 On July 5, 2016, the juvenile court again entered an order ordering service by publication, this time to "Justin White."[3] On July 13, 2016, the State filed an affidavit for service by publication, as well as a notice of publication for "Justin White (Father), AKA Justin Unknown, AKA [respondent's surname], respondents, and to All Whom It May Concern." On September 16, 2016, the State also filed a certificate of publication showing publication in the Chicago Tribune on September 7, 2016.

¶ 9 On September 20, 2016, the State filed an affidavit of service from the sheriff's office, which provided that respondent (under his accurate name) was served by substitute service on September 15, 2016; the affidavit of service provided that the summons and petition were served on Nicholas W.,[4] a 22-year-old male, at a residence on South Richmond Street in Chicago.

¶ 10 On September 27, 2016, the juvenile court entered an order finding respondent in default for want of an appearance or answer; the order provided that there had been service "by publication & [substitute] service." The court then entered an adjudication order finding the minor neglected due to an injurious environment. On the same day, the juvenile court entered a disposition order making the minor a ward of the court and finding both parents unable for some reason other than financial circumstances alone to care for, protect, train, or discipline the minor; the order also found that respondent was unwilling to care for, protect, train, or discipline the minor. The court further found that reasonable efforts had been made to prevent or eliminate the need for removal of the minor from her home but that appropriate services aimed at family preservation and family reunification had been unsuccessful. The court placed the minor in the custody of the DCFS guardianship administrator with the right to place her.

[3]Respondent's surname is not "White."

[4]Nicholas W.'s surname is the same as respondent's.

¶ 11 Also on September 27, 2016, the juvenile court entered a permanency order with a goal to return home within 12 months; the initial permanency order stated that the minor was a year old and had lived in her current nonrelative foster home since July 2015. The order also provided that "[h]er father is not involved."

¶ 12 On March 23, 2017, the State filed an "affidavit of identification," signed by the mother on January 11, 2017, in which the mother identified respondent as the minor's biological father; the affidavit did not contain any contact information for respondent. On the same day, the State filed a final and irrevocable consent to adoption executed by the mother, in which she consented to the minor's adoption by her foster parents. A service plan also filed the same day, which was dated October 7, 2016, indicated that the mother "named putative father for [the minor] October 2015. [Respondent] has refused to be involved with the case and establish paternity. A diligent search was completed July 2016." Finally, on the same day, the juvenile court entered a permanency order modifying the permanency goal to substitute care pending a court determination on termination of parental rights. The reasons for selecting the goal were listed as that (1) the minor was a year and a half old and had been residing in her foster home since her case came into the system in July 2015, (2) the mother had signed consents for the foster parents to adopt the minor, and (3) "[t]he father is not involved."

¶ 13 On July 11, 2017, the State filed a supplemental petition for the appointment of a guardian with the right to consent to adoption (termination petition) with respect to the minor. In its petition, the minor's father was listed as respondent, with an address on South Richmond Street in Chicago. The petition alleged that the mother wished to be relieved of all parental rights and desired the appointment of a guardian with the right to consent to adoption, pursuant to section 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2016)) and sections 8 and 10 of the Adoption Act (750 ILCS 50/8, 10 (West 2016)). With respect to respondent, the petition alleged that respondent was unfit under sections 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and 2-29 of the Juvenile Court Act (705 ILCS 405/2-29 (West 2016)).

¶ 14 Specifically, the petition alleged that respondent was unfit under (1) section 1(D)(a) of the Adoption Act for abandoning the minor (ground a); (2) section 1(D)(b) of the Adoption Act for failure to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (ground b); (3) section 1(D)(c) of the Adoption Act for deserting the minor for more than three months preceding the commencement of the termination proceedings (ground c); (4) section 1(D)(*l*) of the Adoption Act for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare in the first 30 days of her life (ground *l*); (5) section 1(D)(m) of the Adoption Act for failing to make reasonable efforts to correct the conditions that were the basis for the removal of the minor and/or failing to make reasonable progress toward the return of the minor to him (ground m);[5] and (6) section 1(D)(n) of the Adoption Act for evidencing intent to forgo parental rights as manifested by a failure for a period of 12 months to visit the minor, communicate with the minor or agency although able to do so, and/or maintain contact with or plan for the future of the minor although physically able to do so (ground n).

