

NOTICE

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FILED

March 28, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160840-U

NOS. 4-16-0840, 4-16-0841, 4-16-0842, 4-16-0843, 4-16-0845 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Menard County
v. (4-16-0840)	)	No. 13JA1
JED LOMPRESZ, SR.,)	
Respondent-Appellant.)	
_____)	
In re: J.L., a Minor,	)	No. 13JA5
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-16-0841))	
JED LOMPRESZ, SR.,)	
Respondent-Appellant.)	
_____)	
In re: A.L., a Minor,	)	No. 13JA6
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-16-0842))	
JED LOMPRESZ, SR.,)	
Respondent-Appellant.)	
_____)	
In re: Em. L., a Minor,	)	No. 13JA7
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-16-0843))	
JED LOMPRESZ, SR.,)	
Respondent-Appellant.)	
_____)	
In re: El. L., a Minor,	)	No. 13JA8
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (4-16-0845)	)	Honorable
JED LOMPRESZ, SR.,	)	Michael L. Atterberry,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court committed no error in terminating respondent father's parental rights to his five children.

¶ 2 Respondent, Jed Lomprez, Sr., appeals the trial court's termination of his parental rights to his five children. He argues the court's fitness and best-interests determinations were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Jed and his wife, Nicole Lomprez, are the parents of five children, Em. L. (born September 30, 2006), A.L. (born December 29, 2007), El. L. (born March 26, 2011), T.L. (born June 11, 2012), and J.L. (born October 8, 2013). We note a sixth child, R.L., was born during the underlying proceedings, but that child is not at issue in these consolidated appeals. Additionally, these appeals concern only Jed, as Nicole has filed separate appeals in connection with the termination of her parental rights to each child (4-16-0834, 4-16-0836, 4-16-0837, 4-16-0838, and 4-16-0839).

¶ 5 In April 2013, the Illinois Department of Children and Family Services (DCFS) received a report that T.L., then 10 months old, weighed only 13 pounds and was suspected of suffering from failure to thrive syndrome. On April 26, 2013, the State filed a petition for adjudication of wardship, alleging T.L. was a neglected minor. On July 1, 2013, the trial court entered an adjudicatory order, finding T.L. neglected based on the "stipulated testimony of [a physician] that [T.L.] had inorganic failure to thrive and *** was in the 1% development region." On July 25, 2013, the court entered its dispositional order, making T.L. a ward of the court and

placing her custody and guardianship with DCFS.

¶ 6 On October 17, 2013, and December 5, 2013, the State filed petitions for adjudication of wardship with respect to the four remaining minors, alleging they were neglected or, in the case of Em. L. and El. L., neglected and abused. On June 25, 2014, the trial court entered adjudicatory orders finding each minor was neglected. Specifically, the court determined (1) J.L. was neglected due to Nicole’s failure “to provide necessary feeding and other care” for J.L. during a hospital stay, thereby endangering the minor’s safety and well-being; (2) A.L. was neglected because, from August 30, 2013, to December, 5, 2013, her parents “failed to exercise necessary care of [a] rash [on her] genital area and legs,” endangering A.L.’s safety and well-being; and (3) Em. L. and El. L. were neglected because their environment was injurious to their welfare based on their parents’ failure “to exercise necessary care *** of [A.L.’s] rash.” On August 28, 2014, the court entered dispositional orders, making J.L., A.L., Em. L., and El. L. wards of the court and placing their custody and guardianship with DCFS.

¶ 7 On July 16, 2015, the State filed petitions for the termination of both Jed’s and Nicole’s parental rights to each of their five children. It asserted both parents were unfit for failing to make (1) reasonable efforts to correct the conditions that were the basis for removal of the minors from the parents within nine months after adjudication (750 ILCS 50/1(D)(m)(i) (West 2014)) and (2) reasonable progress toward the minors’ return to their care within nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)). The State further alleged that termination was in the minors’ best interests.

¶ 8 In December 2015 and February and April 2016, the trial court conducted fitness hearings in the matter. Initially, the court clarified with the parties the nine-month time frames in

which it would be evaluating the parents' reasonable efforts and reasonable progress. Ultimately, it concluded, with the agreement of the parties, that the appropriate nine-month time frame for T.L. was July 25, 2013, to April 25, 2014, and the appropriate nine-month time frame for the four remaining minors was August 28, 2014, to May 28, 2015.

