

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).

2012 IL App (4th) 120653-U

NO. 4-12-0653

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 28, 2012
Carla Bender
4th District Appellate
Court, IL

In re: M.J., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Morgan County
v.)	No. 10JA13
HENRY JACKSON,)	
Respondent-Appellant.)	Honorable
)	Jeffery E. Tobin,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's denial of father's motion to dismiss petition for termination of parental rights for failure to state a cause of action when it failed to request a guardian of the person be appointed and authorized to consent to adoption of the minor, in violation of section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2010)), was proper.

(2) The trial court's order terminating father's parental rights was not contrary to the manifest weight of the evidence.

¶ 2 The State filed a petition to terminate the parental rights of respondent father, alleging several grounds for finding him unfit. The petition concluded by requesting his parental rights be terminated and requesting any other and further relief available under Illinois law. It did not include a request a guardian of the person be appointed to give authority to consent to adoption. Respondent filed a motion to dismiss, alleging the petition failed to state a cause of action because this language was omitted. The trial court denied the motion.

¶ 3 The trial court found respondent unfit for several reasons, including lack of interest and abandonment. Respondent argues these particular findings were in error as the Illinois Department of Children and Family Services (DCFS) failed to provide or offer any services to him. However, he was also found unfit on two other grounds having nothing to do with the provision of services. Only one ground of unfitness needs to be proved. We affirm the trial court's finding of unfitness on the other grounds and the termination of parental rights..

¶ 4 I. BACKGROUND

¶ 5 In the fall of 2010, M.J. (born December 6, 1999) was living with his mother, Janet Love. M.J. exhibited behavioral issues in a week-long period at school where he would refuse to go home because he claimed his mother was abusive. He would scream, beat on the walls, and threaten to harm himself and others. Efforts were made to secure psychiatric hospitalization but Love refused to consent to hospitalization. DCFS took M.J. into protective custody on September 15, 2010, and the trial court granted temporary custody to DCFS on September 19, 2010. M.J. was placed in Lincoln Prairie Behavioral Hospital (Lincoln Prairie) in Springfield and upon his discharge placed in traditional foster care. He did not adjust well to foster care and was again placed in Lincoln Prairie until placement in a residential facility became available.

¶ 6 On October 18, 2010, the State filed a petition for adjudication of wardship, alleging M.J. was neglected in that he was under the age of 18 and his environment was injurious to his welfare and he was not receiving the proper medical care necessary for his well-being. On October 19, 2010, the trial court held a shelter care hearing. The evidence established at Lincoln Prairie, M.J. was diagnosed with mild mental retardation, major depressive disorder with

psychotic features, intermittent explosive disorder, and attention deficit. He was receiving psychotropic medications. At the time of the hearing, M.J. had been at Lincoln Prairie for about 30 days.

¶ 7 Love had not raised M.J. because of her incarceration in the Illinois Department of Corrections (DOC). Maddie Freeman, the woman who raised M.J., later became incarcerated in DOC, and M.J. began living with Love in late July or early August of 2010. The trial court found probable cause to believe M.J. was neglected, removed him from Love's custody, and placed him with DCFS. In the fall of 2010, respondent father, Henry Jackson, was incarcerated in DOC and had been there for several years.

¶ 8 The trial court did not hold an adjudicatory hearing until March 24, 2011, due to several continuances. Love did not appear at the hearing but respondent was present. He testified he had been in prison for almost eight years and had not seen M.J. during that time. Respondent had no knowledge of recent incidents involving the minor and only knew M.J. was in a group home near Chicago. When respondent went to DOC, M.J. was living with Freeman. Respondent requested M.J. be placed with his paternal grandmother. The court adjudicated M.J. neglected and set a dispositional hearing.

¶ 9 On April 21, 2011, the trial court held a dispositional hearing. Love did not appear. At the court's suggestion, the goal of substitute care pending determination of termination of parental rights was adopted. At a permanency hearing on March 22, 2012, the court again adopted the goal of substitute care pending determination of termination of parental rights.