¶ 15 Additionally, the petition alleged that it would be in the minor's best interest to appoint a guardian with the right to consent to her adoption because she had resided with her foster

[5]On March 15, 2019, the State amended its petition to remove ground m.

parents since July 27, 2015, the foster parents desired to adopt her, and adoption by the foster parents would be in the minor's best interest.

¶ 16 On January 11, 2018, the juvenile court entered an order in which it ordered service by publication to respondent. The State filed an affidavit of service by publication, dated January 12, 2018, which stated that a summons had been issued on August 17, 2017, listing an address on South Richmond Street in Chicago, and that service was "Unsuccessful." The affidavit also stated that a summons had been issued on October 4, 2017,[6] listing an address on South Springfield Avenue in Evergreen Park, and that "Substitute Service [was] Successful." The State also filed a notice of publication, which gave notice of the proceedings to "[Respondent] (Father), AKA Justin Unknown, AKA [respondent's surname], AKA Justin White, Unknown (Father), respondents, and to All Whom It May Concern." The State also subsequently filed a similar affidavit of service by publication and notice of publication, both dated February 21, 2018.

¶ 17 On April 3, 2018, the trial court entered an order for parentage testing "upon the motion of putative father."

¶ 18 On June 7, 2018, the State filed a DNA report establishing respondent's paternity, and the juvenile court entered an order finding that respondent was the minor's father. On the same day, respondent filed an appearance.

¶ 19 On November 27, 2018, the juvenile court entered a visitation order permitting respondent to have at least two, two-hour supervised visits with respondent per month. The order provided that "father came to court long after [the minor's] case came into the system. Father must comply with all recommended services—including individual therapy. There is disagreement about whether the father received notice to come to court."

¶ 20 On January 10, 2019, respondent filed a motion to amend the visitation order to allow for increased supervised visits and/or unsupervised day visits. On January 15, 2019, the juvenile court entered an order increasing respondent's supervised day visits to three, two-hour visits per month and permitted respondent at least one unsupervised two-hour day visit per month. At the hearing on respondent's motion, respondent's counsel informed the juvenile court that respondent would be challenging service during the termination trial, and the court encouraged respondent and the foster parents to work together to resolve their issues. The court noted that "I think the foster parent has to understand that there's a legal issue here, which [respondent and his counsel] have argued, which on appeal could cause you to lose custody of the child entirely, and that's why I'm encouraging you to try to work with him so we can work this out. I don't know what would happen if they appealed me to a different judge. Right now my point of view is the kid has been with you, I'm not going to take the child out, but they have an arguable case that he never got proper service. I'll hear all of that out again."

¶ 21 On March 13, 2019, respondent again filed a motion for increased visitation. On March 15, 2019, the juvenile court entered an order permitting respondent unsupervised day visits at least every Saturday for six hours. At the hearing on the motion, the court noted that "[t]he problem with this case is [respondent] didn't get involved until a year ago, and it appears, through no fault of his own, appears he was never really notified. But, you know, I'll hear all that on the termination proceeding." The court further noted that "[t]he case cries out for, kind of, like, a

[6]The affidavit states "07" instead of "17," but that appears to be a typographical error.

compromise; maybe guardianship or something. I think that the more the foster parents can communicate with the father and vice versa the better it is."

¶ 22 The parties came before the juvenile court for a hearing on the termination petition on April 15, 2019. The State first called David Walker, who was the minor's case manager beginning in July 2015. Walker testified that on September 30, 2015, at approximately 6 p.m., he received a telephone call from respondent, which lasted for approximately 20 minutes; Walker believed that respondent was given Walker's phone number by the minor's mother. Respondent identified himself as "Justin" and informed Walker that he was calling about the minor, "who was possibly his child." Respondent had many questions about the case and what was occurring with the case and with the mother. Walker updated respondent as to the case's status and informed him of an upcoming court date. Walker also encouraged respondent to attend the court date in order to provide a DNA sample. Walker asked respondent for his last name and address, but respondent would not provide that information; Walker did not ask respondent why he would not provide the information. Walker informed respondent that it was important to determine whether he was actually the minor's father, and respondent told Walker that he had just finished a case involving his son "and that it was difficult for him to be caring for him, let alone a second kid at this time." Walker informed respondent that he could be assessed for services and that DCFS would be able to assist him. Walker testified that respondent was "not interested" in the minor and Walker concluded the conversation by providing his contact information and reminding respondent of the next court date.

