2016 IL App (2d) 160141-U
No. 2-16-0141
Order filed June 27, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re CARMELLO B., a Minor,	)	Appeal from the Circuit Court of Lake County.
	)	Nos. 12-JA-87, 13-JA-256
(The People of the State of Illinois, Petitioner-Appellee v. Elliot B., Respondent-Appellant).	)	Honorable Sarah P. Lessman, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings (1) respondent was unfit under section 1(D)(s) of the Adoption Act and (2) it was in the minor child's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Elliot B., unfit under four sections of the Adoption Act (see 750 ILCS 50/1(D)(b), (D)(i), (D)(m)(ii), (D)(s) (West 2012)), and that it was in the best interest of the minor, Carmello B., that respondent's parental rights be terminated. Respondent contends the findings were contrary to the manifest weight of the evidence. The biological mother signed a voluntary specific consent to adoption by the foster parents prior to respondent's fitness hearing, and she is not a party to this appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Brittany H. gave birth to Carmello on May 12, 2012. He was born with blockage in the ureters of his kidneys and had an issue with one of his heart valves. Carmello had surgery at birth to address the medical issues and he was hospitalized for one month. At the time of the minor's birth, Brittany had ongoing involvement with the Department of Children and Family Services (DCFS) with another child, Jaelynn, who had been removed from Brittany's care. Brittany's parental rights with Jaelynn were in the process of being terminated, as she had not engaged in services to remediate certain risk factors identified as substance abuse, mental health functioning, and parenting abilities. Brittany executed surrenders to her parental rights to Carmello on September 24, 2013, and she was discharged from the matter.

¶ 5 On June 14, 2012, the State filed a petition for adjudication of wardship and temporary custody. At the hearing, Brittany stipulated that, at the time of Carmello's birth, she previously had been found unfit and had not been restored to fitness. The court appointed DCFS as temporary custodian with the right to place Carmello.

¶ 6 Respondent was in the Illinois Department of Corrections (DOC) at the time of the hearing. Evidence showed that he had been incarcerated at Vienna Correctional Center around the time of Carmello's birth and then he was transferred to the Sheridan Correctional Center sometime in May 2013, residing there through the filing of the termination petition on October 11, 2013. Respondent was released on parole in April 2014.

¶ 7 On July 19, 2012, the court adjudicated Carmello a neglected minor and it appointed DCFS as temporary custodian with the rights to placement and to grant medical consent. On September 26, 2012, the court held a dispositional hearing, in which it adjudicated Carmello a ward of the court and awarded guardianship to DCFS. Tasks were ordered for respondent, which

included parenting classes, if available at the DOC, and joining the Lifestyle Redirection Group. Respondent also was ordered to contact the caseworker upon release from the DOC in order to start other services.

¶ 8 Periodic status reports were sent to the court from the One Hope United (OHU) caseworker. One report noted that, based on an assessment interview given to respondent, the assessor found that "prognosis for reunification with [respondent] is poor and termination of parental rights should be considered," as respondent had never met Carmello and respondent would not be released from prison until October 2014. The assessor further noted that respondent was a repeat offender who historically had not been compliant with his probation. The assessor believed that, given his prison sentence and his criminal recidivism, the time that it would take respondent to be in a position to obtain custody of Carmello, waiting for reunification might harm the child.

¶ 9 The OHU status report submitted to the court on August 20, 2013, stated that a copy of respondent's service plan was mailed on May 10, 2013, with a letter, a consent form, and a picture of Carmello to the Vienna State Correctional Center. However, in July 2013, OHU was informed that respondent was currently residing at the Sheridan Correctional Center. OHU contacted the Sheridan facility about services for respondent and mailed respondent another copy of his service plan, consent form, and a personal letter on July 31, 2013.

¶ 10 On October 11, 2013, the State filed a petition for termination of respondent's parental rights. The petition alleged that respondent was an unfit person to have a child in that he: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) was depraved (750 ILCS 50/1(D)(i) (West 2012)); (3) failed to make reasonable efforts to correct the conditions which were the basis for

the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2012)); (4) failed to make reasonable progress toward the return of the minor within nine months after an adjudication of neglected minor (July 19, 2012, through April 19, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (5) was incarcerated at the time of the petition or at the time the motion for termination of parental rights was filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his parental responsibilities for the child (750 ILCS 50/1(D)(s) (West 2012)).

¶ 11 The trial commenced on April 6, 2015. Brandy Kukurba, a supervisor at OHU, testified that she met with respondent twice, on June 25, 2012, and July 16, 2012. She informed respondent on those dates of Carmello's medical conditions. Kukurba testified that respondent did ask if he could see Carmello but due to the distance of the Vienna prison location, which was about six hours away, the agency could not facilitate the visits. Kurkurba informed respondent that he was expected to engage in the Lifestyle Redirection program, substance abuse treatment, counseling, and the individual counseling program. Kukurba noted that respondent's service plan from October 2012 to March 2013 was rated as unsatisfactory overall.

