2017 IL App (5th) 160177-U

NO. 5-16-0177

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| *In re* K.J., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Saline County. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 11-JA-12 |
| | ) | |
| Dennis J., | ) | Honorable |
| | ) | Todd D. Lambert, |
| Respondent-Appellant). | ) | Judge, presiding. |

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2017 IL App (5th) 160179

NO. 5-16-0179

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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| *In re* D.J., a Minor | ) | Appeal from the |
| | ) | Circuit Court of |
| (The People of the State of Illinois, | ) | Saline County. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | |
| v. | ) | No. 11-JA-13 |
| | ) | |

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|---|---|---|
| Dennis J., | ) | Honorable |
| | ) | Todd D. Lambert, |
| Respondent-Appellant). | ) | Judge, presiding. |

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Cates and Overstreet concurred in the judgment.

**ORDER**

¶ 1 *Held*: Judgment terminating respondent's parental rights affirmed where circuit court's findings regarding the respondent's unfitness and the children's best interest were not against the manifest weight of the evidence, and the respondent was not deprived of due process.

¶ 2 In this consolidated case, the respondent, Dennis J., appeals the orders entered by the circuit court of Saline County on February 22, 2016, and March 29, 2016, that found him unfit as a parent and found it in the best interest of his two children to terminate his parental rights. Because this appeal involves a final order terminating parental rights, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on September 24, 2016. However, due to multiple motions for extensions of time filed by the respondent and granted by this court, the briefing schedule was not complete until March 27, 2017. The case was immediately placed on the docket and we now issue our disposition. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 On March 29, 2011, petitions for adjudication of wardship were filed by the State, pursuant to section 2-3 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3 (West

2010)), alleging that the minor children in this case, D.J. and K.J., were neglected by being in an environment that was injurious to their welfare because their mother tested positive for cocaine, THC, and benzodiazepines at the time she gave birth to the children's sibling.[1] The children were in the protective custody of the Department of Children and Family Services (Department) when the petitions were filed. Orders were entered the following day, awarding temporary custody of the children to the Department.

¶ 5 The Department established service plans, which were filed in the circuit court on May 10, 2011, with permanency goals for the children to return home within 12 months. Orders of adjudication were entered on June 21, 2011, finding that abuse or neglect was inflicted upon the children as alleged in the petitions for adjudication. The children were made wards of the court via dispositional orders entered on July 19, 2011. Permanency orders were entered on February 14, 2012, finding, *inter alia*, that the respondent had not made reasonable and substantial progress toward the goal of the children returning home in 12 months. Permanency orders were entered on April 16, 2013, finding, *inter alia*, that the respondent had not made reasonable or substantial progress toward the children's return home, and establishing new permanency goals for substitute care of the children pending the termination of the respondent's parental rights.

[1]No allegations of neglect were made against the respondent because he was incarcerated in the Illinois Department of Corrections at the time and the children were not in his care. The mother—who voluntarily relinquished her parental rights—is not subject to this appeal.

¶ 6 On December 13, 2013, motions were filed for the termination of the respondent's parental rights and for the appointment of a guardian with the power to consent to the children's adoption. On February 4, 2014, the respondent filed petitions for custody of the children. Additional permanency orders were entered on March 4, 2014, finding, *inter alia*, that the respondent had made reasonable and substantial progress toward the children's return home. However, the permanency goals remained as substitute care of the children pending the termination of the respondent's parental rights. On September 4, 2014, amended motions were filed for the termination of the respondent's parental rights and for the appointment of a guardian with the power to consent to the children's adoption. Permanency orders were entered on May 5, 2015, finding, *inter alia*, that the respondent had not made reasonable or substantial progress toward the children's return home. The permanency goals remained as substitute care of the children pending the termination of the respondent's parental rights.

¶ 7 A fitness hearing commenced on May 19, 2015, where the following evidence and testimony was presented. Andrea Quigley testified that she is employed as a foster care supervisor at Lutheran Social Services (LSS) and she provided supervision of the respondent's case. An intake interview was conducted with the respondent via telephone on April 18, 2011, and a service plan was established for him on May 3, 2011, which Quigley reviewed and approved. Quigley testified that pursuant to the service plan, the respondent was required to provide the address of the prison where he was housed and to place LSS on a list of approved visitors in order to facilitate visitation with the children at the prison. The respondent was additionally required to notify LSS of his date of parole,

to provide LSS the name of his parole officer once he was released, to be prepared for visits with the children, to stay in contact with LSS, to attend substance abuse treatment, to enroll in an educational or training program, and to set up a financial fund for the children while he was in prison.

