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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> Adoption of C.J., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 13-AD-116
)	
(Sarah R. and Samantha R.,)	Honorable
Petitioners-Appellees, v. Andre J.,)	Patrick L. Heaslip,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent's due process rights were not violated when the trial court denied his motion for a continuance and proceeded with the termination proceeding in respondent's absence where respondent was in jail out-of-state for an indeterminate time; petitioners proved by clear and convincing evidence that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare; petitioners proved by a preponderance of the evidence that termination of respondent's parental rights was in the best interest of the child; the trial court is affirmed.

¶ 2 Respondent, Andre J.,¹ appeals the trial court's order terminating his parental rights to his son, C.J., after a contested adoption proceeding, wherein the trial court permitted the adoption of

¹ Sharon J., the minor's biological mother, was initially named a respondent but consented

C.J. by petitioners Sarah R. and Samantha R. Andre argues that: (1) his due process rights were violated when the trial court denied his motion to continue the hearing and proceeded in his absence; (2) petitioners failed to prove by clear and convincing evidence that he was an unfit parent for failing to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare (see 750 ILCS 50/1(D)(b) (West 2014)); and (3) petitioners failed to prove by a preponderance of the evidence that it was in the child's best interest to terminate respondent's parental rights. We affirm.²

¶ 3

I. BACKGROUND

¶ 4 Andre J. is the father of C.J., who was born August 1, 2011. Sharon J. is C.J.'s mother. All three lived together in Lake County, Illinois, until March 27, 2013, when Andre was incarcerated on charges of burglary.³ When Andre was incarcerated, Sharon and C.J. went to live with Sharon's mother, Jessie M. They lived there for about two weeks and then, on or about April 10, 2013, C.J. and Sharon went to live with petitioners, Samantha R. and Sarah R. Sarah is Sharon's sister and C.J.'s maternal aunt. Samantha and Sarah resided in Rockford, Illinois. C.J. continued to live with Samantha and Sarah for the remainder of the case.

to the adoption of her son by petitioners. Sharon J. is not subject to this appeal.

² We note that this appeal was accelerated pursuant to Supreme Court Rule 311 (a), which provides that, except for good cause shown, this court must issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a) (eff. Feb. 26, 2010). The decision in this case was due on December 24, 2015. Our approximate 20-day delay in issuing this decision is occasioned by appellant's multiple delays in filing his brief. We find these circumstances constitute good cause for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a).

³ Case No. 13 CF 1358.

¶ 5 In April 2013, Sarah filed a petition for guardianship of C.J. in Winnebago County case No. 2013 P 221. She was appointed guardian of C.J. on May 24, 2013.

¶ 6 On July 31, 2013, Samantha and Sarah filed a petition for adoption, alleging, in part, that Andre was an unfit parent because he: (1) abandoned the child; (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare; (3) deserted the child for more than three months; (4) failed to protect the child from conditions within his environment injurious to his welfare; (5) was an habitual drunk for at least one year immediately prior to the commencement of the unfitness hearing; and (6) because of other reasons indicated in section 1(D) of the Adoption Act (the Act) (750 ILCS 50/1(D) (West 2012)).

¶ 7 On August 8, 2013, Sharon executed a final and irrevocable consent to adoption specifically consenting to C.J.'s adoption by Samantha and Sarah.

¶ 8 On August 15, 2013, Andre was served a summons and a copy of the petition for adoption in the Lake County jail. On August 29, 2013, Andre filed a *pro se* motion for extension of time to file an answer to the petition, which the trial court granted. At some point, Andre became aware of the guardianship case and filed a motion to vacate the order granting Sarah guardianship of C.J. On October 10, 2013, Andre filed a *pro se* answer to the petition for adoption denying the allegations of unfitness.

¶ 9 On October 25, 2013, Samantha and Sarah filed an amended petition for adoption. The amended petition contained the same allegations of unfitness regarding Andre as the original petition.