¶ 23 Walker testified that he performed diligent searches, as well as searching the putative father registry in order to attempt to locate respondent, and also communicated with respondent via phone and text messages four to five times between September 2015 and July 2016. Walker testified that respondent contacted him, seeking information about the progress of the case and, on each occasion, Walker reminded him of the next court date. Respondent never asked about the minor's well-being, and never sent any cards, gifts, or letters to the minor. Walker testified that, during these communications, respondent did not provide him with his last name or address.

¶ 24 Walker testified that the mother first identified respondent as the minor's father in court on July 5, 2016. Within two days of receiving respondent's full name, Walker performed a diligent search through the DCFS diligent search service center; Walker explained that caseworkers would provide as much information as they could to the DCFS diligent search service center, and the center would perform searches to locate the parent within the state. Once Walker received an address for respondent, he sent out letters via both regular and certified mail. The letter sent by certified mail was returned as unclaimed. After Walker sent the letters, respondent continued communicating with him periodically. During one conversation, in October 2016, respondent told Walker "something along the lines of he wanted to wait until the case was proceeding to adoption before stepping in." Walker informed respondent that this would be harmful to the minor, as she was already attached to her caregivers and likely would not recognize him by that point.

¶ 25 Walker testified that, in March 2017, the permanency goal in the case changed to termination of parental rights. At that point, the minor had been in DCFS custody for nearly two years, and respondent was not involved in the case. At the time of the goal change, Walker again submitted respondent's name to the diligent search service center, because he had lost contact with respondent and wanted to inform him of the progress of the case. This time, the

search resulted in a different address, on South Springfield Avenue in Evergreen Park, and Walker sent a certified letter to that address informing respondent that he had a possible child in DCFS care and including Walker's contact information; the letter was returned unclaimed. In the summer of 2017, Walker submitted a third request to the diligent search service center, "[j]ust to continue to be diligent." The search returned the same South Springfield Avenue address, and Walker sent another certified letter to that address.

¶ 26 Walker testified that his responsibility for the case ended in October 2017 and that he had not received any communication from respondent between July and October 2017.

¶ 27 On cross-examination, Walker testified that, at the beginning stages of the minor's case, the minor was briefly in the guardianship of Melvin W.'s mother, who shared the last name of the minor and two of the minor's sisters. Walker further testified that Melvin W. was assessed for services with respect to the minor. Walker testified that, at the time of the September 2015 conversation with respondent, Melvin W. was also being DNA tested as the potential father.

¶ 28 Walker testified that it was his practice to document through case notes any time he attempted to make contact with parents concerning their cases and that he had a case note documenting the September 30, 2015, conversation with respondent. Walker acknowledged that he "should" have case notes documenting the additional five or six conversations that he had earlier testified he had with respondent but that he "[m]ost likely" did not document those conversations. Walker also testified that he did not personally visit either the South Richmond Street or South Springfield Avenue addresses.

¶ 29 Walker testified that, until the mother signed the consent to adoption, the permanency goal in the case had been to return home within 12 months. However, Walker did not recall documenting that he had made a contact with respondent informing him that the permanency goal had changed. Walker also did not recall documenting any contact with respondent informing him of the September 2016 adjudication of wardship.

¶ 30 Walker testified that he had respondent's phone number due to respondent's communications with him.

¶ 31 After Walker's testimony, the State asked the juvenile court to take judicial notice of (1) the September 27, 2016, order defaulting respondent, which noted that respondent had been served by substitute service and by publication; (2) the disposition order entered the same day, finding respondent unable and unwilling to care for, protect, train, or discipline the minor; (3) the April 3, 2018, order in which respondent was ordered to submit to paternity testing; and (4) the June 7, 2018, order appointing an attorney to represent respondent, in which respondent's address was listed as the South Springfield Avenue address. The court took judicial notice of the court orders.

¶ 32 The State then called respondent to testify as an adverse witness. Respondent testified that he recalled having sexual relations with the minor's mother approximately nine months before the minor's birth. In response to the court's questioning, respondent testified that he had one conversation with Walker, in September 2015, but that Walker contacted him and not vice versa. Walker asked about the minor, and respondent informed him that respondent had spoken to the mother several months after the minor's birth and that the mother told respondent that Melvin W. was the minor's father. Walker informed respondent that he would "look into that and do some research," and respondent never heard from him again. Respondent also testified that Melvin W. contacted him through social media and threatened him, telling him to leave the minor alone "or die."