¶ 10 On April 5, 2012, the State filed a petition for termination of parental rights as to both Love and respondent. The petition alleged respondent was unfit because of the following:

"(A) he failed to (i) make reasonable efforts to correct the conditions which were the basis for the removal of the child from such parent, or (ii) to make reasonable progress toward the return of the child to such parent within 9 months after an adjudication of neglected minor under the Juvenile Court Act or the Juvenile Court Act of 1987 or (iii) to make reasonable progress toward the return of the child to such parent during any 9-month period after the end of the initial 9-month period following adjudication of neglected minor under Section 2-3 of the [Juvenile Court Act of 1987 (750 ILCS 50/1(D)(m) (West 2010))]; (B) [respondent] has abandoned the minor in that by his actions or inaction has demonstrated an intent to forgo his parental rights [(750 ILCS 50/1(D)(n) (West 2010))]; (C) [respondent] has failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare [(750 ILCS 50/1(D)(b) (West 2010))]; (D) [respondent] is incarcerated currently, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his parental responsibilities for the minor [(750 ILCS 50/1(D)(r) (West 2010))]; (E) [respondent] is incarcerated currently, [respondent] has been repeatedly incarcerated as a result of criminal convictions, and [respondent's] repeated incarceration has

prevented [respondent] from discharging his parental responsibilities for the minor [(750 ILCS 50/1(D)(s) (West 2010))]."

¶ 11 The petition requested (1) respondent's parental rights be terminated and (2) "any other and further relief available under the laws of the State of Illinois that will promote the best interests of the minor[] and the public."

¶ 12 On May 3, 2012, respondent appeared in court in person and by counsel for an initial appearance on the petition. He denied the allegations of the petition and asked the matter be set for hearing. He also indicated he did not wish to be brought back to court for any further proceedings.

¶ 13 On May 24, 2012, the trial court held a fitness hearing on the petition. At the beginning of the hearing, respondent's counsel made an oral motion to dismiss the petition for failure to state a cause of action on the ground the original petition did not request a guardian of the person be appointed and authorized to consent to adoption as required by section 2-29(2) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-29(2) (West 2010). After argument, the trial court denied the motion.

¶ 14 Testimony at the hearing revealed respondent had very little contact with M.J. prior to his incarceration in November of 2004. He did not pay child support for M.J. and was not a significant presence in his life. Someone else raised M.J. from birth. After respondent's incarceration, he had no involvement in M.J.'s life. Respondent's projected parole date as of the time of the hearing was May of 2014. According to the testimony of the DCFS caseworker, respondent was serving a 20-year sentence for aggravated violence with a weapon.

¶ 15 According to the caseworker's testimony, DCFS gave respondent a service plan,

but it did not contain any tasks for him to complete as none were available in DOC. After this case was opened, respondent requested visits with M.J. M.J.'s doctors and therapists determined such visits in DOC, following a four-hour car ride, would be difficult for M.J. to manage and were not in his best interests. On cross-examination, the caseworker admitted some services may have possibly been available in DOC, which respondent could have accessed to work toward returning the minor home once he got out of prison. However, his criminal history included violent offenses and she was not sure if anger management classes were available to respondent. In any case, respondent was not considered a return-home option for M.J. so there was little point in giving him tasks to complete. M.J. had been diagnosed with mood disorder, post-traumatic stress disorder, attention deficit-hyperactivity disorder, pervasive developmental disorder and mild mental retardation. M.J. had suicidal thoughts and behavioral issues at the residential facilities in which he had been placed. Respondent did not believe M.J. suffered from mental retardation.

¶ 16 The trial court found respondent unfit on all grounds alleged except those alleged in (A) for failure to make reasonable efforts or progress. The court also found M.J.'s mother, Love, unfit by default.

¶ 17 On June 21, 2012, the trial court held a best interests hearing. The court granted the State leave to amend its petition for termination of parental rights to add a request a guardian of the person be appointed and authorized to consent to adoption as required in section 2-29(2) of the Act. See 705 ILCS 405/2-29(2) (West 2010). Evidence at the hearing indicated M.J. was placed in Cunningham Children's Home in Urbana. Although DCFS had not identified an adoptive placement for M.J. because of his mental health issues, respondent and Love were not

safe or appropriate placements for him, nor did it appear they would ever be. M.J. was making progress in his placement at Cunningham and was on track to be released from there as early as December 2012 but his release might also be delayed. The trial court found it was in the best interest of M.J. to terminate the parental rights of both of his parents. This appeal followed.