¶ 10 On October 17, 2013 and November 26, 2013, counsel appeared at status hearings as a courtesy to Andre. On November 26, 2013, the Winnebago County circuit court clerk received Andre's *pro se* writ of *habeas corpus* requesting release from the Lake County jail to be present at the proceedings regarding C.J. On December 30, 2013, counsel again appeared in court as a

courtesy to Andre who was not present, and requested a continuance, which the trial court granted. On January 21, 2014, the trial court appointed counsel on behalf of Andre. On June 3, 2014, Andre appeared in open court with counsel at a status hearing. The trial court set the hearing on the amended petition for adoption for October 6, 2014.

¶ 11 On September 30, 2014, Andre filed a motion for a continuance of the hearing. The motion sought a continuance of three months from the scheduled October 6, 2014 hearing date, alleging that; (1) Andre was currently incarcerated in the Walworth County jail in Elkhorn, Wisconsin; and (2) counsel needed additional time to learn the outcome of Andre's Wisconsin case and to have him participate in person at the hearing.

¶ 12 On October 6, 2014, the trial court asked if everyone was ready to proceed with the hearing on the amended petition for adoption. Andre's counsel told the court that he had filed a motion to continue the matter and that Andre was currently in custody in Walworth County, Wisconsin. Before that "[Andre] was in custody in Lake County, Illinois[,] and we had been corresponding by letters and a couple of phone calls." The trial court asked Andre's counsel why Andre was in custody in Wisconsin and "how long was he going to be there?" Counsel replied that Andre had a sentencing date on October 9, 2014 and Andre's public defender did not think Andre would be sentenced to prison time. Counsel also stated that "[t]here was a hold [on Andre] from another county," but the public defender "was getting that resolved to release the hold." Samantha and Sarah's counsel objected to the motion for a continuance stating, "[t]his has been a long time coming."

¶ 13 Samantha and Sarah's counsel also stated that Andre had pending felony criminal matters in Wisconsin in Crawford and Manitowoc counties, case numbers 2013 CF 039 and 2013 CF 0298, respectively. The trial court asked, "So right now [Andre's] in Wisconsin and we have no way of getting him here, even if we wanted him, right?" Andre's counsel replied, "Correct, your

Honor.” The guardian *ad litem* (GAL) expressed that the adoption proceeding should proceed because it had been pending for over one year, and the hearing date was set three months ago with the understanding that Andre’s counsel was going to try to find a way to have Andre present. The trial court denied Andre’s motion for a continuance and the hearing on unfitness began.

¶ 14 Samantha and Sarah’s counsel called Jessie M., C.J.’s maternal grandmother, who testified as follows. Sharon and C.J. lived with Andre from the time C.J. was born until March 27, 2013. From the day C.J. was born, Jessie spoke with Sharon on the phone at least two times a week, sometimes once a day. Jessie talked to Andre on the phone approximately once every three months. She saw Sharon, C.J., and Andre about once a month. Sharon called her and told her that C.J. was “hurt,” but Andre would not let Sharon take C.J. to the hospital. Sharon also called her regularly, requesting money for diapers, formula, and food. In June 2012, Jessie met Sharon, Andre, and C.J. at the beach. Andre drank the entire time, became confrontational, and attempted to fight and argue with Sharon. Andre consumed alcohol at every family gathering. Andre “tried to be pleasant around us. He was a little standoffish, he wouldn’t talk much.”

¶ 15 Jessie testified that, on or about March 27, 2013, Sharon called and asked her to come to her house and get C.J. so that he would not be taken to a foster home. Sharon and Andre had been arrested that day. Jessie picked up C.J. as requested. A few days later, Sharon was released from custody and Jessie picked up Sharon and brought her back to Jessie’s home, where she lived with C.J. for about two weeks. Thereafter, Sharon and C.J. moved in with Sarah. Jessie was not aware of any contact between Sharon and Andre during the time that Sharon lived with her.

¶ 16 During cross examination by Andre’s counsel, Jessie testified as follows. During the time that Andre, Sharon, and C.J. lived together, both Andre and Sharon were parents to C.J., except for occasions when Sharon left Andre. Sharon left Andre briefly in February 2013, but they reconciled in March 2013. Except for Sharon and Andre’s brief separation, Andre was involved

in raising C.J. When Sharon left Andre in February 2013 with C.J., Sharon did not tell Andre where they were going. Andre called Jessie to try to locate them.