¶ 33 The State then rested, and after the court took judicial notice of the affidavits of service that had previously been filed, respondent testified on his own behalf. Respondent testified that he was an early childhood teacher and learned he was the father of the minor in June 2018.

¶ 34 Respondent testified that from October 2016 through December 2017, he lived at an address on North 78th Court in Elmwood Park with his fiancée and son. He moved to the address on South Springfield Avenue in late November or early December 2017. Respondent testified that his fiancée owned the South Springfield Avenue property and that they moved into the home after purchasing it in March 2017 and completing extensive renovations.

¶ 35 Respondent testified that on September 30, 2015, he resided at the address on South Richmond Street in Chicago. He also owned a different property on South Bishop Street in Chicago, which he owned as investment property and rented. Respondent testified that he did not give the South Richmond Street address to Walker during their conversation but that Walker never asked for his address.

¶ 36 Respondent testified that Nicholas W. was his 22-year-old brother.

¶ 37 Respondent then rested, and the State recalled Walker, who again testified that he asked respondent for his address during the September 30, 2015, conversation but that respondent was not comfortable providing that information. Walker testified that he informed respondent that providing his address would help with the case.

¶ 38 The juvenile court found that respondent was unfit, finding that "[t]his case is overwhelming." The court first found that Walker was "very credible" and found respondent "not to be credible." The court found that, at a minimum, respondent knew that there could be a baby born from engaging in sexual relations with the mother and, several months after the minor was born, had a conversation with Walker in which he was informed that a child, in fact, had been born. The court found that "bingo, the case is over right there. He should have come to court. He should have taken the test. Once he didn't do that, he permitted the child to remain with these people for 36 months before he came forward. That's at a minimum."

¶ 39 The court also found that it believed Walker's testimony that he had five or six conversations with respondent and he did not believe respondent's testimony as to his address, finding that "[respondent's] credibility has gone down the tubes in the case." The court specified that it was finding unfitness on "[e]ach ground: A, B, C, L and M."[7]

¶ 40 The parties then proceeded to the best-interest hearing, at which Maggie Griffin testified that she had been the minor's case manager since May 2018. Griffin testified that the minor was currently placed with a nonrelative foster home and that she had been in the same placement since the case came into the system. Griffin testified that the current placement was safe and appropriate, with no signs of abuse or neglect, and that the foster parents and the minor were "very well bonded"; Griffin testified that "[the minor] looks at the foster parents as her parents and that's her home" and called her foster parents "[p]opa and momma." Griffin testified that the minor resided in the home with the foster parents' two biological children and

[7]As noted, ground m had been withdrawn by the State on March 15, 2019. However, the court's oral finding did not mention ground n, and its written order references ground n and not ground m, suggesting that the oral reference to ground m was improperly transcribed, especially given the similarity in the sounds of the two letters.

the minor's biological sibling, who was also in foster care at the home.[8] Griffin testified that the minor was "well bonded" with the other children and considered them her siblings.

¶ 41 Griffin testified that the agency recommended that parental rights for both parents be permanently terminated because "[the minor] has been in this home since birth. This is the only home she knows. [The minor] needs closure. The foster parents are willing to keep a relationship with dad. [The minor] also needs a sense of security and peace of mind." Griffin also testified that the mother was bilingual and the foster home was chosen because the foster mother was Spanish-speaking.

¶ 42 Griffin testified that respondent had been assessed for services while she was the case manager and that he was required to attend individual therapy, which he did. Griffin testified that his visits with the minor were appropriate and respectful. Griffin testified that it would be a good idea for the minor to maintain contact with respondent and testified that the foster parents had expressed a willingness to permit the minor to have a relationship with him. However, Griffin testified that the foster parents and respondent had not yet formed a relationship, with both canceling scheduled dinners and lunches.

¶ 43 The foster mother testified through an interpreter that they wished to adopt the minor because "we love [the minor]. [The minor] is everybody to us. To us she is like our daughter. And as she knows it. We are her family." The foster mother testified that her extended family considered the minor as part of the family and "they see her all the time." She was teaching the minor Spanish, and the minor was able to speak both Spanish and English. The foster mother testified that she had two biological children whom the minor loved; one was a year-and-a-half old, and the other was seven months. They had also been caring for the minor's biological brother for two years. The foster mother testified that it would be a good idea for the minor to continue to have a relationship with respondent.