¶ 12 Kukurba testified that the service plan covering the period from April 2013 to October 2013 was mailed to respondent in April 2013 via certified mail. On May 9, 2013, the court asked the agency to resend a copy of the service plan along with a letter indicating an update on Carmello's medical needs. On October 9, 2013, the agency received a letter from respondent indicating an update that he had changed correctional facilities from Vienna to Sheridan. Kukurba testified that respondent had moved to Sheridan in May 2013, but respondent failed to contact the agency as he was directed until the October letter.

¶ 13 Kukurba further testified that respondent did ask for a visit with Carmello in the October letter, and visitation began sometime after October 2013. Respondent was allowed once a month visits. The goal also had changed in October to return home.

¶ 14 After reviewing the petition for termination, the evidence, the applicable statute, and case law, the trial court held that the State had met its burden on four of the five unfitness counts. The proceedings then moved to the best-interest phase, in which the following evidence was presented.

¶ 15 Carmello had been placed in a specialized foster placement in the same foster home since his release from the hospital on June 12, 2012. Sarah Greenwalt, the caseworker, testified that she visits the foster home three times a month. The State entered into evidence a report prepared by Greenwalt. In sum, Greenwalt's report stated that Carmello has lived with the foster parents and their children since he was discharged from the hospital, for almost three and a half years. Carmello was doing very well in the foster home and is very bonded with the family. Carmello's needs are being met by the foster parents and they ensure that he attends all necessary medical and developmental services. The foster parents have provided Carmello with a loving, nurturing, stable, safe, and appropriate environment. The foster parents are willing to provide permanency through adoption. Greenwalt opined that it would be in Carmello's best interest to remain in his current placement and obtain permanency through adoption.

¶ 16 After reviewing the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2014)), the trial court held that the State had proved by a preponderance of the evidence that it was in the best interest of Carmello that the parental rights of respondent be terminated and that DCFS, as the guardian of Carmello, be given the right to consent to his adoption. Respondent timely appeals.

¶ 17 II. ANALYSIS

¶ 18 In Illinois, the Juvenile Court Act (705 ILCS 405/1 *et seq*. (West 2014)) provides a two-stage process for involuntary termination of parental rights. First, the State must establish that the parent is "unfit" under one or more of the grounds set forth in the Adoption Act. 705 ILCS 405/2-29 (West 2014); 750 ILCS 501/1 (D) (West 2014). If the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minors that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2014). *In re D.T.*, 212 Ill. 2d 347, 352 (2004).

¶ 19 Because the termination of parental rights constitutes a complete severance of the parent-child relationship, proof of parental unfitness must be clear and convincing. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). In order to reverse a trial court's finding that there was clear and convincing evidence of parental unfitness, the reviewing court must conclude that the trial court's finding was against the manifest weight of the evidence. *In re Adoption of Syck*, 138 Ill. 2d 255, 274 (1990). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 141-42 (1986).

¶ 20 A. Respondent's Fitness

¶ 21 Respondent contends the trial court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 22 One of the bases for the trial court finding respondent unfit was under section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)), which provides a parent may be declared unfit if:

> "The child is in the temporary custody or guardianship of [DCFS], the parent is incarcerated at the time the petition or motion for termination of parental rights is filed,

> the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750 ILCS 50/1(D)(s) (West 2014).

¶ 23 Respondent only contests the fourth element, arguing that his repeated incarcerations have not prevented him from discharging his parental responsibilities. In support of his contention, but without citation to the record, respondent makes a brief, general reference to the following in his appellate brief: "Throughout the trial, testimony surfaced that [respondent] requested visits with Carmello B. while he was incarcerated but the agency never arranged for any visits." Respondent raises a similar contention in the best-interest argument, which we will address here.

¶ 24 We find respondent's argument disingenuous. The evidence indicated that the lack of visitation while respondent was incarcerated at Vienna was due to distance and the age, and health of the minor. Later, it was due to respondent's lack of informing the agency for at least five months when respondent transferred to Sheridan. We note that, at the November 18, 2014, permanency hearing, the trial court found that respondent had not provided the verification of services while he was incarcerated and, since his release, he had made only four of six scheduled visits. Other evidence established that, of the periods where respondent was not incarcerated, from June 2014 through November 2014, and then January 2015 through June 2015, he only visited Carmello five times of the available monthly visits.