¶ 17 Samantha testified as follows. She and Sarah were married. Sharon and C.J. lived with Samantha and Sarah beginning approximately two weeks after Sharon was arrested, and Sharon moved out May 9, 2013, leaving C.J. in Samantha and Sarah's care. Sarah obtained guardianship of C.J. and he had been in their care ever since. Andre had not had any contact with Samantha at any time from April 2013 until the day of this hearing. Andre had not provided C.J. with any presents, cards, telephone calls, or financial support.

¶ 18 During cross examination by Andre's counsel, Samantha testified as follows. Sarah had guardianship of C.J. for "a couple of months" before the original petition for adoption was filed. During those months, Samantha did not attempt to contact Andre in the Lake County jail, made no attempt to give Andre her phone number, and made no attempt to contact Andre's family. Samantha did not know where Andre was and did not have any address to contact him. Andre did not have Samantha's phone number because they never actually met.

¶ 19 Sarah testified as follows. Sarah was Sharon's sister and C.J.'s maternal aunt. Sarah was present at C.J.'s birth, and Andre was at the hospital but not present in the delivery room. Sarah spoke to Sharon approximately every other day; sometimes Sharon called to tell her how C.J. was doing. On occasion, Sharon called to discuss problems in her marriage with Andre. Sharon described Andre to Sarah as physically or emotionally abusive. Once, Sharon called Sarah and Sharon was upset because she had been holding C.J. when Andre and Sharon began fighting. Sharon bought diapers and Andre was upset because he did not have money to go to Chicago to get his other sons. Sharon told Sarah that Andre pushed Sharon against the wall while she was holding C.J. When Sarah picked up Sharon two days later, Sharon had bruises all down her side. Sarah asked Sharon why she did not leave Andre, and Sharon replied that she was afraid to leave.

¶ 20 Sarah testified that this type of incident happened on more than one occasion. Sharon left Andre shortly after C.J. was born and stayed with a friend in Aurora. Sharon reconciled with Andre, telling Sarah that she needed “a home, a roof that was gonna [sic] be constant.” A short time later, Sharon left again and moved to Oklahoma for a couple of months before she reconciled with Andre again. Sharon left Andre again, moving into a woman’s shelter, but reconciled with Andre shortly before they were arrested in March 2013. When Sharon left Andre, she never left C.J. with Andre. Andre contacted Sarah once to try to find Sharon. Besides that one time, Andre did not show any interest in C.J. when Sharon left.

¶ 21 Sarah testified that, from the time that C.J. was born until Andre became incarcerated, she saw C.J. about once a month. Andre was “very standoffish, he didn’t like” Sarah. However, when he was around Sharon’s family, Andre “always put a smile on his face.” Sarah testified that Andre was a “drinker.” Whenever Andre was with Sarah’s family and when Andre and Sharon visited Sarah, Andre always drank.

¶ 22 Sarah testified that Sharon left Andre on more than one occasion. C.J. moved in with Sarah and Samantha at the end of April 2013. Shortly thereafter, Sarah filed a petition for guardianship at Sharon’s request. Sharon told Sarah that Sharon did not have a stable home and that she wanted C.J. to be safe. From the time that C.J. began living with her until the present hearing date, Sarah had no contact with Andre. Andre did not send cards or gifts to C.J. and had not made any phone calls to C.J. or Sarah. Sarah testified that her telephone number had been the same since 2000 and that Andre knew her phone number. Andre had been present in court at a status hearing in June 2014, but he did not make any attempt to speak with Sarah at that time. Andre had not provided any support for C.J.

¶ 23 During cross examination by Andre’s counsel, Sarah testified as follows. Sarah knew Andre was living at the Lake County jail when she filed her petition for guardianship, but she did

not serve Andre with the petition. Sarah testified that she did not inform Andre of her address and never called Andre to tell him that C.J. was living with her.