¶ 44 The juvenile court found that it was in the minor's best interest to terminate respondent's parental rights. The court found that "the evidence I heard, she's lived with these people for three years. She's clearly bonded to them. And this is a no brainer."

¶ 45 On the same day, the juvenile court entered an order finding by clear and convincing evidence that respondent was unfit under grounds a, b, c, *l*, and n and that it was in the minor's best interest to terminate his parental rights.

¶ 46 On April 25, 2019, respondent filed a motion to reconsider, claiming that he was not living at the South Richmond Street or the South Springfield Avenue addresses at the time the notices were sent to those addresses. In support, respondent attached a number of real estate documents, which he claimed showed that (1) he owned rental property on South Bishop Street, (2) the South Springfield Avenue residence had code violations and was under repair between March 2017 and November 2017, (3) he and his fiancée resided at the North 78th Court address, and (4) the South Springfield Avenue property was transferred into his fiancée's name in October 2017.

¶ 47 The following real estate documents were attached to respondent's motion. First, a residential real estate purchase and sale contract showed that respondent made an offer to purchase a home on South Bishop Street on June 16, 2012; a later settlement statement showed

[8]Griffin testified that the agency was "unsure" whether the minor's biological sibling would remain in the home. Walker had previously testified that the child's permanency goal in that case was to return home.

that respondent subsequently sold this property on January 31, 2018. Next, an inspection notice from the Village of Evergreen Park, addressed to respondent's fiancée, indicated that a March 10, 2017, inspection of the South Springfield Avenue address revealed several code violations; a home inspection report also detailed a number of issues. A building permit dated April 27, 2017, indicated that respondent had applied for a permit for residential remodeling on the South Springfield Avenue property, and an October 6, 2017, warranty deed conveyed the South Springfield Avenue property from respondent to his fiancée. Finally, a trustee's deed dated June 8, 2017, conveyed the North 78th Court property to respondent's fiancée.

¶ 48 On May 3, 2019, the juvenile court denied respondent's motion to reconsider. This appeal follows.

¶ 49 ANALYSIS

¶ 50 On appeal, respondent challenges both the juvenile court's unfitness and best-interest findings. Under the Juvenile Court Act, termination of parental rights requires a two-step process. First, there must be a showing, by clear and convincing evidence, that the parent is unfit, as defined in section 1 of the Adoption Act. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re Brown*, 86 Ill. 2d 147, 152 (1981). Since the juvenile court was in the best position to view and evaluate the parties, its decision is entitled to great deference, and a finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re Brown*, 86 Ill. 2d at 152. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Additionally, due to the "delicacy and difficulty of child custody cases *** wide discretion is vested in the [juvenile court] to an even greater degree than any ordinary appeal to which the familiar manifest weight principle is applied." (Internal quotation marks omitted.) *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998). If the court makes a finding of unfitness, it then must decide whether it is in the best interest of the child to terminate parental rights. See 705 ILCS 405/2-29(2) (West 2016); *In re C.W.*, 199 Ill. 2d at 210. However, the best interests of the child cannot be considered when the court is determining fitness. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990).

¶ 51 In the case at bar, as noted, respondent challenges the juvenile court's findings at both steps of the process. However, respondent also argues that the termination proceedings violated his due process rights because he was never properly served with notice of the proceedings. The legal question of whether the juvenile court obtained personal jurisdiction over respondent is reviewed *de novo*. *In re Dar. C.*, 2011 IL 111083, ¶ 60. *De novo* consideration means we perform the same analysis that a trial judge would perform. *People v. McDonald*, 2016 IL 118882, ¶ 32.

¶ 52 Personal jurisdiction may be imposed on a litigant through effective service of summons. *In re Dar. C.*, 2011 IL 111083, ¶ 61. "Providing effective service is a means of protecting an individual's right to due process by allowing for proper notification of interested individuals and an opportunity to be heard." *In re Dar. C.*, 2011 IL 111083, ¶ 61 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). Our supreme court has instructed that "[b]ecause the termination of parental rights implicates a fundamental liberty interest, the procedures employed must comply with due process. [Citation.] Ultimately, inadequate service of summons or process divests the trial court of personal jurisdiction. [Citation.]" *In re Dar. C.*, 2011 IL 111083, ¶ 61.

