

No. 1-12-1106

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

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|---------------------------------------|---|------------------------------|
| IN THE INTEREST OF:                   | ) | Appeal from the              |
|                                       | ) | Circuit Court of             |
| MYA H., aka MIA B.,                   | ) | Cook County, Illinois        |
|                                       | ) | Juvenile Justice and         |
| Minor-Respondent-Appellee,            | ) | Child Protection Department, |
|                                       | ) | Child Protection Division    |
| (The People of the State of Illinois, | ) |                              |
|                                       | ) |                              |
| Petitioner-Appellee,                  | ) | No. 08-JA-848                |
|                                       | ) |                              |
| v.                                    | ) |                              |
|                                       | ) |                              |
| Melanie H.,                           | ) | Honorable                    |
|                                       | ) | Erica Reddick,               |
| Respondent-Appellant-Mother).         | ) | Judge Presiding.             |

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

Held: The trial court's determination that Melanie H. was unfit and it was in the best interest of Mia to terminate Melanie's parental rights was not against the manifest weight of the evidence where Melanie has not complied with agency directives, attended visitation irregularly,

and has not had contact with Mia since October 2011. Mia has also bonded with her foster mother, Wendy B., who wishes to adopt her.

¶ 1 Respondent, Melanie H., appeals the order of the circuit court terminating her parental rights as to minor Mya H., aka as Mia B. On appeal, she contends (1) the trial court's finding of unfitness was against the manifest weight of the evidence; and (2) the trial court erred in determining that it was in Mia's best interest to terminate Melanie's parental rights. We affirm.

¶ 2 JURISDICTION

¶ 3 The trial court entered judgment in a final termination hearing order on April 4, 2012. Respondent filed a notice of appeal on April 9, 2012. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(6) governing interlocutory appeals as of right after the termination of parental rights. Ill. S. Ct. R. 307(a)(6) (eff. Feb. 26, 2010).

¶ 4 BACKGROUND

¶ 5 Minor Mia B. was born on August 23, 2008. She was born with cocaine in her system and was later diagnosed with hypoglycemia. Her mother Melanie did not receive prenatal care during her pregnancy and tested positive for cocaine a few weeks before Mia's birth, and again at the time of her birth. The Department of Children and Family Services (DCFS) took protective custody of Mia on September 2, 2008, and on September 3, 2008, the State filed a petition for adjudication of wardship for Mia. On April 22, 2009, the trial court found that Mia was neglected and exposed to substances, and determined that Melanie was responsible for her condition. The court adjudicated Mia a ward of the court on May 14, 2009.

¶ 6 The trial court conducted the first permanency planning hearing for Mia on July 10, 2009.

It entered a goal of return home in 12 months and noted that Melanie had made some progress towards that goal but had not yet entered a drug treatment program. At the next hearing on December 2, 2009, the court again entered the goal of return home in 12 months and noted that Melanie was making substantial progress and was involved in a drug treatment program and visiting Mia. The court entered the same goal at the hearing on February 18, 2009, but also indicated that although Melanie was involved in an outpatient drug treatment program, she was visiting Mia only "minimally."

¶ 7 At the May 14, 2010, hearing the court changed the goal to substitute care pending court determination on termination of parental rights. It entered the same goal at the hearing on January 18, 2011, and noted that Melanie was participating in some services and attended some visits with Mia, although not on a consistent basis.

¶ 8 On February 9, 2011, the State filed a motion to permanently terminate parental rights and appoint a guardian with the power to consent to adoption for Mia. The motion indicated that Mia has lived in her pre-adoptive foster home since July 6, 2010. Proceedings on the motion began on February 24, 2012. Melanie was not present for the proceedings although her attorney informed her of the court date. The court moved forward with the proceedings finding that Melanie was present through her attorney's appearance.