¶ 24 At the close of petitioners' case regarding unfitness, Andre's counsel moved for a continuance to allow Andre to be present to testify. The trial court denied the motion. The trial court gave its decision regarding unfitness following closing argument. The trial court found that C.J. lived with Andre off and on until Andre's arrest on March 27, 2013. However, from April 10, 2013 until the hearing date, October 6, 2014, C.J. had been living with Sarah who obtained guardianship of C.J. At some point, Andre became aware of the guardianship case, because he filed a motion to set aside the guardianship order. Also, Andre was served with summons and with the petition of adoption in this case on August 15, 2013. Andre knew where C.J. was, he knew how to speak with Sarah, he had Sarah's phone number, and he could have called or written to inquire about the welfare of his son. The trial court stated, "There's absolutely no evidence to suggest that he showed any interest in his child other than to appear in court, in the adoption case and to file a motion in the guardianship case." The trial court found that petitioners established by clear and convincing evidence that Andre failed to maintain a reasonable degree of interest, concern, and responsibility as to C.J.'s welfare. The trial court also found that Andre did not abandon or desert C.J., nor were there any other grounds for unfitness established.

¶ 25 The trial court then immediately began the best interest portion of the hearing. Andre's counsel requested a continuance, which the trial court denied.

¶ 26 Jessie, C.J.'s maternal grandmother, testified as follows. She had been around C.J., Sarah, and Samantha since May 2013 and described Sarah and Samantha's relationship with C.J. as "awesome." Jessie described C.J. as "a very happy child." He was a different child than he was before he moved in with Sarah and Samantha. Before the move, C.J. seemed angry, cried a lot, and was a "miserable little boy and now he's very happy just—smiles, loves to play, loves to run.

He's just a totally different child.” Jessie has been at Sarah and Samantha's house, and it was appropriate for a child. C.J. had his own room at the house. She had no concerns with C.J. being adopted by Sarah and Samantha.

¶ 27 During cross-examination by Andre's counsel, Jessie testified that, before Andre was incarcerated in March 2013, he worked and had a one-bedroom apartment. “They shared the room with [C.J.]” The home was appropriate. Andre had seven or eight children; C.J. had six or seven half siblings. Before May 2013, C.J. saw one of his half siblings on a regular basis, but not since then.

¶ 28 Alicia K., Samantha and Sarah's neighbor since April 2013, testified as follows. Alicia described Samantha and Sarah as “very loving people.” Alicia saw Samantha and Sarah with C.J. about three to six days a week and testified that, “[t]hey are amazing with [C.J.]. They always put his needs in front of their own and it—I see [C.J.] and he looks so happy. He's a happy boy.” Samantha and Sarah's home was “very clean and child like.” When C.J. first came to live with Samantha and Sarah, he was “shy and standoffish” and did not want contact with different people. Now, C.J. was “a much happier boy.”

¶ 29 During cross-examination by Andre's counsel, Alicia testified that it was fair to say that, if C.J. met Andre's counsel today, C.J. would seem standoffish. During cross-examination by the GAL, Alicia testified that she had seen Samantha and Sarah punish C.J. twice by spanking him on his “butt.”

¶ 30 Samantha testified that she was 28 years old at the time of the hearing, was employed, and was able to support herself and C.J. She had no other children. When C.J. first came to live with her, he was “a very distant, angry child who had no way of knowing how to express himself.” Now, “he is a loving, helping, happy little boy who can now use words to express himself to calm down his own anger when before he didn't.” C.J. was in counseling for three months, but he

recently “graduated” at the recommendation of the counselor. Samantha spanked C.J. three or four times early on when he came to live with Samantha and Sarah because C.J. was violent “with the dog.” Samantha and Sarah’s home has five bedrooms. Sarah worked during the day and C.J. went to a licensed “pre-k” daycare facility at a church. According to Samantha, “C.J.’s one of the best behaved children at daycare.” On a regular basis, Samantha and Sarah took C.J. to festivals, pumpkin farms, or parks, and did activities so that he could get exercise. Samantha and Sarah took C.J. to the doctor regularly.

¶ 31 During cross examination by Andre’s counsel, Samantha testified that C.J.’s verbal development was due in part to Samantha and Sarah’s efforts and counseling and in part to normal childhood progression. Samantha first spanked C.J. on his “butt” when he was about eighteen months old and first came to live with her and Sarah, and before Sarah had guardianship of C.J. C.J. was spanked for pushing the family dog down the stairs. It was “a small pat on his butt.” Sarah spanked C.J. about two months later for “violence towards the animals.” Sarah still did not have guardianship at that time. C.J. was spanked on his butt about four times total for the same thing: “he was angry and he would take it out on the animals.” Samantha and Sarah used their words but spanked him to “get his attention.”