¶ 9 At the fitness hearings, the State presented the testimony of several witnesses, including Abigail Brenn, a case aide for the Center for Youth and Family Solutions (CYFS), who described visitations she supervised with the family in December 2014 and January 2015; Amber Jones, the CYFS caseworker for the family from December 10, 2013, to April 24, 2015, who testified regarding the parents' participation in services; Lucas Carriger, a case aide with Hobby Horse, who described visitations he supervised with the family from August 28, 2014, to November 28, 2014; Staci Garlits, a CYFS family support worker, who described visitations she supervised with the family from February to May 2015; Jessica Heidenreich, the family's caseworker from April to August 2013, who described the circumstances under which T.L. was removed from the home and the parents' required services; Molly Boucher, the family's caseworker from August 2013 to January 2014, who described the parents' participation in required services; Shana Nelson, the family's CYFS caseworker from May to July 2015, who described the parents' participation in required services; Valerie Cherry, a CYFS family support worker, who described visitations she supervised with the family from August 2013 to the beginning of 2014; and Christina Moore and Lori Lemme, two neonatal intensive care unit (NICU) nurses, who assisted in caring for J.L. following his birth in October 2013 and described both J.L.'s feeding requirements and the parents' participation in J.L.'s NICU feedings.

¶ 10 On April 15, 2016, the date of the final fitness hearing, the State presented two

witnesses, Moore and Lemme. Following a recess, the trial court noted it had been advised by counsel that they had been “working on some possible areas of agreement,” and the State represented that the parties had “a stipulation to present to the Court for consideration.” Jed’s counsel represented to the court that the parties were “stipulating that that’s what the witnesses from the State would testify to and we are not offering any contrary evidence. Much like a stipulated bench trial to that affect.” Finally, counsel for both Jed and Nicole agreed with the following comment by the court:

“Okay and it’s my understanding, and correct me if I’m wrong Counsel here, that what we’re doing essentially is that all the parties, all the parties here, [the guardian *ad litem* (GAL)] included, are all stipulating that if witnesses called by the State were called to testify they would testify to the following evidence [in the stipulation] which the parties stipulate and agree would be admissible and establish the following.”

¶ 11 The written stipulation, signed by all the parties, provided as follows:

“Respondent parents *** stipulate that competent witnesses, if called by the State to testify and present evidence as to tasks assigned in their client service plans, would be allowed and accepted by the Court in making a finding as to their fitness:

1. Failed to cooperate with [DCFS] by signing requested releases to obtain various information regarding counseling and medical records;
2. Failed to cooperate with DCFS investigators and Case Workers in allowing them into their home;

3. Failed to complete psychological evaluations in a timely manner;

4. Failed to attend all 15 medical appointments during the time period of [August 22, 2014, to January 15, 2015];

5. Failed to attend 5 medical appointments for [T.L.], including her 18[-]month appointment [from August 13, 2013, to January 2014;]

6. Failed to complete parenting classes during the nine[-]month time period;

7. Respondent Father completed a domestic violence assessment but failed to follow through and complete the recommended domestic violence counseling classes;

8. Respondent Father failed to provide written documentation of any legal means of income;

9. Respondent Mother fail[ed] to attend all 56 feedings at St. John's Hospital, [NICU], during [J.L.'s] hospitalization from [October 8, 2013, to October 16, 2013].

Based upon the above factors, the overall rating for the two consecutive client service plans were rated unsuccessful during the applicable nine[-]month time periods.”

The parties further stipulated to the admission of several exhibits, including (1) T.L.'s first client service plan dated December 3, 2013; (2) T.L.'s second client service plan dated April 1, 2014; (3) Jed's Veterans Administration (VA) medical records; (4) the client service plan for Em. L.,

El. L., A.L., and J.L. dated September 22, 2014; (5) the client service plan for Em. L., El. L., A.L., and J.L. dated April 1, 2014; and (6) “Feeding Documentation” for J.L. during his October 9 to October 16, 2013, hospitalization.

¶ 12 The record reflects the State rested following the parties’ stipulation and neither Jed nor Nicole presented any witnesses, evidence, or argument. The trial court then found both parents unfit as alleged in the State’s petitions.

¶ 13 On May 31, August 3, and September 29, 2016, the trial court conducted best-interests hearings. At the outset, the court stated it considered a best-interests report prepared for the proceedings. The report showed Em. L., A.L., El. L., and T.L. resided together in the home of their maternal aunt, Angela Allen, and her husband, Zach. Angela and Zach reported that they were willing to provide permanency for the children and were described as having a strong bond with all four children. In particular, the report noted El. L. and T.L. had “a very close bond” with their foster parents and, because they were very young at the time they were taken into care, they had spent more time in the care of their foster parents than in the care of Jed and Nicole.

¶ 14 The best-interests report showed J.L. resided in a foster home with his younger brother, R.L. J.L. had been placed in that home as a newborn, and it was the only home he had ever known. J.L. called his foster parents “momma” and “dada” and was described as being “clearly attached” to both foster parents. J.L.’s foster parents were also willing to provide him with permanency.

¶ 15 Additionally, the report described Jed and Nicole as failing to complete their services as recommended by DCFS and CYFS. It stated they did not agree with the recommended services, had inconsistent involvement with their caseworker, and were uncooperative. Further,

the report stated Jed and Nicole failed to accept responsibility as to why their children were taken into care and termination of their parental rights was recommended.