¶ 18

II. ANALYSIS

¶ 19

A. Failure to State a Cause of Action

¶ 20

Respondent argues the State failed to state a cause of action because in the petition to terminate parental rights it failed to request a guardian of the person be appointed and authorized to consent to the adoption of the minor, thereby violating section 2-29(2) of the Act (705 ILCS 405/2-29(2) (West 2010)).

¶ 21

Section 2-29(2) states in pertinent part: "If a petition or motion alleges and the court finds that it is in the best interest of the minor that parental rights be terminated and the petition or motion requests that a guardian of the person be appointed and authorized to consent to the adoption of the minor, the court, *** after finding, based upon clear and convincing evidence, that a parent is an unfit person *** may terminate parental rights and empower the guardian of the person of the minor, in the order appointing him or her as such guardian, to appear in court where any proceedings for the adoption of the minor may at any time be pending and to consent to the adoption." 705 ILCS 405/2-29(2) (West 2010).

¶ 22

The petition filed in this case did not request the appointment of a guardian of the person. Respondent's counsel moved orally to dismiss the petition, arguing this omission was jurisdictional. At the same time, counsel acknowledged the State could remedy the situation by simply amending its petition. The State contended it was not required to request the appointment

of a guardian of the person with authority to consent to adoption as it was not sure in this case adoption was appropriate or feasible. The trial court denied respondent's motion and proceeded with the fitness hearing where respondent was found to be unfit.

¶ 23 Several weeks later, the best interest hearing was held to determine if respondent's parental rights should be terminated. At the start of that hearing, the State moved to amend its petition to request the appointment of a guardian of the person with authority to consent to adoption of the minor. The trial court allowed the State to amend its petition. The court received evidence on the issue and found it was in M.J.'s best interest respondent's parental rights be terminated and a guardian of the person with consent to adopt be appointed. Before these findings were made, respondent was made aware the State was seeking to have a guardian appointed. Respondent knew from early on in this case the State could seek such relief because he was represented by counsel and it was obvious from respondent's counsel's representation counsel was aware of this possibility.

¶ 24 The test of the sufficiency of the State's petition for termination of parental rights is whether it reasonably informs a respondent of a valid claim against him. *In re Dominique W.*, 347 Ill. App. 3d 557, 565, 808 N.E.2d 21, 28 (2004). The sufficiency of the pleadings is an issue of law which is reviewed *de novo*. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1045, 796 N.E.2d 1175, 1179 (2003).

¶ 25 The petition here clearly informed respondent the State was seeking to find him unfit and to terminate his parental rights. It clearly specified the grounds for the finding of unfitness and referred to the statutes under which relief was being sought. While better practice would be to include language requesting the appointment of a guardian of the person with

consent to adopt in the initial petition to terminate parental rights, the lack of such language is not jurisdictional. It was included by amendment prior to the trial court hearing any evidence heard or making any findings on the issue. Respondent's motion to dismiss the petition to terminate for failure to state a cause of action was properly denied.

¶ 26 B. Termination of Parental Rights

¶ 27 When reviewing a trial court's decision to terminate parental rights, the reviewing court applies the manifest weight of the evidence standard. *In re E.O.*, 311 Ill. App. 3d 720, 726, 724 N.E.2d 1053, 1058 (2000). In order for a finding to be against the manifest weight of the evidence, the opposite result must clearly be apparent from a review of the evidence. *In re C.L.T.*, 302 Ill. App. 3d 770, 772, 706 N.E.2d 123, 125 (1999).

¶ 28 The trial court found respondent unfit based on (1) abandonment, (2) failure to maintain a reasonable degree of interest, concern or responsibility for the minor, (3) he was incarcerated and had little or no contact with the minor or provided little or no support for the minor for a period in excess of two years prior to incarceration, and (4) his repeated incarceration prevented respondent from discharging his parental rights. Respondent argues the findings of unfitness for lack of interest and abandonment should be reversed because DCFS did not provide or offer any services to respondent.