¶ 32 During cross-examination by the GAL, Samantha testified that, before she and Sarah spanked C.J., they told him, “no,” “redirected him,” and gave him a time out. Sarah spanked C.J. after he continued to push the dog six or eight times. C.J. was wearing a diaper and pants when he was spanked, so he did not have any marks after being spanked. Samantha and Sarah were involved in counseling with C.J. for three months until C.J. reached his third birthday in August 2014.

¶ 33 Sarah testified as follows. She was employed and was a disabled veteran. Her injuries did not keep her from doing anything physical. She had sufficient funds to raise C.J. C.J.

loved Samantha, whom he called, “Mama Jo.” There had been a “drastic change” in C.J. since he came to live with Samantha and Sarah. At first, when they tried to discipline C.J., he would bang his head against the wall, and he tried to hurt them. C.J. did not talk very much; he grunted, he had a blank stare, and he “rammed” toys into the animals and laughed. Samantha and Sarah learned through counseling “the correct way of handling things and what was best for [C.J.]” Now, C.J. smiled all the time and was “so happy.” He got excited to see his favorite people and to go to school. He helped feed the animals and checked their water bowls. C.J. had patience with the animals and was very gentle with them.

¶ 34 Sarah worked with her neighbor Alicia, and Sarah trusted Alicia to babysit C.J. C.J. was involved with and saw his extended family regularly and loved them all: aunts, uncles, cousins, “grandparents.” C.J. saw one of his half siblings on a regular basis, but he did not see Andre’s other six or seven children. Sarah had made no attempts to contact these half siblings. She testified that two of the half siblings were “incarcerated,” two others had been adopted “because they were taken by the State,” and she had not met “the other two.” Sarah had no plans to attempt to find C.J.’s half siblings, but she would if C.J. asked. C.J. only knew about the half sibling who he already saw; C.J. did not know about the others because he was “very confused already.” C.J. had no contact with Andre’s family; they had not “reached out” to Samantha or Sarah. Sarah had not tried to reach out to Andre’s family and did not plan to do so. She had no plans to maintain a relationship between C.J. and Andre’s family unless C.J. asked. Sarah planned to tell C.J. the truth about everything that had happened “because it’s only fair that he knows the truth.” To continue C.J.’s cultural ties with his African American background (Andre was African American), C.J. attended a biracial or multiracial school, and Sarah had “several friends who are African American.” The counselor told Sarah and Samantha that swatting C.J. on the butt was “not detrimental” to him.

¶ 35 During cross-examination by the GAL, Sarah testified that, if any of Andre’s family contacted her after the adoption, she would be “open” to such contact. Sarah was also “open” to helping C.J. know more about his African American culture.

¶ 36 After hearing argument, the trial court stated that it had considered the relevant best interest factors and found that it was in the best interests of C.J. to terminate Andre’s parental rights. The trial court granted petitioners’ petition for adoption.

¶ 37 On November 6, 2014, the trial court entered a decree of adoption terminating Andre’s parental rights to C.J. On December 5, 2014, respondent filed a motion to vacate the judgment or for a new trial pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2014)). The trial court denied the motion on June 25, 2015, and respondent filed a timely notice of appeal.

¶ 38

II. ANALYSIS

¶ 39

A. Due Process – Motion to Continue

¶ 40 On appeal, respondent argues that his due process rights were violated when the trial court denied his motion to continue the fitness hearing and proceeded in his absence without providing him any alternative to participate in the hearing and defend against petitioners’ accusations. Respondent contends that this was error warranting reversal.

¶ 41 A parent's interest in the care, custody and control of their children is a fundamental liberty interest protected by the due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV, § 1). *In re M.H.*, 196 Ill. 2d 356, 361-62 (2001). Therefore, the procedures employed in a parental rights termination proceeding must comply with the requirements of procedural due process. *In re Andrea F.*, 208 Ill. 2d 148, 165 (2003) (citing *Santosky v. Kramer*, 455 U.S. 745, 749 (1982)). To determine whether procedural due process was available in court during termination proceedings, our supreme court has adopted the test

enunciated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *In re D.T.*, 212 Ill. 2d 347, 362-63 (2004).