¶ 16 The report set forth several ways in which Jed and Nicole were noncompliant with service plan tasks. It stated Nicole failed to maintain stable employment, noting she quit a job in January 2016, reporting that her entire check was being taken to pay for child support. In March 2016, Nicole reported she accepted a position at a McDonald's restaurant; however, she had failed to provide proof of income as of the date of the best-interests report. Jed was reportedly receiving VA benefits of \$913 per month, but he failed to provide any additional proof of income. He asserted he worked for himself and did not receive a paycheck. Additionally, the caseworker stated she requested "a copy of [Jed's] W2 on a number of different occasions," but he failed to provide it.

¶ 17 Next, the report stated Nicole failed to attend counseling on a consistent basis. She also failed to address domestic-violence issues in counseling, despite reporting to caseworkers that Jed was verbally and emotionally abusive. As a result of Jed's domestic-violence assessment, a 26-week course was recommended to address "ways to control and prevent aggression, domestic violence, and anger." Jed did not complete the course, asserting he intended to address his anger and aggression through treatment for his post-traumatic stress disorder (PTSD) at the VA clinic. He also asserted the 26-week course was too expensive, although Nicole reported to the caseworker that Jed could afford the course because he was "making a substantial amount of money."

¶ 18 With respect to housing, the report noted Jed and Nicole's home met "minimal standards" in November 2015. However, the caseworker was no longer permitted to visit the

home due to Jed “kicking [the caseworker] and her supervisor out when discussing” issues related to Jed and Nicole’s youngest child, R.L. The caseworker asserted she felt “threatened” by Jed during the incident and, due to his behavior, she could only see him in a public location. The report further stated both Jed and Nicole refused to submit to random toxicology screens. Additionally, Nicole missed two appointments for a psychological assessment before attending a third in January 2015, and she attended only two prenatal appointments while pregnant with her sixth child. Finally, the report stated Nicole failed to attend any of her children’s medical appointments until February 2015. After that time, the foster parents reported that Nicole would talk on the phone and not pay attention to the doctor during the appointments that she did attend.

¶ 19 At the best-interests hearings, the State presented the testimony of Shannan and Monte Stuhmer, J.L.’s foster parents. Shannan testified she was a registered nurse, but currently, she was a “stay at home mom.” Her husband, Monte, worked outside the home. Shannan testified she and Monte resided in a four-bedroom home with J.L. and his younger sibling, R.L. Additionally, Shannan stated she had four adult children. Two of her children—Ellie, age 20, and Emma, age 21—also resided in the home.

¶ 20 Shannan testified J.L., who was 2 ½ years old, began residing with her as a newborn on October 25, 2013. She stated she knew about J.L. prior to that date because her daughter-in-law, Angela, was Nicole’s sister. Shannan described J.L. as having “feeding difficulties” at the time he came into her care. More recently, he was found to have developmental delays and hearing loss. His hearing issues required numerous medical appointments, including therapy three times a week. Shannan, her other family members, and J.L. were all learning sign language.

¶ 21 Shannan testified J.L.'s siblings, Em. L., A.L., El. L., and T.L., who resided with Angela and Shannan's son, Zach, often came over for "play time" in the afternoons. She estimated J.L. saw his siblings two times a week.

¶ 22 Shannan testified she loved and cared for J.L. and was willing to adopt him. She believed she could provide him with a stable and nurturing environment. Shannan testified she and Monte had a strong bond with J.L. and he referred to them as his mother and father. Additionally, her daughter Emma developed a bond with J.L., and Ellie referred to him as "her little brother." Monte testified similarly to Shannan, stating he was also willing to provide permanency for J.L. through adoption. He described J.L. as being a part of the family.

¶ 23 The State also presented the testimony of the foster mother for the four oldest children, Angela Allen. Angela testified she resided with her husband, Zach, and Em. L., who was nine; A.L., who was 8; El. L., who was 5; and T.L., who was 3. She stated Nicole was her sister and the four minors were her nieces. Angela testified she worked providing baby-sitting services for one child and Zach performed "side jobs." Their home was located approximately one block from Jed and Nicole's residence.

¶ 24 Angela described the minors' various medical concerns, stating Em. L. had been diagnosed with attention deficit hyperactivity disorder, for which she took medication, A.L. wore hearing aids, and El. L. had been diagnosed with Asperger's Syndrome. She further described the minors' routines, schooling, and activities, as well as the care she and Zach provided for them. Angela noted J.L. and R.L. lived with her in-laws and the children visited together frequently. She stated she and the children were trying to learn sign language so they could communicate with J.L. and R.L.

¶ 25 Angela testified the minors referred to her and Zach as their aunt and uncle. Additionally, she and Zach were willing to provide the minors with permanency through adoption. Angela stated the minors were her family and she had been a part of their lives since birth. She testified the children were affectionate toward her and she returned their affections. Angela stated the minors knew who their biological parents were. Em. L. stated she “dislike[d]” Jed and was angry with him because he yelled and cursed at her. Angela described A.L. as having an “anger problem too.” However, she acknowledged that all four minors loved Jed and Nicole. Angela further acknowledged that a background check on Zach had revealed he committed “theft of a four-wheeler 10 years ago.” She was not aware of any criminal history he had aside from that charge.