¶ 53 Section 2-15 of the Juvenile Court Act governs service of the summons of a petition alleging abuse, neglect, or dependency of a minor. 705 ILCS 405/2-15 (West 2016). Under section 2-15, personal service may be made by either (1) delivering a copy of the summons and petition to the person being summoned or (2) "leaving a copy at his usual place of abode with some person of the family, of the age of 10 years or upwards, and informing that person of the contents thereof, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the person summoned at his usual place of abode, at least 3 days before the time stated therein for appearance." 705 ILCS 405/2-15(5) (West 2016); *In re Dar. C.*, 2011 IL 111083, ¶ 62. Under section 2-15, "[t]he return of the summons with endorsement of service by the officer is sufficient proof thereof." 705 ILCS 405/2-15(4) (West 2016).

¶ 54 In the case at bar, on September 20, 2016, the State filed an affidavit of service from the sheriff's office, listing respondent's South Richmond Street address, in which the sheriff's deputy certified that respondent was served by substitute service in that the deputy "[left] a copy of the summons and complaint at the [respondent's] usual place of abode with a family member or person residing there, 13 years or older, and informing that person of the contents of the summons. Also, a copy of the summons was mailed to the [respondent] at his or her usual place of abode on the 15 day of Sep 2016." The deputy further certified that the summons was served on Nicholas W., a 22-year-old male, at 3:37 p.m. on September 15, 2016. At the termination trial, respondent testified that Nicholas W. was his brother. Additionally, respondent testified that he lived at the South Richmond Street address as of September 2015 and that he lived at the North 78th Court address as of October 2016; respondent did not testify that he lived anywhere other than the South Richmond Street address in September 2016. Accordingly, the evidence shows that respondent was properly served via substitute service when the sheriff's office served respondent's brother at respondent's home on September 15, 2016. Thus, as of September 15, 2016, at the latest—before the entry of the adjudication order, nearly a year before the filing of the termination petition, and nearly two years before respondent filed his appearance in the instant case—respondent had notice of the termination proceedings, and we therefore cannot find that service was improper.[9]

¶ 55 We turn, then, to consideration of the juvenile court's findings as to fitness and the best interest of the minor. As noted, the first step of the termination proceedings involves showing, by clear and convincing evidence, that the parent is unfit, as defined in section 1 of the Adoption Act. *In re C.W.*, 199 Ill. 2d at 210; *In re Brown*, 86 Ill. 2d at 152. Since the juvenile court was in the best position to view and evaluate the parties, its decision is entitled to great deference, and a finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re Brown*, 86 Ill. 2d at 152. As noted, a finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d at 354.

¶ 56 In the case at bar, the juvenile court found respondent unfit under five different grounds. On appeal, the State concedes that the evidence was insufficient to support a finding of

[9]The State argues that service was effectuated even earlier through publication, as it claims that respondent was concealing his location when communicating with Walker. However, since it is clear that respondent was served prior to the adjudication order and well before the filing of the termination petition, we have no need to determine whether service by publication was necessary.

unfitness under ground *l*, concerning the degree of interest, concern, or responsibility as to the minor's welfare in the first 30 days of her life. However, since the grounds for unfitness are independent, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000); *In re T.Y.*, 334 Ill. App. 3d 894, 905 (2002); *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000); see also *In re D.L.*, 191 Ill. 2d 1, 8 (2000) (section 1(D) lists a variety of discrete grounds for finding a parent unfit, and a challenge of only one ground of unfitness among several renders the appeal moot). Accordingly, we consider the juvenile court's findings with respect to the remainder of the grounds.

¶ 57 One of the grounds relied on by the juvenile court was ground n, which provides that a parent can be found unfit due to

> "[e]vidence of intent to forgo his or her parental rights, whether or not the child is a ward of the court, (1) as manifested by his or her 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 2016).

In the case at bar, the juvenile court found that respondent was notified of the minor's existence no later than the September 30, 2015, phone conversation with Walker. However, respondent made no effort to visit the minor and did not inquire as to her welfare until the June 7, 2018, paternity finding, nearly three years later. We thus cannot find that the juvenile court's ground n finding was against the manifest weight of the evidence.[10]