¶ 8 Regarding the respondent's compliance with the service plan, Quigley testified that he signed a release of information but he did not add LSS to the list of approved visitors at the prison until December 2011, seven months after the service plan was implemented. Quigley explained that in order for LSS to be placed on the list of approved visitors, the respondent needed to provide to the prison the children's names and birth dates, as well as the name of the LSS caseworker who would be bringing the children to the visit. The caseworker contacted the prison several times, but visitation did not commence until the respondent provided the necessary information seven months later. Quigley testified that no other goals of the service plan were satisfied by the respondent and multiple service plans were subsequently implemented with identical requirements which the respondent never fulfilled.

¶ 9 Quigley testified on cross-examination that the initial May 3, 2011, service plan was served on the respondent by mail to the prison, as were subsequent service plans. She recalled that the respondent was sent an integrated assessment for social history and a release of information, both of which he completed, signed, and returned. Quigley conceded that she had no proof regarding when the service plans were mailed or whether the respondent actually received the service plans. She noted, however, that the service

plan requirements were set forth in the aforementioned integrated assessment, which the respondent did receive and complete.

¶ 10 Constance Hernandez testified that she is employed by LSS as a child welfare specialist and was the respondent's caseworker from May 8, 2012, to June 11, 2012, and again from July 3, 2012 through January 30, 2013. Hernandez had no contact with the respondent from May to June 2012, nor did she send any letters to him at the prison. She was aware that he had not contacted LSS since September 2011. After she was re-assigned to the respondent's case on July 3, 2012, she met with him at a court proceeding on August 14, 2012, informed him that she was his caseworker, and remained on the case until after he was released from prison on January 4, 2013. Hernandez testified that the respondent told her at the August 14, 2012, court proceeding that he was unable to complete any services because he was in a maximum security facility. Hernandez did not confirm his statement and emphasized that it was his own self-report. Hernandez testified that at the August 14, 2012, proceeding, the circuit court granted LSS jurisdiction over the children's visitation and LSS did not recommend visits because the respondent was incarcerated and "it would not be a suitable environment for the children to visit."

¶ 11 Hernandez noted that there was one active service plan for the respondent while she was his caseworker, dated September 20, 2012, which required him to maintain contact with the children, inform LSS of his conditions of parole, attend AA and NA meetings as available, inform LSS of his release date, and participate in educational, employment, and training programs while incarcerated. Hernandez testified that she

mailed the service plan to the respondent at the prison on October 19, 2012, which he received, signed, dated, and returned to her on November 30, 2012. Hernandez indicated that there was a provision of the service plan that allowed the respondent to present any questions he had, which he left blank. She added that the respondent was able to contact her via telephone if he so desired but he never did so. Hernandez reported that she did not ask the respondent to sign a release of information on the service plan—which would have allowed her to obtain information from the prison—because the respondent informed her himself that he did not complete any of the services on the plan. Accordingly, he was rated unsatisfactory on all of the service plan requirements.

¶ 12 Rachel Smith testified that she is employed by LSS and was involved as a child welfare specialist in the respondent's case from February 2013 to March 2014, and resumed duties as the caseworker following Hernandez. By that time, the respondent was out of prison. When Smith assumed the case, a service plan dated January 2013 was in place. Smith agreed that the service plan did not require the respondent to do anything other than maintain contact with LSS, attempt to visit with the children, and to keep LSS advised of his address. There were no educational or counseling requirements on that particular service plan. Smith confirmed that the respondent was rated unsatisfactory on all of the requirements of the plan because he did not maintain contact with her or with LSS. She stated that numerous attempts were made to contact him and "visitation was sporadic at best." She emphasized that in order to complete services, it was essential for the respondent to maintain contact with her, "and that did not happen."