¶ 26 Finally, the State presented the testimony of Courtney Kavanagh, who had been Jed and Nicole’s CYFS caseworker since August 2015. Kavanagh observed the children in their foster homes. She testified she had no safety concerns about Angela and Zach’s home and no problem communicating with Angela. She noted Angela and Zach had reliable transportation and consistently attended the children’s medical appointments. Kavanagh also observed effective and appropriate discipline in the home. She believed Angela could effectively handle all four children on her own. Further, she stated Angela and Zach had committed to providing permanency for the children and she had no concerns about adoption. Kavanagh believed the children were very attached to Angela and they reported that they liked living with her. She stated the children’s relationship with Zach was the same, they felt comfortable with him and showed him affection. Additionally, Kavanagh testified she was aware DCFS conducted a criminal background investigation on Zach, which revealed that he had stolen a four-wheeler. However,

she asserted that, at the time the children were placed with Angela and Zach, a substantial period of time had passed since the four-wheeler incident with no additional criminal activity on Zach's record.

¶ 27 Kavanagh stated J.L. was two years old and had been in his foster home since birth. He had some hearing issues and was receiving developmental and speech therapy. His therapy included sign language. Kavanagh described J.L. as having "a very close relationship" with his foster parents, noting he looked to them for guidance. She believed he had a strong bond with his foster parents and noted they were affectionate with one another. Kavanagh further testified that the foster home had appropriate bedding for J.L. and safety measures in place. She stated Shannan and Monte were willing to provide permanency for J.L. and his younger sibling, R.L., and Kavanagh had no concerns about an adoption. Kavanagh testified J.L. referred to Shannan and Monte as "momma" and "dada."

¶ 28 Kavanagh stated she authored the best-interests report and recommended termination of Jed's and Nicole's parental rights. She reasoned that the minors needed permanency and had developed strong attachments to their foster parents. Additionally, Kavanagh had concerns about the children returning home because Jed and Nicole had "not followed up with their service plan."

¶ 29 Kavanagh recalled a conversation she had with Em. L. in April 2016 regarding her parents. Em. L. reported that she heard her parents were divorcing and that she was concerned for her mother. She stated she did not have a very close relationship with Jed and remembered him yelling, being hungry, and that respondent "mostly cared for" Em. L.'s younger brothers. In May 2016, Em. L. reported to Kavanagh that she learned her parents were not get-

ting divorced, she was feeling better about things, and she was sleeping better.

¶ 30 Merle Buerkett, a pastor for No Mountain Too High Church in Athens, Illinois, testified on behalf of Jed and Nicole. He met Jed and Nicole approximately 8 to 10 years prior through a church outreach program for youth. Buerkett saw Nicole frequently while she was driving the church van, and he worked on several different projects with Jed. He described Jed as a hard worker, kind, considerate, and conscientious. However, he could also see that Jed “was kind of agitated.” Buerkett stated Jed “would get fussy in his temperament” but that he has since changed. He believed Jed was calmer now and “more at peace.”

¶ 31 Buerkett testified Jed and Nicole regularly attended church services for a period of time. However, he acknowledged that it had been “some time” since that occurred. There were times Buerkett also observed Jed and Nicole with their children. He stated the children and parents loved one another and he witnessed the children giving Jed and Nicole affection. Buerkett never witnessed any abuse or inappropriate physical contact between the parents and children, nor did he see Jed yell at the children. The children appeared healthy and well-clothed.

¶ 32 Buerkett recalled that Jed and Nicole stayed at the church “for a period of time” when they had two children. Buerkett stated they had a room that was maintained appropriately and they “always helped around” the church. Buerkett also visited Jed and Nicole in their own home. He described his visit as being “some time” ago and stated he noticed the children were happy. Although the home was messy, it was not filthy. Additionally, Buerkett denied that he observed Jed to have any substance-abuse issues. However, he acknowledged that he tried to help Jed get a job at Walmart, but the job did not “pan out because of a failed test.”

¶ 33 Buerkett estimated it had been four or five years since he observed Jed and Nicole

with their children. However, he recalled seeing Jed and Nicole the previous Christmas. At that time, Jed returned gifts that had been given to the family, stating they did not need them and asking that the gifts be given to another family. Finally, Buerkett testified that, although Jed and Nicole “had work to do on being parents,” he did not believe their parental rights should be terminated.

¶ 34 Susan Lynn Anderson also testified, stating she had known Jed and Nicole since 2005, when she was the leader of their church youth group. She recalled both participating in community activities through the youth group. Anderson described Jed as smart, upstanding, and “[j]ust a regular guy.”

