2017 IL App (2d) 160793-U
Nos. 2-16-0793 & 0816 (cons.)
Order filed February 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re LOGAN W. and TIMOTHY M., Jr.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
minors.	)	
	)	
	)	Nos. 16-JA-59, 16-JA-60
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Timothy M., Sr.,	)	Mary Linn Greene
Respondent-Appellant.)	)	Judge, Presiding.

In re DANUEL S., ETHAN S.,	)	Appeal from the Circuit Court
DEBORAH W., TIMOTHY M., Jr.,	)	of Winnebago County.
	)	
	)	
minors.	)	
	)	
	)	Nos. 16-JA-60, 16-JA-61, 16-JA-62,
	)	16-JA-63
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee v. Crystal W.,	)	Mary Linn Greene
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment, finding respondent parents unfit and terminating their parental rights, was not against the manifest weight of the evidence.

¶ 2 Respondents, Crystal W. and Timothy M., Sr. (Timothy), each appeal from the trial court's judgment that each was an unfit parent, and terminating their parental rights. We consolidated the appeals on the parties' motion and they submitted a joint appellate brief. We now affirm the judgment of the trial court.

¶ 3 Crystal is the mother of five children: Danuel S., Ethan S., Deborah W., Timothy M., Jr. (Timothy Jr.), and Phylicia M.; Timothy (Sr.) is Crystal's fiancée, and he is the father of Logan W., Timothy Jr., and Phylicia. (Not at issue in this appeal is Logan's mother and the fathers of Danuel, Ethan, and Deborah.)

¶ 4 Most of the proceedings in this case occurred in early 2016, at which time Logan was 14, Danuel was 13, Ethan was 12, Deborah was 4, and Timothy Jr. was 3. Phylicia was born December 24, 2015. On February 17, 2016, seven-week-old Phylicia was pronounced dead at Rockford Memorial Hospital. At the time of Phylicia's death, Crystal, Timothy, and all six children resided in a house on Bond Avenue in Rockford.

¶ 5 Two days after Phylicia's death, the State filed combined neglect and termination petitions on behalf of Logan, Danuel, Ethan, Deborah, and Timothy Jr. (Herein, we will refer to these five children, excluding Phylicia, as "the children.") The petitions sought to terminate Crystal's parental rights over Danuel, Ethan, Deborah, and Timothy Jr., as well as Timothy's parental rights over Logan and Timothy Jr.

¶ 6 The State's petitions invoked the Juvenile Court Act's expedited termination procedure (see 705 ILCS 405/2-21(5) (West 2016)) against Crystal and Timothy. This expedited procedure enables the trial court to terminate parental rights at the initial dispositional hearing, provided certain conditions are met. See *id.* (We note that respondents make no argument that this

expedited procedure was improper here.) Each of the State's petitions set forth the same principal allegations of neglect: that each child's environment was injurious to his or her welfare (1) because the Bond Avenue home was unsafe and (2) because Phylicia was "found deceased *** covered in urine and feces" and "with a portion of [her] fingers missing [and with] abrasions to the head and shoulders" (her body had been partially consumed by rats).

¶ 7 The petitions further alleged that Crystal and Timothy were unfit parents, as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) on two grounds. The first ground was that Crystal and Timothy failed to "maintain a reasonable degree of interest, concern or responsibility as to [each] child's welfare." 750 ILCS 50/1(D)(b) (West 2016). The second ground was that Crystal and Timothy failed "to protect [each] child from conditions within his environment injurious to the child's welfare." 750 ILCS 50/1(D)(g) (West 2016). The petitions sought the termination of the Crystal's and Timothy's parental rights and, in their place, the appointment of a guardian with the power to consent to adoption.

¶ 8 A combined hearing was held on the issues of neglect and unfitness. At that hearing, on the State's motion, the court took judicial notice that each of the children were subjects of prior neglect proceedings. Specifically, in 2011, Danuel, Ethan, and Deborah were adjudicated neglected. Shortly after his birth, in 2013, Timothy Jr. was adjudicated neglected. In 2009 and again in 2013, Logan was adjudicated neglected.

¶ 9 In October 2014, Crystal and Timothy Sr. somehow came to live with the children at Crystal's grandmother's former residence on Bond Avenue. We say "somehow" because the circumstances of how Crystal and Timothy re-obtained custody of the children are not clear from the record.