¶ 25 Regardless, "[b]eing a parent involves more than attending a few visits and sending an occasional gift to the child" *In re M.M.J.*, 313 Ill. App. 3d 352, 355 (2000). In *M.M.J.*, the Fourth District Appellate court noted the significance of recurring absences caused by incarcerations, stating:

> "The child needs a positive, caring role model present in her life. [Section 1(D)(s)] may be utilized regardless of respondent father's efforts, compliance with DCFS tasks and satisfactory attainment of goals, or the amount of interest he has shown in his [child's] welfare. Here, respondent father's repeated incarcerations have prevented him from providing the emotional and financial support and stability [the minor] needs and deserves. Moreover, his past criminal history raises the inference that respondent father will continue to be unavailable and inadequate as a parent. [Citation omitted]." *Id.*

¶ 26 When presented with this ground of unfitness, the important consideration is the " 'overall impact that repeated incarceration may have on the parent's ability to discharge his or her parental responsibilities *** , such as the diminished capacity to provide financial, physical, and emotional support for the child.' " *In re Gwynne P.*, 215 Ill. 2d 340, 356 (2005) (quoting *In re D.D.*, 196 Ill. 2d 405, 421 (2001)). The repeated incarceration also demonstrates the parent's inability to conform to societal norms. *D.D.*, 196 Ill. 2d at 421.

¶ 27 Here, respondent has been incarcerated throughout the majority of Carmello's life. His repeated incarcerations have prevented him from being a positive, caring role model for Carmello, and have diminished his capacity to provide financial, physical, and emotional support Carmello needs and deserves. Moreover, during the short time that he was not incarcerated, respondent re-offended, and thus, his actions while the custody of his child was at stake, raised the inference that he "will continue to be unavailable and inadequate as a parent." *M.M.J.*, 313 Ill. App. 3d at 355; see also *Gwynne P.*, 215 Ill. 2d at 359.

¶ 28 Based on the evidence, we conclude the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence and the opposite conclusion is not clearly evident; nor is the determination unreasonable, arbitrary, or not based on the evidence. Because

we have upheld the trial court's determination finding respondent unfit on this ground (see 750 ILCS 50/1(D)(s) (West 2014)), we need not review any other bases for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 29 B. Carmello's Best Interest

¶ 30 After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interests. *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002). At the best-interest stage of the termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interests. *D.T.*, 212 Ill. 2d at 366. We will not reverse the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 890. A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008). The trial court's determination is entitled to great deference since it is in the best position to observe the conduct and demeanor of the witnesses. Thus, a reviewing court should not substitute its judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given to the evidence, or the inference to be drawn. *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008).

¶ 31 When determining whether termination is in the child's best interest, the court must consider, in the context of the child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, including food, shelter, health, and clothing; (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, including love, security, familiarity,

and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 32 Respondent challenges the trial court's best-interest finding. He maintains that the trial court did not consider all the statutory factors set forth in section 1-3(4.05) and that it was not clear which factors the court relied upon in reaching its decision.

¶ 33 Respondent's argument belies the record. The court clearly referred to every factor listed in section 1-3(4.05) and specifically noted which factors it found relevant in light of the evidence presented at the hearing. The State points out that respondent's assertion "suffers from worse deficiencies" since he neither refers to any factors which the court did not consider and lacks any citations to the record. We agree with the State.

¶ 34 We also observe that respondent presents no legal precedent to establish that a trial court is required to explicitly mention, word-for-word, the factors listed in section 1-3(4.05) while rendering its decision. To the contrary, our law is clear that a trial court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision. See *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004).

¶ 35 Finally, we note that respondent fails to cite to any portions of the record in support of his claim that the trial court's ruling was against the manifest weight of the evidence. However, our independent review of the record attests to overwhelming evidence that the statutory factors support the conclusion that Carmello's best interests lie in the termination of respondent's

parental rights. Carmello's foster parents have cared for him since he was one month old. Carmello has only known his foster parents and their children as his family. They have continuously taken care of all of Carmello's special needs, including taking him to specialist doctors and frequent medical appointments and speech, language, and occupational therapy, and dealing with his developmental delay. Carmello is treated as a member of the family, and he has bonded with the foster parents and their children. Carmelllo has not had any consistent or continuous relationship with any biological relatives and had no bond with his biological family. The foster parents have expressed their willingness to adopt Carmello, thus ensuring the need for permanency in his life. The caseworker, who visits Carmello three times a month in his foster home, opined that it was in Carmello's best interest that respondent's parental rights are terminated and that Carmello be freed for adoption.

¶ 36 Respondent presented little evidence during the best-interest hearing that the statutory factors lie in his favor. He produced no professional or expert testimony to rebut that of the caseworker, who strongly recommended termination. Respondent presented argument at the hearing that the paternal grandmother and paternal aunt wanted to have Carmello placed with them. This did not address the minor's well-being as it would remove Carmello from the only family he has known. Furthermore, the evidence showed that the paternal grandmother had only five visits with Carmello since his birth. The paternal aunt was excluded as a placement during the underlying proceeding for an extensive criminal background, which had not been cleared at the best-interest hearing.

¶ 37 Based on this record, the trial court's determination that it was in Carmello's best interest that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

¶ 39 Accordingly, we affirm the judgment of the Circuit Court of Lake County finding respondent unfit and that it was in the best interest of the minor that respondent's parental rights be terminated.

¶ 40 Affirmed.