¶ 9 Traci Hall testified for the State. She worked as a case manager for ChildLink and was assigned Mia's case in October 2009. She stated that Melanie was in need of services including a Juvenile Court Assessment Protocol (JCAP) substance abuse assessment, a mental health assessment, individual therapy, urine screenings, intensive inpatient substance abuse treatment

and supervised visits. The JCAP evaluation recommended that Melanie participate in an intensive inpatient substance abuse treatment program. However, at the time Melanie took part only in an outpatient drug treatment program which she failed to complete.

¶ 10 Melanie informed Hall that she had relapsed and had been in treatment at the Women's Treatment Center (WTC) since about March 17, 2010. Due to a family emergency, Melanie withdrew from WTC on April 27, 2010. Although she eventually returned to WTC Melanie did not complete the program because she was arrested for possession of a controlled substance and had to serve time in jail. When she was released from jail in October 2010, Melanie asked to participate in services and try to regain custody of Mia.

¶ 11 Hall spoke to Melanie on November 5, 2010, and she informed Hall that she was involved in inpatient substance abuse treatment and parenting and anger management services. Hall recommended that Melanie engage in intensive outpatient substance abuse treatment, random urine screens and NA/AA meetings. Melanie participated in these services in October, November, and December of 2010. Hall also received documentation that Melanie participated in NA/AA meetings in late December 2010 and early 2011. Although Melanie's probation officer required periodic urine screenings, Hall never received the results of those tests. Melanie completed inpatient and outpatient substance abuse treatment at Loretto Hospital in February 2011.

¶ 12 In August 2011, Melanie stopped giving Hall verification of her attendance at NA/AA meetings and also stopped responding to the agency's request for urine drops. During this time, Melanie communicated with Hall sporadically and Hall encouraged her to cooperate with the

urine screens and to verify her attendance at NA/AA meetings. In January 2012, Melanie informed Hall that she was involved in a drug treatment program and Hall received documentation that Melanie completed a 90-day inpatient program at A Safe Haven and was involved in an outpatient treatment program.

¶ 13 Hall stated that Melanie was also in need of mental health services. She was discharged from a program in October 2009 and Hall referred her to Catholic Charities for individual therapy. She went to an initial appointment sometime between January and March of 2010, but after that only met with her therapist twice even though she was supposed to attend weekly sessions. Melanie stated that she did not want to follow this recommendation and Hall testified that she never received any verification that Melanie ever participated in individual therapy. Hall stated that Melanie requires individual therapy in order to reunite with Mia.

¶ 14 Melanie also participated in supervised visits with Mia through Hall's agency. Hall stated that she supervised a visit in August 2011 at a park. Melanie played with Mia with the foster mother present giving some direction. Mia recognized Melanie. Melanie was then incarcerated from June 2010 to October 2010. After her release, Hall's agency continued with visitation plans. The agency informed Melanie that the supervised visits were meant for her and Mia only. However, Melanie frequently brought along other people to these visitations. Melanie did not comply with the agency's request and consequently there was concern about her ability to focus on Mia during visitations. Hall also testified that Melanie has never given the agency gifts, cards, or letters for Mia and that Melanie has not had contact with Mia since October 2011. Although Mia recognizes Melanie, she does not appear to have bonded with her. Hall further

stated that Melanie needs to attend NA/AA meetings to address her substance abuse.

¶ 15 Wendy B. testified that she has been Mia's foster mother since July 6, 2010. On October 28, 2010, she participated in a meeting with Melanie to create a visitation plan. Melanie was informed at the meeting that she could bring Mia's younger brother Malcolm to the visitations but that no other people should attend. They established that if Melanie could not attend a planned visit, she should call Wendy. Melanie attended three of the first six weekly visits. Another visitation plan was created in late 2010 or early January 2011. They again talked about permitted visitors and that only Melanie, Malcolm, and Mia were to attend. Wendy stated that by February 2011 Melanie was attending visitation consistently.

¶ 16 However, between February and October of 2011, Melanie brought other people to the visitations including her young grandchildren, and her partner as well as her partner's child. These visitations were "chaotic" because Melanie's partner's son was in a wheelchair and her grandchildren needed supervision. Mia did not receive much attention during these visits. Wendy testified that on February 13, 2011, nine people attended the visit which ended early because some of the other children were running around the restaurant.