¶ 10 As noted, Phylicia was born on December 24, 2015. At around 5:00 a.m., on February 17, 2016, Crystal called 9-1-1 to report that Phylicia was not breathing. Responding personnel arrived at the Bond Avenue residence where they found Phylicia in her swing in a single bedroom shared by most of the family. Phylicia was transported to the hospital; efforts to resuscitate her proved unsuccessful. Responding personnel noted that the conditions in which Phylicia was found were filthy, and that she had extensive bite marks on her body.

¶ 11 An autopsy report was received into evidence. In it, Dr. Mark Witeck, a forensic pathologist, noted that prior to her death, it was reported that Phylicia had a history of "cold like symptoms" (as confirmed by Phylicia's pediatrician). Witeck's examination of Phylicia revealed "severe fluid build-up in the lungs" as well as "pulmonary congestion and edema," *i.e.*, swelling. Witeck opined that the primary cause of Phylicia's death was "probable viral syndrome" and that she "died of complications of an upper respiratory illness ***." Witeck also noted that Phylicia's head, torso, and extremities showed signs of chewing by insects and/or rodents, which occurred either while Phylicia was dying or after her death. Witeck opined that a secondary cause of death was "[p]erimortem and/or postmortem predation by insects and possibly [rats or] mice."

¶ 12 Illinois Department of Children and Family Services (DCFS) child protection investigator Andy Saunders testified that after Phylicia was reported deceased, he interviewed the family and inspected the Bond Avenue home where Crystal, Timothy, the children, and Phylicia had been living. The house has two floors and a basement. Pictures of the home reveal that it was a shambles. The interior and exterior of the building show significant rot, structural damage, and damage to the windows. Pictures of the residence's cramped interior show food, garbage, and clothing strewn about the house. Several ceiling areas also appear to be bowed and falling down, spilling insulation into the home. In short, the pictures reveal a number of obvious hazards to

young children. In addition, according to Saunders, even though it cannot be seen in the photographs, there was no drywall on some of the interior walls and there was exposed wiring.

¶ 13 No pictures of the basement were taken, however Saunders testified that the basement stairs were considerably damaged and unsafe. In the basement, Saunders testified, there was standing water, many cobwebs, and the "strong smell of mildew[.]" The washing machine and dryer are in the basement; on the floor near those appliances, Saunders observed several open containers of laundry detergent, which were accessible to young children.

¶ 14 According to the evidence, the family slept on the second floor of the home with Crystal, Timothy, Deborah, Timothy Jr., and Phylicia in one bedroom, and Logan, Danuel, and Ethan in a second bedroom. Saunders testified that he observed cockroaches crawling on the walls and floors throughout the home and on the second floor beds. Saunders recounted that during his field interview, as he spoke with one of the children, the child interacted with a cockroach. Saunders also heard what he believed to be rodents inside the walls in the residence.

¶ 15 During his investigation, Saunders was told that Phylicia was put in her baby swing to sleep. When it was time for her to be fed, she was put in the swing and "they would prop the bottle with a blanket." After his field investigation, Saunders took protective custody of the children and they were placed in foster homes.

¶ 16 After the State rested its case, Crystal testified. She stated that Phylicia had been to the doctor three times before she passed away. Crystal noted that neither she nor Timothy had been criminally charged in connection with Phylicia's death. As for the Bond Avenue residence, Crystal testified that the door to the basement was "always locked." She denied that there was "standing water" in the basement, but stated that the basement floor was "a little wet ***." Crystal agreed that the photos showed areas of the house were "a mess," but she attributed its

messiness to the children. To the extent the pictures depict clothes everywhere, she stated that at the time the pictures were taken she "was in the process of doing all the laundry and everything." She denied there was any exposed wiring in the home. Crystal conceded that there were roaches and rodents in the residence, stating "Once we moved in we got bombs, we got sprays, powders. We did everything we could to get rid of them"; however, she acknowledged that those efforts had not been successful.

¶ 17 On cross-examination, Crystal stated that an exterminator was hired after Phylicia's death. Crystal stated that she works "part-time hours at Help At Home" earning "about $340 every two weeks," and that Timothy is unemployed. To the extent the upstairs area was unclean, Crystal stated, it "was cleaned quite frequently" and "it wasn't always like" how it appears in the pictures.