¶ 58 Respondent claims that he had an affirmative defense to a ground n finding because the mother misled him by informing him that Melvin W. was the minor's father. The Adoption Act provides that "[i]t shall be an affirmative defense to any allegation under paragraph (2) of this subsection that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any person having legal custody. Proof of that fact need only be by a preponderance of the evidence." 750 ILCS 50/1(D)(n) (West 2016). The first flaw in respondent's argument is that the affirmative defense set forth above applies only to subparagraph (2) of ground n, which concerns a father's failure to commence legal proceedings to establish his paternity within 30 days of being informed of his possible paternity. 750 ILCS 50/1(D)(n) (West 2016). While subparagraph (2) could also apply, the affirmative defense relied on by respondent does not apply to subparagraph (1), which we have concluded supports the juvenile court's unfitness finding. Moreover, respondent did not establish this defense by a preponderance of the evidence. His testimony was the sole support he offered for his claim that the mother informed him that Melvin W. was the father. However, the juvenile court expressly found respondent not to be credible, and we cannot reweigh the court's credibility determinations on appeal. Accordingly, we must affirm the juvenile court's unfitness finding as to ground n. Since, as noted, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness, we have no need to consider the propriety of the juvenile court's findings as to the other grounds.

[10]We note that, even using the September 15, 2016, date on which respondent was served through substitute service as the starting point, it was nearly two years from that date before respondent first involved himself with the case.

¶ 59 We next consider the juvenile court's best-interest finding. Once a parent has been found unfit, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The State has the burden of proving that it is in the child's best interest to terminate parental rights by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004).

¶ 60 Section 1-3 of the Juvenile Court Act enumerates a number of factors that must be considered when determining whether termination of parental rights is in the minor's best interest:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);
>
> (ii) the child's sense of security;
>
> (iii) the child's sense of familiarity;
>
> (iv) continuity of affection for the child;
>
> (v) the least disruptive placement alternative for the child;
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
>
> (h) the uniqueness of every family and child;
>
> (i) the risks attendant to entering and being in substitute care; and
>
> (j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2016).

¶ 61 "Additionally, the court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. "The [juvenile] court's best interest determination need not contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the [juvenile] court below in affirming its decision." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19. Upon review, a lower court's determination that the State has met its burden will not be reversed unless it was against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Gwynne P.*, 215 Ill. 2d at 354.

¶ 62 In the case at bar, the juvenile court found that the State had demonstrated by a preponderance of the evidence that it was in the minor's best interest to terminate respondent's parental rights, and we cannot find that this finding was against the manifest weight of the evidence. Respondent points to the fact that he is an early childhood teacher and that the minor's brother lives with respondent and his fiancée. Respondent further points to his

compliance with services and his consistent visitation with the minor after paternity had been established. Finally, respondent pointed to the caseworker's testimony that it would be a good idea for the minor to have continued contact with respondent. We do not find these arguments persuasive.

¶ 63 While respondent may be correct in his ability to care for the minor and while it is clear that he had begun building a relationship with her, the juvenile court was entitled to more heavily weigh the facts that the foster home was the only home that the minor had ever known, that she had strong ties to her foster family, and that she felt secure at the foster home. The juvenile court was also permitted to weigh the facts that respondent had only recently come into the minor's life, while her foster family had been there for her entire life. Finally, the juvenile court was permitted to take into account the fact that respondent had knowingly remained uninvolved in the minor's life instead of submitting to paternity testing much earlier. Accordingly, we cannot find that it was against the manifest weight of the evidence for the juvenile court to find that it was in the minor's best interest to terminate respondent's parental rights.

¶ 64 As a final matter, respondent suggests that guardianship would have been a better goal than adoption. However, under the express language of the Juvenile Court Act, guardianship cannot be considered as a permanency goal unless adoption has been ruled out as an option. See 705 ILCS 405/2-28(2) (West 2016); see also *In re Julieanna M.*, 2018 IL App (1st) 172972, ¶ 21 (noting that "[a]doption is given preference over guardianship when the natural parent cannot give proper care because adoption better insures the child's stability and permanency in a safe, comfortable environment"); *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 33 ("the permanency goals of return home and adoption are 'statutorily preferred' over private guardianship"); *In re Jeffrey S.*, 329 Ill. App. 3d 1096, 1103 (2002) ("The trial court can order a subsidized guardianship only when the options of return home and adoption have been ruled out."). Thus, we can find no error in the juvenile court's decision to terminate respondent's parental rights.

¶ 65 CONCLUSION

¶ 66 For the reasons set forth above, we affirm the juvenile court's termination of respondent's parental rights. Respondent was properly served with notice of the termination proceedings, and the juvenile court's findings that respondent was unfit to parent the minor and that it was in the minor's best interest to terminate his parental rights were not against the manifest weight of the evidence.

¶ 67 Affirmed.