¶ 42 In *Mathews*, 424 U.S. 319, 335, the Supreme Court identified three factors to be considered in determining what due process requires in proceedings implicating fundamental liberty interests. *Id.* The first is the private interest that would be affected by the official action. *Id.* The second is the risk of erroneous deprivation of such interest through the procedures used, coupled with the value, if any, of substituted procedural safeguards. *Id.* The third factor is the government's interest, including the function involved and the monetary and administrative burdens that additional procedural requirements would entail. *Id.* 335-36.

¶ 43 We note that a parent has a right to be present at proceedings to terminate parental rights. See 705 ILCS 405/1-5 (West 2014)). However, the right to be present is not absolute; those who are incarcerated no longer have many of the rights and privileges of those of the general public. *In re C.J.*, 272 Ill. App. 3d 461, 465 (1995) (citing *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)). Moreover, a trial court's decision to deny a motion for a continuance is a matter within its discretion and will not be grounds for reversal unless the complaining party has been demonstrably prejudiced. *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002); *In re C.L.T.*, 302 Ill. App. 3d 770, 779 (1999); see also 735 ILCS 5/2-1007 (West 2014) (continuances may be granted “in the discretion of the trial court”).

¶ 44 In applying the *Mathews* factors, we determine that Andre was not denied due process. The first *Mathews* factor clearly weighs in favor of Andre. It is undeniable that Andre had a liberty interest in the care, custody, and control of C.J. See *M.H.*, 196 Ill. 2d at 361-62. Regarding the second *Mathews* factor, the trial court invited some risk of the erroneous deprivation of respondent's parental interests when it proceeded with the unfitness and best interest hearings without Andre being present. However, the record indicates that the trial court inquired about

securing Andre's release from the jail in Wisconsin and delayed the proceedings waiting for arrangements to be made for his release to allow him to be present. However, these arrangements were unsuccessful. Further, when coupled with the value, if any, of substituted procedural safeguards, the risk of deprivation of due process was minimal. Although Andre was not present at the termination proceedings, his attorney likely represented his interests to the best degree possible. We note that Andre's counsel cross-examined each witness. Despite being incarcerated, Andre, through counsel, could have requested an alternative means to participate in the hearing. Had Andre wanted to provide evidence regarding his fitness and the best interests of C.J., Andre could have been deposed by telephone or by videotape, and counsel could have called witnesses to testify on Andre's behalf. Although Andre had the right to be deposed and call witnesses, he made no such requests. In addition, Andre fails to indicate what evidence he would have presented to the court to counter the evidence that he failed to inquire about C.J.'s well-being, and that he failed to contact C.J., either by phone, mail, or by sending gifts.

¶ 45 Regarding the third *Mathews* factor, any risk that Andre was erroneously deprived of his rights was minimal when balanced against the State's interest in preventing a delay in adjudicating Andre's parental rights and preserving C.J.'s best interest. See *id.* (providing that the primary concern of proceedings under the Act is the best interest and welfare of the child). Illinois recognizes that "serious delay in the adjudication of abuse, neglect, or dependency cases can cause grave harm to the minor." 705 ILCS 405/2-14 (West 2014). Delays in termination proceedings impose a serious cost on the function of the government, as well as intangible costs to the lives of the children involved. *In re M.R.*, 316 Ill. App. 3d 399 (2000). If the child at issue is young, delay in adjudication of his or her status is not beneficial to the establishment of a stable permanent environment for the minor and imposes a serious cost on government function. *C.J.*, 272 Ill. App. 3d at 466. Thus, due process does not require the trial court to continue a termination case for an

extended length of time for an incarcerated parent to be released. *Id.* In this case, Sarah was granted guardianship of C.J. in May 2013, when C.J. was 18 months old. At the time of the fitness hearing, C.J. was over three years old due to numerous continuances. When Andre's counsel moved for a continuance before the termination hearing was to begin, he could not say for certain when both of Andre's cases would be resolved or when Andre would be able to be present for ongoing proceedings. Given the more than nine months in a temporary environment, and counsel's failure to indicate when Andre could appear, we determine that Andre's due process rights were not violated by proceeding with the termination hearing in Andre's absence.