¶ 18 Crystal was aware that the Bond Avenue house (her grandmother's former residence) had been flooded at some point before Crystal, Timothy, and the children moved to the home in October 2014. Crystal denied that she was told the children could not be returned to her care in prior neglect cases due to the condition of the home. Crystal rested her case. By agreement of the parties, Timothy submitted a carbon copy of an agreement for bimonthly pest control services for the home. The agreement was dated February 24, 2016, or seven days after Phylicia's death. Then Timothy rested his case and the parties made their closing arguments.

¶ 19 At a subsequent court date, the trial court adjudicated the children neglected. The court further found Crystal an unfit parent, on both grounds alleged in the petition, with respect to Danuel, Ethan, Deborah, and Timothy Jr. The court also found Timothy an unfit parent, on both grounds alleged in the petition, with respect to Logan and Timothy Jr.

¶ 20 A combined hearing was then held on the children's disposition and best interests. At the hearing, on the State's motion, the court took judicial notice of a report prepared by DCFS. The report shows that Crystal, Timothy, and the children have been involved in 14 separate DCFS investigations (all of which resulted in indicated findings). In addition, the report states that Timothy is a registered sex offender; however, he has never reported the fact that he has been living with children.

¶ 21 DCFS caseworker Meghan Jamison testified regarding the children's placement after protective custody was taken. Logan, Deborah, and Timothy Jr. were each placed with separate relatives; Ethan and Danuel were placed together in a traditional foster home. According to Jamison, some of the children had significant difficulties. Ethan, for example, has a history of behavioral problems. Danuel once started a fire, which burned down several small structures and claimed the life of a dog. Deborah required significant counseling after Phylicia's death. Timothy Jr.'s sensory development was profoundly delayed. However, Jamison's testimony demonstrated that each of the children had made some progress since their foster placements.

¶ 22 Jamison facilitated supervised visits between Crystal, Timothy, and the five children. According to Jamison, all of the children love Crystal and Timothy; however, Jamison also stated, "These minors have been in care at least 2 times now *** and they deserve to have permanency."

¶ 23 Crystal testified that she loves Danuel, Ethan, Deborah, and Timothy Jr. On cross-examination, she conceded that there was still "[s]omewhat" of a bug problem in the home, but stated that she believed Danuel, Ethan, Deborah, and Timothy Jr. should not have been removed from her custody.

¶ 24 Timothy testified that he loves Logan and Timothy Jr. On cross-examination, Timothy stated that he believed he and Crystal were not offered adequate services to "give [them] correction" in order to get the children back. When asked what needed to be corrected, Timothy stated, "The condition of the home needed to be corrected, which it's done. I think that's about it." Later, Timothy elaborated that the house was now clean, and "for the most part bug free."

¶ 25 After arguments, the court determined that it was in the best interests of Danuel, Ethan, Deborah, and Timothy Jr. to terminate Crystal's parental rights. The court also found that it was in the best interests of Logan and Timothy Jr. to terminate Timothy's parental rights. The court set the permanency goal for Danuel, Ethan, Deborah, and Timothy at adoption, and set the permanency goal for Logan at substitute care pending a determination of his mother's parental rights.

¶ 26 Crystal and Timothy appeal the court's judgments concerning unfitness and best interests. They raise no argument regarding the trial court's adjudication that the children were neglected and its dispositional finding concerning the children's wardship. Accordingly, even though this was an expedited termination proceeding, our review can proceed along the same lines as our review of an ordinary termination proceeding.

¶ 27 The termination of parental rights is a two-step process governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2016)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2016)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The first step requires the State to plead and to prove, by clear and convincing evidence, that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *In re J.L.*, 236 Ill. 2d at 337. If the trial court determines that the parent is unfit, the court will then consider whether a preponderance of the

evidence demonstrates that it is in the child's best interest that parental rights be terminated. *Id.; In re E.B.*, 231 Ill.2d 459, 472 (2008); *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 28 First, we address the trial court's unfitness findings. We review a finding of unfitness under the highly deferential manifest weight standard. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 66. "When the manifest weight standard applies, the reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if the reviewing court would have reached a different conclusion if it had been the trier of fact." *In re An.W.*, 2014 IL App (3d) 130526, ¶ 55. Rather, we will reverse a trial court's finding only if it was against the manifest weight of the evidence—by which we mean if and only if the *opposite* result was clearly warranted. *In re Phoenix F.*, 2016 IL App (2d) 150431, ¶ 6.