¶ 35 Anderson stated she had opportunities to observe Jed and Nicole with their children. She testified the children appeared well-dressed and well taken care of. They also appeared to love their parents. Anderson never noticed Jed raising his voice to the children, nor did she witness any domestic violence between the parents or any substance-abuse issues. She also stated she visited the family in their home for the purpose of “[h]elping them out financially.” Anderson believed Jed and Nicole had three children at the time. She stated the home looked “like a normal home.”

¶ 36 Anderson testified Jed and Nicole were good parents to their children. She did not believe their parental rights should be terminated, stating the children should stay with parents who love them and care about them.

¶ 37 Jed testified on his own behalf, stating he was 33 years old. He attended school until his senior year of high school but left before graduating due to “bad mistakes as a kid.” Ultimately, Jed obtained his general equivalency diploma and joined the military. He was in the

military for three years and received medical, combat, and weapons training. From 2003 to 2004, he served in Iraq. Jed stated he “was an infantry soldier and front line soldier” and “got to see everything first.” Although he did not sustain any physical injuries, he was exposed to improvised explosive devices and comrades being killed. After being discharged from the military, Jed “bounced from place to place” before settling in Petersburg, Illinois, in 2005.

¶ 38 Jed described his work history since settling in Petersburg, stating he worked at fast food restaurants and worked “odd[s] and ends jobs” around town. The last two years he “subcontracted through multiple contractors around town” and performed siding, framing, and roofing work. More recently, he began working as a full-time commercial roofer for a company in Springfield, Illinois. Jed stated his full-time position was seasonal, and he continued to perform “work on the side with [his] business.” In 2016, he expected to earn \$25,000 to \$30,000 from his work. He testified Nicole would make \$11,000 to \$17,000 at her job.

¶ 39 In 2005, Jed met Nicole while participating in the same church youth group and, in 2007, they were married. He described their marriage as “pretty good for the most part.” He recalled that they separated in April 2016 for less than two weeks. Jed testified the separation was caused by a misunderstanding and stress “over the case of [their] children.” He stated they had since reconciled and he felt they had a loving relationship.

¶ 40 Jed further testified that he had six children. He stated he had good relationship with them and was very interactive with them when he could be. Jed stated the children called him “daddy” and expressed love to him both verbally and physically. He testified he disciplined the children by using “time out[s],” redirecting them, talking with them, or removing them from the situation that was causing trouble.

¶ 41 Jed testified that after leaving the military, he “wasn’t the same person.” He became reclusive, isolated himself, and “had adverse reaction[s] to authority.” He also had mood swings, and his temper was affected. Jed did not seek any treatment for himself because he “thought it was normal.” However, once he realized he was losing his family and children, he decided to do something about it. He realized he had a problem when he participated in the court-ordered psychiatric evaluation and was diagnosed with PTSD. Jed asserted he sought treatment from the VA “as soon as [he] found out.” He estimated he began seeking treatment in March 2015. The VA recommended counseling and medication. Jed testified he began counseling in April 2015, and he attended sessions every two weeks. Also, he had been taking medication for nine months. Since engaging in counseling and taking medication, Jed obtained employment, noticed he was more active, and was no longer hiding from people. He also realized there was “stuff” he had not been doing the right way, like keeping his house clean. Jed also believed he was closer to his children.

¶ 42 Jed testified he received VA benefits of \$917 a month. He denied being unemployed at any point throughout the underlying neglect proceedings and asserted he tried to give his caseworker verification of his employment. Initially, he provided her with deposit slips, but his caseworker stated she could not accept them as proof of employment. Later, during the fitness portion of the termination proceedings, Jed provided his caseworker with “a 1099,” which he testified was what he received from the contractors he worked with. Jed acknowledged that he did not present the paychecks he received to his caseworker, stating he thought the deposit slip “was good enough.”

¶ 43 Jed further denied that there was ever any domestic violence between him and

Nicole or that there were substance-abuse issues in his household. Jed acknowledged that he refused to submit to toxicology tests as requested by his caseworkers. He asserted he felt “insulted” because he never had any substance-abuse problems. Jed further testified that he was not asked to take a drug test until he questioned whether one of the foster parents was doing drugs.

¶ 44 Jed also acknowledged that he missed some medical appointments for his children. However, he asserted the primary reason he missed the appointments was due to work. He testified he had to have gainful employment to take care of his family, and he was given “very short notice” of appointments, so it was hard for him to get time off of work. He also denied that he received notice of every appointment his children had. Jed maintained he attended some of his children’s medical appointments, although he could not recall how many. Further, he testified that during the first year his children were taken into care, he lacked reliable transportation.

¶ 45 Jed testified he was attempting to learn sign language. He noted that Nicole had hearing issues and could not hear him unless he raised his voice. Jed testified Nicole had a hearing amplifier, but it did not cure her hearing loss. He believed his actions were misconstrued when he yelled or spoke loudly to Nicole.

