FILED
November 10, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 160462-U

NO. 4-16-0462

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.E., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 15JA18
AMANDA EVANS,	)	
Respondent-Appellant.	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment terminating respondent's parental rights based on her voluntary surrender and consent to adoption but vacated the court's unfitness finding.

¶ 2 Respondent, Amanda Evans, appeals from the trial court's May 2016 order terminating her parental rights to L.E. (born November 18, 2014). We affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 On March 26, 2015, the State filed a petition for adjudication of wardship, alleging L.E. was a neglected and/or abused minor. In support, the State alleged, (1) on March 20, 2015, respondent, who later tested positive for tetrahydrocannabinol, opiates, and

benzodiazepine in her system, attempted to retrieve L.E. from a temporary caregiver while she was highly intoxicated and unable to care for L.E.; (2) on March 24, 2015, respondent stated to an Illinois Department of Children and Family Services (DCFS) investigator she was a heroin addict, used 10 Vicodin pills daily, and consumed drugs while caring for L.E.; and (3) in 2012, respondent had her parental rights to her infant son terminated after it was discovered he was born with tetrahydrocannabinol, opiates, benzodiazepine, and cocaine in his system. Respondent later admitted the allegations in the State's petition were true, and the trial court adjudicated L.E. to be a neglected and/or abused minor, made her a ward of the court, and placed custody and guardianship with DCFS.

¶ 5 In March 2016, the State filed a motion to terminate respondent's parental rights, which was later amended. The State alleged respondent was an unfit parent as she (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 2014)); (2) abandoned the minor (750 ILCS 50/1(D)(a) (West 2014)); and (3) deserted the minor for more than three months preceding the filing of an adoption petition (750 ILCS 50/1(D)(c) (West 2014)).

¶ 6 In May 2016, the trial court held a hearing on the State's amended motion to terminate respondent's parental rights. At the hearing, child-welfare specialist Anita Ferguson testified she witnessed respondent execute a voluntary final and irrevocable surrender of her parental rights to L.E. moments before in open court. A written final and irrevocable surrender to an agency for the purpose of adoption was entered into evidence, which had attached to it a parental affidavit, consent to termination of parental rights, and a certificate of acknowledgement. The surrender indicates it was witnessed by Judge John C. Wooleyhan. The

State argued: "As the court is aware, [respondent] executed a surrender in this cause just moments ago in open court. I would ask the court to make a finding of unfitness based on that voluntary surrender that was executed." The court acquiesced to the State's request and found respondent to be unfit based upon the voluntary surrender she had signed in court that day. The court later held a best-interest hearing, after which it found it was in L.E.'s best interest to terminate respondent's parental rights. The court entered a written termination order. The court's order initially notes its unfitness finding based on respondent's voluntary surrender. It then orders respondent's parental rights to be "voluntarily terminated" based on respondent's "surrender of the minor to a child welfare agency or the general consent of the mother to the adoption of the child."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, respondent argues the trial court's order terminating her parental rights is void as (1) a voluntary surrender is not a statutory basis for a finding of parental unfitness, and (2) the State's amended motion to terminate her parental rights did not allege such a basis for a finding of unfitness. Respondent requests this court to reverse the unfitness finding as well as the termination of her parental rights based on that finding. The State concedes this court should vacate the trial court's unfitness finding but maintains the termination of respondent's parental rights should be affirmed based on her voluntary surrender for purposes of adoption.

¶ 10 "To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, *alternatively*, it has been proven, by clear and

convincing evidence, that the parents are 'unfit persons' within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child." (Emphasis added.) *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20, 45 N.E.3d 1107.

¶ 11 Following the execution of respondent's *voluntary* surrender, the trial court unnecessarily allowed the State to proceed on its amended motion to *involuntarily* terminate respondent's parental rights. Respondent voluntarily surrendered her parental rights and consented to termination. The court did not need to conduct the typical fitness and best-interest hearings associated with involuntary termination proceedings. It only needed to make a best-interest finding before entering its termination order. See 705 ILCS 405/2-29(2) (West 2014) ("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 ***, the court, with the consent of the parents, *** may terminate parental rights and empower the guardian of the person of the minor *** to consent to the adoption."). Not only was the prosecution of the State's amended motion unnecessary, the court's unfitness finding was legally erroneous. A voluntary surrender is not a statutory ground for a finding of unfitness (see 750 ILCS 50/1(D)(a) to (t) (West 2014); *M.H.*, 2015 IL App (4th) 150397, ¶ 22, 45 N.E.3d 1107 (a parent is considered an "unfit person" where he or she conforms to one of the statutory definitions)), nor was it included in the State's amended motion to terminate respondent's parental rights (*In re D.C.*, 209 Ill. 2d 287, 296, 807 N.E.2d 472, 476 (2004) ("A court may not terminate a parent's rights on grounds not charged in the petition.")). We accept the State's concession of error and vacate the trial court's unfitness finding.

¶ 12 While respondent concedes an order terminating her parental rights based on her validly executed voluntary surrender and consent to adoption would be a valid order, respondent maintains we must reverse the trial court's judgment terminating her parental rights as it was based on the improper unfitness finding. In its written order, however, the court orders respondent's parental rights be "voluntarily terminated" based on respondent's "surrender of the minor to a child welfare agency or the general consent of the mother to the adoption of the child." While the court's written order contained a superfluous and erroneous unfitness finding, it is clear the court ultimately ordered respondent's parental rights to L.E. to be terminated based on her voluntary surrender and consent to adoption. Respondent's parental rights were appropriately terminated following respondent's execution of a surrender of her parental rights.

¶ 13 This issue has arisen before in a case from Adams County. We recommend the trial court modify its form termination order to remove any references to a voluntary surrender or consent to adoption as bases for a finding of parental unfitness.

¶ 14 III. CONCLUSION

¶ 15 We affirm the trial court's judgment terminating respondent's parental rights based on her voluntary surrender and consent to adoption but vacate the court's unfitness finding.

¶ 16 Affirmed in part and vacated in part.