¶ 29 Section 1(D) of the Adoption Act (750 ILCS 50/1(D)) sets forth several bases for determining a person is an unfit parent. Again, the State's petitions alleged two bases of unfitness against Crystal and Timothy—the failure to maintain a reasonable degree of interest, concern, or responsibility under subsection (b) (750 ILCS 50/1(D)(b)), and the failure to protect the children from an environment injurious to their welfare under subsection (g) (750 ILCS 50/1(D)(g)). A finding of unfitness may be sustained on any one ground under section 1(D) of the Adoption Act (*In re M.I.*, 2016 IL 120232, ¶ 43; *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005); *In re C.W.*, 199 Ill. 2d 198, 210 (2002)), and, as noted, the trial court found Crystal and Timothy unfit on both grounds.

¶ 30 In their appellate brief, Crystal and Timothy devote 10 pages of argument to the trial court's unfitness findings; but most all of their argument is devoted to their claim that there was insufficient evidence to support the trial court's injurious-environment findings under subsection

(g). Crystal's and Timothy's brief does little to argue against the trial court's unfitness findings under subsection (b)—that they failed to maintain a reasonable degree of interest, concern, or responsibility—short of citing that subsection twice (both times incorrectly) and stating their opinion that the evidence "did in fact show a reasonable degree of interest, concern, and responsibility with respect to the children."

¶ 31 Those brief references give us nothing meaningful to review. We determine that Crystal and Timothy have forfeited any challenge to the trial court's interest-concern-responsibility findings under subsection (b). Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) provides that in the opening brief, "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing[,]" and an issue that is merely listed or included in a vague allegation of error has not been "argued" and does not satisfy the requirements of the rule. See *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010). Crystal's and Timothy's forfeiture is particularly significant here because an unfitness judgment may be affirmed on any one ground. See, *e.g.*, *In re M.I.*, 2016 IL 120232, ¶ 43. In essence, by arguing exclusively against the trial court's injurious-environment findings under subsection (g), and by forfeiting any challenge to interest-concern-responsibility findings under subsection (b), Crystal and Timothy have left the trial court's findings under subsection (b) completely unchallenged. Thus, even if we agreed with *all* of Crystal and Timothy's 9¾-page argument that the conditions in the home did not constitute an injurious environment from which they failed to protect the children from under subsection (g), we would still affirm the unfitness judgments based on Crystal's and Timothy's failure to challenge the trial court's interest-concern-responsibility findings under subsection (b).

¶ 32 Although our supreme court has recently cautioned against addressing arguments concerning surplus unfitness grounds (*In re M.I.*, 2016 IL 120232, ¶¶ 42-45), in the interest of completeness and because the matter is straightforward, we choose to address Crystal's and Timothy's arguments that the findings of their unfitness under subsection (g) was against the manifest weight of the evidence. We find those arguments to be meritless.

¶ 33 Again, Crystal and Timothy deny that the house was an injurious environment at all. They assert that the evidence merely shows that they were poor and not that they failed to protect the children under subsection (g). Further, Crystal and Timothy dispute the weight of the evidence concerning the living conditions in the house. They note some of the home's conditions—such as the presence of garbage and food in the home's living areas, the building's structural damage, the condition of the basement (including the presence of standing water, cobwebs, damage to the stairs, and open detergent containers), and the insect and mouse infestations—but they assert that none of those conditions "were shown to be a danger to the children in the home." Additionally, Crystal and Timothy argue there was no evidence that Phylicia's "death was caused even in part by the condition of the home," a point they underscore by noting that they were not criminally charged in connection with Phylicia's death.