¶ 46 Further, the trial court did not abuse its discretion by denying Andre's motion for a continuance. See *In re Jamarqon C.*, 338 Ill. App. 3d 639, 633 (2003). There is no absolute right to a continuance in a proceeding to terminate parental rights. *Id.* In this case, Andre fails to establish that he was prejudiced by the trial court's denial of his motion for a continuance. See *id.* Andre offers no indication of how he would have undermined the overwhelming evidence against him had the case been continued or alternative procedures used. Therefore, Andre cannot establish that the trial court abused its discretion by denying his motion for a continuance. See *id.* (the trial court did not abuse its discretion by denying motion for continuance in termination of parental rights proceedings, where father could not establish that he was prejudiced by such denial).

¶ 47 Andre cites *C.J.*, 272 Ill. App. 3d 461, to support his argument. In *C.J.*, the appellate court ruled that the trial court violated a mother's due process rights by holding a hearing to terminate the mother's rights without her presence because she was incarcerated in another state. *Id.* at 466. Two months before the scheduled hearing, the mother asked for a continuance of one year because she was scheduled for release from prison that would have allowed her to be present at the hearing. *Id.* The trial court denied the mother's request for a continuance, and the case proceeded to the

termination hearing as scheduled. *Id.* The appellate court held that the procedures used by the trial court resulted in a deprivation of the mother's parental rights. *Id.* at 466. The appellate court remanded the matter for the trial court to choose one of three alternative methods for the respondent's participation. *Id.* *C.J.* is distinguishable from the case before us because the mother in *C.J.* knew for certain when she would be released from prison; in this case, Andre's counsel could not tell the trial court for certain when he would be present. Therefore, *C.J.*, is inapplicable to this case.

¶ 48 This case is more like *In re M.R.*, 316 Ill. App. 3d 399 (2000), wherein the appellate court held that a mother's due process rights were not violated by her lack of presence at the termination hearing. *Id.* at 402. In *M.R.*, on the date of the termination hearing, counsel sought a continuance due to the mother's hospitalization. *Id.* The trial court denied the request for a continuance of an unknown duration. *Id.* at 400–01. The appellate court held that the procedures used by the trial court offered little to no risk of improper deprivation of the mother's interests. *Id.* at 402. *M.R.* is similar to this case because the continuances requested in both cases were of unknown durations.

¶ 49 B. Unfitness

¶ 50 Next, Andre argues that the trial court's finding that he was unfit in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to C.J.'s welfare was against the manifest weight of the evidence.

¶ 51 In an adoption case, to terminate the parental rights of a nonconsenting parent, trial courts must undertake a two-step process. *In re Adoption of Syck* (1990), 138 Ill. 2d 255, 276 (1990). First, the court must determine whether the parent is unfit. *Id.* at 276. The trial court must determine that the parent is unfit by clear and convincing evidence. *Jamarqon C.*, 338 Ill. App. 3d at 649. A trial court's ruling on unfitness will not be disturbed on appeal unless it is against the

manifest weight of the evidence. *In re A. W.*, 232 Ill. 2d 92, 104 (2008). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Id.*

¶ 52 The grounds that will support a finding of unfitness are set out in section 1(D) of the Act (750 ILCS 50/1(D) (West 2014)). Although section 1(D) sets out various grounds under which a parent may be deemed unfit, an unfitness finding may be entered if there is sufficient evidence to satisfy any one statutory ground. *In re Donald*, 221 Ill. 2d 234, 244 (2006). In this case, the trial court found Andre unfit under section 1(D)(b) of the Act, which provides:

“ ‘Unfit person’ means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:

(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.” 750 ILCS 50/1(D)(b) (West 2014).