¶ 17 Melanie's last visit occurred on September 28, 2011. The following week, Melanie did not show up for the scheduled visit and Wendy left her a message. Wendy has not heard from, nor has Mia had contact with, Melanie since that time. Wendy stated that since October 2011 Melanie has not sent Wendy any gifts, cards, or letters for Mia.

¶ 18 Melanie testified that she completed inpatient and outpatient treatment at Loretto Hospital in February 2011. She also completed an outpatient program at Safe Haven on March 28, 2012.

She testified that she participated in individual therapy at Catholic Charities and saw a therapist while serving time in jail. She stated that the counselors at Safe Haven told her she did not need individual therapy.

¶ 19 Melanie stated that her visits with Mia occurred either at McDonalds or at Oz Park. She brought a toy for Mia each visit and also brought her a happy meal. Mia enjoyed these visits. Melanie stated that she remained focused on Mia even when others came to the visitations. She was the only person interacting with Mia. She explained that she stopped attending visitations in October 2011 because she lost her cell phone and lost Wendy's phone number. She testified that she spoke to Hall and told her she lost the phone number but Hall did not voluntarily give Melanie the number. Melanie acknowledged that she has missed a lot of visits and that Mia has been in the system for a number of years. She also stated that she has custody of her 11 year old and wants to see her daughter. She testified that she is now clean and sober and does not want her parental rights terminated.

¶ 20 On cross-examination, Melanie admitted that her probation officer asked her to repeat drug treatment services in December 2011, after she had completed the programs at Loretto Hospital. She also violated her probation in June 2010 because she was in the company of someone who had drugs in his or her possession.

¶ 21 Melodie Kipta testified that as Melanie's friend, she attended many of the visitations with Mia. She stated that the presence of others did not distract from the visits and that Melanie's conduct was appropriate and Mia found the visits enjoyable. The others always gave Melanie and Mia time and space to interact on their own. She also testified that her 16 year old

handicapped son did not disrupt these visits. Mia always referred to Melanie as "Mel" and never "mom." Melodie stated that the visits stopped after October 2011 because Melanie had to move to another residence, had asthmatic problems and spent a lot of time at Loretto Hospital.

¶ 22 On April 4, 2012, the trial court found Melanie unfit under sections 1(D)(b) and (m) of the Adoption Act (750 ILCS 50/1(D)(m), (b) (West 2008)). The trial court specifically noted that Melanie had not visited Mia since losing her telephone in October 2011. It found her efforts in seeking out visitation and re-engaging with Mia after that point "lacking." The best interest hearing immediately followed.

¶ 23 At the best interest hearing, Hall testified that Mia has lived in the same foster home with Wendy B. since July 2010 with her foster mother and another foster child. On March 12, 2012, Hall visited the home and determined that it was safe and appropriate for Mia. Hall's agency has regularly visited the home since July 2010 and has never had any concerns regarding abuse, neglect or corporal punishment. Although she required occupational and physical therapy when she was younger, Mia, who will be four years old in August, is now reaching her developmental milestones. Mia attends day care while Wendy works.

¶ 24 During her regular visits, Hall observes Mia's interactions with Wendy. Wendy responds appropriately to Mia and Mia is bonded with Wendy whom she calls "mom." Mia also seeks affection from Wendy and has bonded with Wendy's extended family as well. Hall informed the court that her agency recommends that Melanie's parental rights be terminated so that a guardian may be appointed with the right to consent to adoption. Mia has been in the system for almost four years and her mother has not made serious efforts toward reunification. Hall also stated that

Wendy has been supportive of Melanie's relationship with Mia and is open to contact between them in the future. However, Melanie has not contacted Wendy.