¶ 46 Jed noted that the children and their foster parents lived in close proximity to him and Nicole. His four oldest children lived approximately one block away, and J.L. lived about six blocks away. Jed stated he would occasionally see the children outside of sanctioned visitations and that such interactions went “pretty well.” He noted Angela would allow him to say “hi” to the children and they appeared happy to see him. Jed also testified that they had many visits with the children, which Angela supervised. Recently, they had been to a water park. They had also seen the children at family reunions. During those functions, Jed and Nicole were

“pretty much 100 percent watching [their] children and doing things for them.” Jed testified that he wanted to be a father to his children and take care of them. He believed that the treatment he received following his PTSD diagnosis helped him recognize how he needed to treat his children.

¶ 47 Nicole also testified at the best-interests hearing. She stated she graduated from high school in 2007, and she had maintained employment since that time. She testified she has had hearing problems since the age of three. She wore a hearing amplifier but could also read lips and knew sign language. Nicole described her relationship with each child, stating she was close with Em. L. and A.L., and El. L. was her “snuggle baby” and liked to cuddle. She noted T.L. was 11 months old when she was taken into care, but Nicole loved T.L. like the rest of her children. During visitations, T.L. and Nicole became closer and T.L. would state that she wanted to “come home.” Nicole stated she was also close with J.L., who called her “mom” and told her he loved her. She testified she was unaware that J.L. had any special needs. Nicole asserted that all of her children expressed the desire to “come home.”

¶ 48 Nicole testified that both she and Jed love their children. She described Jed as “a very good father” and stated she had learned to “deal with” Jed’s PTSD and helped him as much as she could. She observed positive changes in Jed since he began receiving treatment for his PTSD. Specifically, Nicole noticed that Jed was not as agitated, he disciplined the children like he was supposed to, did not spank the children, and did not raise his voice. Nicole testified her relationship with Jed was stronger following their separation in March or April 2016. Also, once Jed began receiving treatment for his PTSD, he was more understanding and listened to her instead of blocking her out.

¶ 49 Nicole denied that she ever spanked her children. Additionally, she testified that after the children were removed, she obtained more information about proper ways to discipline them, particularly El. L., who had been diagnosed with Asperger's Syndrome. Nicole asserted she completed parenting classes and learned how to "maintain" her children, as well as activities to engage in with them. She testified visitations with the children went "really well." The children always ran to her and showed her affection.

¶ 50 Nicole denied abusing alcohol or illegal drugs. Also, she believed she had been cooperative with DCFS. She described her history of employment. At the time of the best-interests hearing in August 2016, she stated she was working 56 to 60 hours per week at McDonald's. During the best-interests hearing in September 2016, Nicole testified she performed in-home health care work. Further, Nicole acknowledged that, initially, she did not appropriately maintain her home. Although she denied that it was unclean, she stated she had too much "clutter" and "stuff." Currently, her house was always clean, with adequate furniture. Nicole recognized that there had been reports about her home smelling like cat urine, but she testified that was due to her old cat, which she no longer had. Additionally, Jed no longer smoked cigarettes inside the home.

¶ 51 Nicole denied that anyone ever asked her to take a toxicology screen or that she was reprimanded for failing to take a test. However, she also indicated that she received telephone calls at work regarding toxicology testing, but she could not make it to the tests because she was working. Nicole testified, on two occasions, she received same-day notice that "they wanted us to come in" for toxicology tests.

¶ 52 Regarding her children's medical appointments, Nicole estimated that she missed

approximately three. She asserted she received short notice of the appointments and missed them because she was working.

¶ 53 Nicole agreed with a description in her service plan that she “had multiple failed attempts to successfully engage in counseling.” However, she testified that when the children were first removed from the home, she was told that seeing a counselor was optional. Additionally, Nicole reported that her most recent counselor said things she did not like. Specifically, she complained that the counselor recommended Nicole “just give up and sign her rights [to her children] over.”

¶ 54 Nicole further disagreed with a statement in her service plan that she failed to follow recommendations to receive prenatal care in connection with the pregnancy of her sixth child. She asserted she did not find out she was pregnant until the end of the pregnancy.

¶ 55 The record reflects the trial court also considered a videotape submitted by Jed and Nicole depicting portions of the family’s visitations. Further, it conducted *in camera* interviews of the two oldest children, Em. L. and A.L. (The appellate record does not contain a transcript of the court’s *in camera* interviews.) Finally, the record shows the court considered a report prepared by the GAL, which recommended termination of Jed’s and Nicole’s parental rights. The GAL noted each child had a strong bond with his or her foster parents, and the two oldest children had expressed a desire to the GAL to remain in their foster home. The GAL described the children as thriving in their foster homes and noted that both sets of foster parents had “voiced a strong willingness to provide permanency for” the children.