¶ 53 Because the language of section 1(D)(b) of the Act is in the disjunctive, any of the three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare. *In re C.E.*, 404 Ill. App. 3d 97, 108 (2010). In assessing a parent's unfitness on this ground, a court considers a parent's efforts to visit and maintain contact with the child, as well as other indicia, such as inquiries by the parent into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The court must examine the parent's conduct in the context of the parent's circumstances. *Syck*, 138 Ill. 2d at 278-79. Relevant circumstances include difficulty obtaining transportation, the parent's poverty, statements made by others to discourage visitation, and whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems. *Id.* If personal visits were somehow impractical, courts consider whether a reasonable degree of concern

was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts. *Id.* at 279.

¶ 54 In this case, the record supports the trial court's finding that Samantha and Sarah established by clear and convincing evidence that Andre failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. From the time of Andre's arrest in March 2013 until the date of the unfitness hearing in October 2014, Andre made no contact with C.J. Sarah testified that she has had the same phone number for almost 14 years and that Andre had called Sarah previously when looking for Sharon. However, Andre did not call Sarah to ask to speak to C.J. or inquire about C.J.'s welfare, did not request visitation, and did not send letters, cards, or gifts to C.J. Even when Andre was out of jail, albeit for a brief time on or about June 3, 2014, and was present in court with Sarah, he did not ask Sarah about C.J.'s welfare or ask Sarah if he could visit C.J. Thus, the trial court's finding that Samantha and Sarah established by clear and convincing evidence that Andre failed to maintain a reasonable degree of interest, concern, and responsibility as to C.J.'s welfare is not against the manifest weight of the evidence.

¶ 55 Andre argues that his ability to engage with C.J. was restricted by his incarceration and that he showed his interest "the only way he could by participating in court proceedings," by filing motions and making an appearance on one occasion. We disagree with Andre, because a parent is not fit simply because he demonstrates some minimal interest in his child. *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). The interest, concern, or responsibility must be objectively reasonable. *Id.* Andre's minimal efforts do not demonstrate objective reasonable interest. Further, Andre was responsible for his incarceration. See *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 70 (2005) (holding that the trial court's finding of father's unfitness was not against the manifest weight of the evidence based on failure to maintain reasonable degree of interest, concern or responsibility, as to the child's welfare where father was incarcerated).

¶ 56

C. Best Interests

¶ 57 Andre also argues that petitioners failed to prove by a preponderance of the evidence that it was in C.J.'s best interests to terminate Andre's parental rights.

¶ 58 Where the court determines that the petitioners have met their burden of establishing by clear and convincing evidence the existence of one or more grounds for unfitness, it must then determine whether termination of parental rights and granting the adoption petition would be in the child's best interests. *Syck*, 138 Ill. 2d at 277. As our supreme court noted, at the best-interests phase, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364 (2004). In making a best interests determination, section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) requires a trial court to consider certain factors within "the context of the child's age and developmental needs"; these include: (1) the physical safety and welfare of the child; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and goals; (6) the child's community ties, including church, school, and friends; (7) 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; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. *Id.* The petitioner bears the burden of proving by a preponderance of the evidence that termination is in the best interests of the minor. *D.T.*, 212 Ill. 2d at 366. A trial court's best-interests finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010).

¶ 59 At the time of the best-interest hearing, C.J. was just over three years old. He came to live with Samantha and Sarah when he was about eighteen months old and had been living with

them for approximately eighteen months. Samantha and Sarah had provided C.J. with a loving, stable, safe home for half of his life, and C.J. was surrounded by extended family and friends. Meanwhile, Andre was a long way from being able to assume parental responsibility for C.J. Andre argues that C.J.'s "identity and familial background would not be served by terminating" Andre's parental rights. However, Samantha testified that C.J. visits with one of Andre's children regularly. Further, Sarah testified that two of the other half siblings were incarcerated and two others have been adopted. In addition, no one else in Andre's family has contacted Samantha or Sarah her regarding C.J. Sarah also testified that if she would be "open" to such contact in the future. Therefore, we determine that Samantha and Sarah proved by a preponderance of the evidence that termination of Andre's parental rights was in the best interest of C.J. Accordingly, the trial court's decision to terminate Andre's parental rights was not against the manifest weight of the evidence.

¶ 60

III. CONCLUSION

¶ 61 Accordingly, we affirm trial court's judgment.

¶ 62 Affirmed.