¶ 25 Wendy testified that Mia has lived with her since July 2010 and that she wants Melanie's parental rights terminated so that she can adopt Mia. She stated that she and Mia have become family and adopting was the "natural thing to do." Wendy takes Mia to the library and park, and they walk the dog together. Mia also takes swimming lessons and is enrolled in ballet. Wendy stated that she has always been open to a relationship between Melanie and Mia, and continues to support such a relationship if it is deemed appropriate. In fact, she would prefer that Melanie and Mia retain contact and develop a relationship.

¶ 26 The public guardian agreed with the State and requested that the court find it is in Mia's best interests to terminate Melanie's parental rights so that Wendy can adopt Mia.

¶ 27 The court found that it was in Mia's best interest to terminate Melanie and Jessie B's<sup>1</sup> parental rights. The court appointed D. Jean Ortega-Piron as Mia's guardian with the right to consent to adoption. Melanie filed this timely appeal.

¶ 28 ANALYSIS

¶ 29 Under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq* (West 2008)), the involuntary termination of parental rights is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). First, the State must prove the parents unfit pursuant to section 1(D) of the Adoption Act. *In re C.W.*, 199 Ill. 2d at 210. Such proof must be clear and convincing since the

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<sup>1</sup>Jessie B. Is the biological father of Mia. He had been adjudged by the juvenile court as unable to care for Mia and is not a party to this appeal.

termination of parental rights is a complete severance of the parent-child relationship. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The trial court is in the best position to determine the credibility of witnesses; therefore, this court will not reverse the trial court's finding regarding parental fitness unless it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *In re C.N.*, 196 Ill. 2d at 208.

¶ 30 Here, the trial court found Melanie unfit pursuant to section 1(D)(b) of the Adoption Act. Unfitness under (b) is defined as failure by a parent "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1 (D)(b) (West 2008). In determining whether a parent is unfit under (b), the trial court must examine a parent's reasonable efforts rather than her success, and whether any circumstances may have made it difficult for the parent to visit, communicate or show interest in the child. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). The court should also consider any difficulty the parent encountered in obtaining transportation to visit the child, the parent's poverty, the conduct of others that hindered visitation, and the motivation underlying her failure to visit. *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990). If personal visits often proved impractical, the court should consider whether the parent showed a reasonable degree of concern "through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts." *In re Daphnie*, 369 Ill. App. 3d 1052, 1064 (2006). Noncompliance with an imposed service plan and infrequent or irregular visitation with the child is sufficient grounds to find a parent unfit under (b). *In re Jaron Z.*, 348 Ill. App. 3d at 259.

¶ 31 Here, Melanie participated in various treatment programs, and completed the inpatient and outpatient programs at Loretto Hospital in February 2011 and a program at A Safe Haven in January 2012. However, although Melanie was required by the agency to submit to occasional urine screens, around August 2011 she stopped responding to the agency's requests and also stopped giving Hall verification of her attendance at NA/AA meetings although requested to do so by Hall. Also, Hall determined that Melanie needed individual therapy in order to reunite with Mia yet there is no documentation that she ever completed a course of therapy. Melanie testified that she participated in individual therapy at Catholic Charities and saw a therapist while serving time in jail. However, she stated that she was told she did not need individual therapy.

¶ 32 Melanie also attended visitations irregularly and often brought others to the visits although instructed by Hall not to do so. At one visit there were eight or nine people present. Furthermore, she has not had contact with Mia since October of 2011. The trial court found Melanie showed a lack of interest in Mia by not participating in visitation and also made note that she never tried to maintain contact through gifts, letters or cards. Melanie explained that she lost Hall's phone number when she lost her cell phone and Melodie testified that Melanie suffered from medical conditions requiring stays at a hospital and that Melanie now lives in the suburbs making transportation more difficult. Melanie and Melodie testified as to the difficulties associated with personal visitation, yet Melanie never tried to maintain contact through alternative means such as letters, cards or gifts.