¶ 56 At the conclusion of the hearing, the trial court found termination of Jed’s and Nicole’s parental rights was in the children’s best interests. In reaching its decision, the court

and February 2015, when no children were residing in the home; and (3) the ratings he received with respect to visitations with his children, which he maintains “flies in the face of the testimony elicited from” individuals who supervised the visitations and showed he had the ability to parent his children.

¶ 61 A trial court may involuntarily terminate parental rights if it finds (1) the State proved the parent unfit by clear and convincing evidence based upon grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) and (2) termination is in the child’s best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). “A parent’s rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.” *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). “A reviewing court will not reverse a trial court’s fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record.” *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 62 In this case, the State alleged two grounds for finding Jed unfit, including that he failed to make reasonable progress toward his children’s return home during specified nine-month periods following their neglect adjudications. 750 ILCS 50/1(D)(m)(ii) (West 2014).

“[T]he benchmark for measuring a parent’s ‘progress toward the return of the child’ under section 1(D)(m) of the Adoption Act encompasses the parent’s compliance with the service plans and the court’s directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent.” *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030,

1050 (2001).

Additionally, we have held that reasonable progress “is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody.” (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 63 On appeal, the State points out that Jed entered into a stipulation at the fitness portion of termination proceedings, agreeing that the State would present evidence showing he received “unsuccessful” ratings on relevant service plans and acknowledging several ways in which he failed to comply with the required service plan tasks, including failing to (1) cooperate with DCFS by not signing releases or allowing workers into his home, (2) timely complete a psychological evaluation, (3) attend medical appointments for his children, (4) complete parenting classes, (5) follow through with recommendations from his domestic-violence assessment, or (6) provide written documentation of a legal means of income. The State maintains that, due to the stipulation, Jed may not challenge the trial court’s acceptance of the evidence of Jed’s service plan failures or his “unsuccessful” service plan ratings. In response, Jed contends that he objected to termination of his parental rights at all times during the underlying proceedings and never stipulated that he was an unfit parent.

¶ 64 “A stipulation is an agreement between parties or their attorneys with respect to an issue before the court.” *People v. Woods*, 214 Ill. 2d 455, 468, 828 N.E.2d 247, 256 (2005). “The primary rule in the construction of stipulations is that the court must ascertain and give ef-

fect to the intent of the parties.” *Id.* at 468-69, 828 N.E.2d at 256. Further, “[a] stipulation is conclusive as to all matters necessarily included in it.” *Id.* at 469, 828 N.E.2d at 256 (quoting 34 Ill. L. & Prac. *Stipulations* § 8 (2001)). Generally, a party is not permitted to attack or otherwise contradict any facts to which he or she stipulated. *Id.*

¶ 65 Here, we agree that Jed did not admit or stipulate that he was unfit as alleged in the State’s petition to terminate. Thus, his stipulation was not conclusive as to that ultimate factual determination, and the trial court was still required to consider and weigh the evidence presented to determine whether he was unfit. However, Jed did stipulate to what the State’s evidence would show; acknowledged that he did not intend to offer any contrary evidence at the time of his stipulation; and, in fact, he offered no contrary evidence or argument to rebut what he agreed was the State’s admissible evidence. In the absence of contrary evidence, the parties’ stipulation demonstrated that, during the relevant nine-month time frames, Jed received “unsuccessful” ratings on his service plans and was slow to comply or failed to comply with service plan directives in several respects. As a result, the evidence presented at the fitness hearing amply demonstrated a lack of reasonable progress by Jed during the relevant nine-month time periods, in that, due to his failure to comply with services, it was unlikely his children could be returned to his custody in the near future.

¶ 66 On appeal, Jed challenges the trial court’s fitness determination on the basis that DCFS and its agents were biased against him. As indicated above, he did not raise this argument with the trial court and, as a result, it has been forfeited. See *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772, (2009) (finding the “forfeiture principle applies in proceedings under the Juvenile Court Act”). However, even ignoring Jed’s forfeiture, we find no merit to his assertions

of bias.

¶ 67 First, in challenging the trial court's fitness determination, Jed cites, and relies upon several reports and documents that, although contained within the appellate record, were not introduced as evidence at any of the fitness hearings. However, a trial court's fitness decision "should be based only upon evidence properly admitted at the unfitness hearing." *In re J.G.*, 298 Ill. App. 3d 617, 629, 699 N.E.2d 167, 175-76 (1998). Appellate review of a trial court's fitness determination should similarly be confined to such evidence. *In re J.J.*, 316 Ill. App. 3d 817, 823, 737 N.E.2d 1080, 1085 (2000), *aff'd*, 201 Ill. 2d 236, 776 N.E.2d 138 (2002). Thus, reports or documents that Jed cites on appeal but which were not properly admitted at the fitness hearings may not be considered in reviewing the trial court's fitness determination.

¶ 68 Second, the evidence presented simply fails to demonstrate bias by DCFS or its agents. Jed maintains due consideration was not given to his PTSD diagnosis. However, as discussed, reasonable progress is an *objective* standard and is measured by looking at a parent's compliance with service plan directives. In this instance, the evidence demonstrated Jed either failed to comply with required service plan directives or was slow to engage in services, such that it was unlikely the court could return his children to his custody in the near future.