¶ 34 Crystal's and Timothy's arguments are not well taken. A parent has a duty to ensure "a safe and nurturing shelter for his or her children, and to protect the children from an environment that is unsafe and is inimical to their development. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). Crystal and Timothy failed in this regard. This was not simply a case of a "dirty house"—the residence was a dangerously unsanitary environment full of long-neglected and potentially fatal hazards to children. Consider what happened to Phylicia in the home. True, the home's poor condition was not the *primary* cause of Phylicia's death; but Dr. Witeck opined that the predation

of Phylicia by vermin may have been a *secondary or contributing cause of death*. Thus, contrary to Crystal's and Timothy's assertion, there was *clear evidence* that Phylicia's death may have been caused "in part by the condition of the home." But even if we granted Crystal's and Timothy's assumption that the home's conditions did not directly contribute to Phylicia's death, that observation would in no way minimize the harm the conditions in the home presented to the physical and psychological health of the rest of the children. Crystal and Timothy still failed to protect each of the surviving children from an environment where vermin were able to consume significant portions of the children's young sibling in what was apparently a matter of a few hours. When a residence is in such poor shape, a parent cannot fail to protect a child from those conditions. See *In re Tolbert*, 62 Ill. App. 3d 927, 930 (1978) (finding mother unfit for failure to protect children from roundworm infection).

¶ 35 Crystal's and Timothy's assertion that the home's condition was a feature of their poverty and inability to repair and maintain it, rather than an intentional failure to protect the children, is beside the point. Subsection (g) "contains no state of mind requirement, nor does it carve out an exception for faultless failure." *In re M.I.*, 2016 IL 120232, ¶ 26 (making this same observation of subsection (b)). Thus, the plain meaning of the phrase "[f]ailure to protect the child from conditions within his environment injurious to the child's welfare" in subsection (g) (750 ILCS 50/1(D)(g)) includes all situations in which a parent's attempts to protect the child from the environment are inadequate, "regardless of whether that inadequacy seems to stem from unwillingness or an inability to comply." *In re M.I.*, 2016 IL 120232, ¶ 26; accord. *In Interest of Dalton*, 98 Ill. App. 3d 902, 911 (1981). (reaching the same conclusion under subsection (g)). We acknowledge that at the unfitness hearing, Crystal testified that some efforts were made to address the building's infestation. But when the conditions in the home so gravely threaten the

physical and psychological health of the child, the parent's efforts to protect the child must produce results. Efforts alone are not enough. *Id*.

¶ 36 Clear and convincing evidence showed that the conditions in the home were a conspicuous and unabated danger to the well being of all of the children. Accordingly, the trial court's findings that Crystal and Timothy were unfit for failing to protect the children from an environment injurious to their welfare was not against the manifest weight of the evidence.

¶ 37 We turn then to the trial court's best-interests findings. After a parent has been found unfit, during the best-interest portion of the proceedings, the focus shifts to the child, and "the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home." *In re S.D.*, 2011 IL App (3d) 110184, ¶ 34. In determining a child's best interest, the trial court must consider several factors including the child's physical safety and welfare; the development of the child's identity; the child's sense of attachment, including love, sense of security, sense of familiarity, continuity of affection of the child; the child's community ties, including church, school, and friends; and, the child's need for permanence. 705 ILCS 405/1-3(4.05) (West 2016). As with a finding of unfitness, we will not disturb a trial court's determination that it is in the child's best interest to terminate parental rights unless the ruling is against the manifest weight of the evidence. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 54.

¶ 38 In a scant, two-page argument, Crystal and Timothy first assert that the trial court erred in terminating their parental rights "because it erred in finding them unfit ***." As we have explained, there was no error in the trial court's unfitness findings. Next, Crystal and Timothy argue that the State offered "no evidence of the current state of the [Bond Avenue residence], the sole basis for the removal of the children," and "no evidence of the condition of parents' home

relative to the various foster parents." Such a comparison was not required. The availability of an adoptive home is not a precondition to the termination of parental rights. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 25; *In re D.M.*, 336 Ill. App. 3d 766, 775 (2002); *In re Tashika F.*, 333 Ill. App. 3d 165, 170-71 (2002). Accordingly, none of Crystal's and Timothy's argument shows that the trial court's best-interests decisions were against the manifest weight of the evidence.

¶ 39 In sum, the trial court properly found respondents unfit (on both subsection (b) and subsection (g) grounds), and correctly determined that it was in each child's best interests to terminate Crystal's parental rights over Danuel, Ethan, Deborah, and Timothy Jr., and to terminate Timothy's parental rights over Logan and Timothy Jr. Therefore, the judgment of the circuit court of Winnebago County is affirmed.

¶ 40 No. 2-16-0793, Affirmed.

¶ 41 No. 2-16-0816, Affirmed.