¶ 33 *In re Konstantinos H.*, 387 Ill. App. 3d 192 (2008) is instructive. In that case, this court affirmed a finding of unfitness where the parent knew her attendance at NA/AA meetings and

participation with random urine testing was necessary in order to reunify with her child, but she did not comply with those directives. *Id.* at 205. The finding was further supported by the fact the parent attended visitations irregularly and did not manifest her concern for the child by sending letters, cards or gifts. *Id.* Likewise, Melanie did not follow agency directives regarding her attendance at NA/AA meetings, urine screens, and individual therapy. She also did not attempt to maintain contact with Mia through cards, gifts or letters, and contact with Mia ceased altogether after October 2011. Evidence in the record supports the trial court's finding that Melanie is unfit pursuant to subsection (b), for each of the nine month periods that were pled.

¶ 34 Melanie disagrees, arguing that she has shown sufficient interest in Mia to overcome a finding of unfitness. She argues that she "did the best she could under her own unique circumstances" given her history of drug addiction and relapses. As support, she cites *In re Adoption of Syck*, 138 Ill. 2d 255, 280-81 (1990) where the court reversed a finding of unfitness even though the mother had few visits with her child. In that case, the mother lived out of state making personal visits difficult. Also, her in-laws who were caring for the child blocked her attempts to contact him. The evidence further showed that the mother regularly communicated her interest in contacting her son and sent him letters, cards, and gifts. *Id.* at 262-63. *Syck* is inapposite. Although Melanie did visit with Mia, the visits were inconsistent, infrequent, and ceased altogether after October 2011. Furthermore, Wendy supported, rather than hindered, Melanie's visits with Mia. Despite that fact, Melanie never attempted to maintain contact with Mia by sending her letters, cards or gifts. The trial court's determination was not against the

manifest weight of the evidence.<sup>2</sup>

¶ 35 Once the trial court finds a parent unfit, the next step in an involuntary termination proceeding is for the court to determine whether it is in the best interests of the child to terminate parental rights. 705 ILCS 405/1-3(4.05) (West 2006). “[A]t a best interest hearing, the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” The State bears the burden of proving by a preponderance of the evidence that termination is in the child’s best interests. *In re D.T.*, 212 Ill. 2d at 365-66.

¶ 36 Section 1-3(4.05) sets forth factors the trial court must consider in making a best interest determination. These factors include:

“(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 love, attachment, and a sense of being valued);

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<sup>2</sup>Due to our determination that the trial court's finding of unfitness under (b) was not against the manifest weight of the evidence, we need not address other findings of unfitness made by the trial court. See *In re Janira T.*, 368 Ill. App. 3d 883, 893-94 (2006).

- (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 2006).

¶ 37 Hall testified that she has found Mia's foster home safe and appropriate. Mia required physical and occupational therapy when she was younger but now has reached the proper developmental milestones. She attends daycare while Wendy works, and takes swimming and ballet classes. Although Mia recognizes Melanie, she is not bonded with her. Instead, Mia has bonded with her foster parent, Wendy, and calls Wendy "mom." She has also bonded with Wendy's extended family. Wendy testified that she would like to adopt Mia. Wendy also stated that she supports future contact between Melanie and Mia if it is deemed appropriate. The trial court determined that it was in Mia's best interest to terminate Melanie's parental rights.

¶ 38 Melanie disagrees with the trial court's determination, arguing that the trial court's best

interest finding mentioned only that Mia is bonded with Wendy while she had only "intermittent" involvement with Melanie. She contends that since the trial court ignored the other statutory factors, its determination was "superficial." She maintains that the trial court must "evaluate each best interest factor on the record either orally or in writing." Melanie, however, provides no legal authority supporting her position.

¶ 39 Under Illinois law, the trial court need not explicitly mention every factor in rendering its determination. *In re Deandre D.*, 405 Ill. App. 3d 945, 954 (2010). "In fact, the court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision." *Id.* Our careful review of the record shows that the trial court heard testimony from Hall, Wendy, Melanie and Melodie regarding the statutory factors before making its determination. We find that its decision to terminate Melanie's parental rights was not against the manifest weight of the evidence.

¶ 40 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 41 Affirmed.