¶ 69 We also disagree with Jed's contention that DCFS and its agents were biased against him because they placed undue emphasis on improper considerations, such as his failure to submit to toxicology screens or the contents of his refrigerator after the children were removed from the home. The record indicates these facts were considered together with other evidence demonstrating Jed's level of cooperation with DCFS. While neither factor appears to have been a focus of the trial court's fitness determination, both were relevant to the overall question of

Jed's compliance with his service plan directives and his ability to adequately care for his children.

¶ 70 Finally, we note Jed also argues the bias of DCFS and its agents was shown through the unsatisfactory ratings he received for visitations with his children. He references witness testimony, which he contends "demonstrated clearly" his ability to parent during visitations. Again, we find no evidence of bias. While some of the evidence with regard to visitations demonstrated appropriate interactions between Jed, Nicole, and the children, evidence also showed visitations were described as "chaotic," and concerns were raised about Jed's and Nicole's ability to manage all six of their children. Additionally, Jed was described as focusing his attention on only J.L. or R.L. during visits, being "aggressive" with the children and caseworkers, cursing in front of the children, calling Nicole names, and yelling at Nicole and the children beyond what was necessary to address Nicole's hearing issues.

¶ 71 Based upon the evidence presented, the trial court's finding that Jed was unfit was not against the manifest weight of the evidence. In particular, sufficient evidence was presented to demonstrate a lack of reasonable progress by Jed toward the return of his five children during the relevant nine-month time frames. Because we find the evidence presented was sufficient to support a finding that Jed was unfit for failing to make reasonable progress, we need not address the alternative ground alleged by the State.

¶ 72 **B. Best Interests**

¶ 73 On appeal, Jed next argues termination of his parental rights was not in his children's best interests. He contends it "is clear that [he] has turned his life around" and asserts the evidence showed he was active in the community, learned to control his mood swings, earned a

substantial income and could financially support his children, had a loving relationship with his children, and was able to parent his children appropriately.

¶ 74 “At the best-interest stage of termination proceedings the State bears the burden of proving by a preponderance of the evidence that termination is in the child’s best interest.” *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Pursuant to the Juvenile Court Act, there are several factors for a court to consider when making a best-interests determination. 705 ILCS 405/1-3(4.05) (West 2014). Those factors, which must be considered in the context of the child’s age and developmental needs, include:

“(1) the child’s physical safety and welfare; (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; (6) the child’s community ties; (7) the child’s need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (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.” *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 75 On review, a trial court’s best-interests determination will not be reversed unless it was against the manifest weight of the evidence. *Id.* “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.” *Id.*

¶ 76 Here, the evidence at the best-interests hearings showed J.L. was taken into care and began residing with his foster parents shortly after his birth in October 2013. He resided in the foster home with his younger sibling, R.L., and was described as having a “strong bond” with his foster parents, whom he referred to as his mother and father. The evidence demonstrated J.L. was doing well in the home and all of his needs, including those related to his developmental and hearing issues, were being met. J.L.’s foster parents wanted to provide him with permanency through adoption and facilitated a relationship with his older siblings.

¶ 77 Evidence also showed Em. L., A.L., El. L., and T.L. resided together in the home of their maternal aunt and uncle. Each was described as having a “strong bond” with their foster parents, particularly El. L. and T.L., who were 2 ½ and approximately 10 months old, respectively, when they were removed from their parents’ care. The children were described as happy and thriving in their foster home, and the two eldest children expressed to the GAL that they wished to remain in the care of their aunt and uncle. The children’s foster parents also wished to provide them with permanency through adoption. Further, the evidence showed the foster parents had been willing to facilitate a relationship with both the children’s siblings and Jed and Nicole.

¶ 78 Conversely, the evidence showed Jed refused to comply with the required tasks in his service plan and, at best, was slow to engage in necessary services. In particular, he failed to provide proof of income from his alleged employment, refused to engage in a recommended domestic-violence course, behaved threateningly toward his caseworker to the point that she could only meet with him in a public location, and refused to submit to toxicology screenings. Moreover, we note Jed repeatedly failed to attend his children’s medical appointments despite the fact that a lack of appropriate medical care was one of the bases for their removal from his care. As a

result of Jed's failure to promptly and consistently engage in services, his children remained in their foster placements for significant periods of time.

¶ 79 Ultimately, the trial court considered the appropriate factors, including the children's need for permanence, in finding termination of Jed's parental rights was in his children's best interests. The evidence presented did not clearly demonstrate that the court should have reached the opposite result, and its best-interests finding was not against the manifest weight of the evidence.

¶ 80

III. CONCLUSION

¶ 81 For the reasons stated, we affirm the trial court's judgment.

¶ 82 Affirmed.