¶ 29 We need not consider respondent's contentions as the trial court found him unfit on two other grounds: (1) he was incarcerated and had little or no contact with the child or provided little or no support for the child for a period in excess of two years prior to incarcerations; and (2) his repeated incarceration prevented respondent from discharging his parental rights. DCFS' lack of provision of services has no bearing on these findings. Respondent does

not challenge the sufficiency of the evidence as to these grounds but admits he did not have substantial contact with the minor during his lifetime and did not pay child support.

¶ 30 We may affirm a finding of unfitness if any one of the grounds alleged are proved. See *In re J.T.C.*, 273 Ill. App. 3d 193, 198, 652 N.E.2d 421, 424 (1995). It is clear from reviewing the evidence both grounds related to respondent's incarceration have been proved. We affirm the trial court's finding of unfitness.

¶ 31 As for the trial court's determination termination of respondent's parental rights was in the best interest of M.J., the court stated "After giving careful consideration to the testimony and the contents of the best interest report dated June 18[th] of 2012, the Court finds specifically that neither parent will be able to safely and appropriately parent the minor in the future. * * * Court's also relying upon the other findings that are set forth and factual basis that is set forth in the June 18th report. The Court finds that it's in the best interests the minor to terminate the parental rights of both the father and the mother in this case."

¶ 32 Respondent argues the trial court's statement did not mention any of the factors required to be considered in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2010)). See *In re B.B.*, 386 Ill. App. 3d 686, 698-99, 899 N.E.2d 469, 480-81 (2008). Respondent acknowledges the court does not need to specifically mention each factor from section 1-3(4.05) it is considering (see *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63, 810 N.E.2d 108, 127 (2004)) but he argues the record does not indicate the court considered any of the factors or even acknowledged its duty to do so.

¶ 33 Following the finding of unfitness, all considerations must yield to the best interest of the child. *In re C.R.*, 221 Ill. App. 3d 373, 382, 581 N.E.2d 1202, 1207 (1991). The

State must prove by a preponderance of the evidence it is in the child's best interest the parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 358-59, 818 N.E.2d 1214, 1223-24 (2004). A reviewing court will not disturb a trial court's determination unless it is against the manifest weight of the evidence. *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000). The reviewing court may not disturb the trial court's determination merely because it might have weighed the evidence differently. See *In re I.D.*, 205 Ill. App. 3d 543, 550, 563 N.E.2d 1200, 1205 (1990). Nor may the court reweigh the evidence or reassess the credibility of witnesses. *S.M.*, 314 Ill. App. 3d at 687, 732 N.E.2d at 144.

¶ 34 Respondent is correct a trial court need not specifically mention all of the factors in section 1-3(4.05). In fact, it need not discuss any specific rationale for its decision. *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55, 940 N.E.2d 246, 254-55 (2010). The best interest report prepared in this case as well as testimony given was enough to cover several of the factors listed in section 1-3(4.05) and was sufficient for the court to conclude M.J.'s best interests would be served by terminating respondent's parental rights.

¶ 35 The best interest report discussed M.J.'s placement at Cunningham Children's Home and his progress there. His discharge date from Cunningham was scheduled for December 2012 but the actual date will depend on his response to treatment. A caring, patient and loving person will be needed to provide for M.J.'s multiple special needs. M.J. struggles to develop relationships with authority figures and struggles daily with rules, behavior, developmental delays and mental health issues. His ability to develop bonds and relationships with adults has been seriously impacted by the trauma suffered at the hands of his biological mother and her lack of interest in him. The report also noted respondent rarely had contact with M.J. prior to his

placement in foster care. Respondent had been incarcerated since November 2004 and will remain incarcerated until 2014.

¶ 36 This evidence showed M.J. was a troubled young teen suffering from several mental disabilities who needed special care. He has had no relationship with respondent either before or after he was made a ward of the court and placed in foster care. Respondent could not function as a parent due to his incarceration. Under these circumstances, the trial court properly concluded it was in the best interest of M.J. to terminate respondent's parental rights to try to provide some finality and certainty to his future.

¶ 37 III. CONCLUSION

¶ 38 We affirm the trial court's judgment.

¶ 39 Affirmed.