¶ 13 Smith testified that she eventually made contact with the respondent via telephone on March 19, 2013, and scheduled a visit with the children for March 22, 2013, but when she arrived at the respondent's residence for the visit on that date, the respondent was not home. Smith further indicated that when the respondent made a court appearance on March 26, 2013, she instructed him to provide her with his work schedule so she could arrange to bring the children for a visit. She followed up with a letter to the respondent on March 27, 2013, again requesting him to check his work schedule and confirm his availability for a visit, but she was never able to obtain that information.

¶ 14 Smith testified that on April 23, 2013, she mailed a letter to the respondent to inform him that the permanency goal had been changed to substitute care pending a termination of parental rights. By May 14, 2013, Smith was aware that the respondent had changed addresses, but she was unsure of the new address. She stated that she knocked on the door of the home at his previous address multiple times, but was always told by an unknown female that the respondent was not there. Smith testified that she searched public records to locate the respondent's last known address and began sending letters there on or about July 24, 2013. She also recalled sending letters on August 1, 2013, and September 3, 2013, attempting to schedule visits.

¶ 15 Smith testified that she prepared the next service plan dated September 9, 2013. She indicated that she attempted to notify the respondent of the service plan by means of phone calls, letters, and by physically going to his residence numerous times, but contact was never made. Accordingly, a copy of the service plan was made available to the respondent through an administrative case review (ACR), but Smith indicated that the

respondent never appeared at the ACR and never made himself available, thereby making visits with the children impossible. For these reasons, the respondent was rated unsatisfactory on all of the requirements of the service plan.

¶ 16 Smith testified that she made contact with the respondent in court on January 22, 2014. At that time, the respondent informed her that he had purchased various items for the children. Despite seeing the respondent at six court hearings, Smith stated that he never provided her with his work schedule so she could arrange visits. Smith was involved in the case from February 2013 to March 2014 and could not recall receiving a single phone call from the respondent concerning visitation. Smith testified that the children were initially placed with their maternal grandmother until she died in December 2013, and Smith heard "through the grapevine" that the respondent made unofficial visits with the children at the grandmother's house that were never documented by LSS. She testified that when she first assumed the case, visits were eventually removed from the schedule "after some time that [the respondent] stopped attending."

¶ 17 The respondent testified that he was incarcerated in 2010 and released on parole in January 2013. He had been imprisoned eight or nine months when the case commenced in 2011, and the children resided with their maternal grandmother at the time. Prior to his incarceration, the respondent also resided at the grandmother's house with the grandmother, the children, and the children's mother. He first learned of the case when his counselor at the prison informed him that he would be receiving a telephone call from the Department. When he received the phone call, he was provided the details of the case.

¶ 18 The respondent testified that while he was in prison the Department asked him to attend whatever NA or AA classes were available and to stay in contact with the children. He stated that "they didn't offer any educational [*sic*] really," but he obtained a job at the prison working in the kitchen and he stayed in contact with the children by writing them letters and sending them cards on birthdays and holidays. He conceded that there was one NA or AA session group offered, but he did not attend because "it was nothing that was certified[,] *** you couldn't get any documentation afterward," and there was a requirement "to get on the list."

¶ 19 The respondent testified that he received two letters from the Department with documents attached that he signed and returned. He recalled meeting Rachel Smith when she assumed the case. He testified that every time he saw Smith in court, he asked her about visits with the children and she responded that "she would get back at me or she would send me something in the mail, but I never received visitations in the mail [*sic*]." The respondent opined that Smith "never tried to help me see my kids." When asked why it took so many months to place the children on the list of approved visitors at the prison, the respondent replied that he was required to fill out a visitor list once per month. The children were already on the list, but he was required to add the name of the attending LSS caseworker. The prison required a specific name, and each time a caseworker from LSS brought the kids, that particular person's name was required to be on the list. According to the respondent, he was required to create a new visitor list every time the children visited because the attending LSS caseworkers changed.

¶ 20 The respondent indicated that after Smith left the case, a new caseworker was assigned and he exercised all of his visits. He explained that the documented visits began after case aids came to his house in March 2014 and hand-delivered the visitation schedule to him. He testified that he did receive letters regarding visitation times and he never missed any visits when he received those letters. The respondent testified that besides the documented visits at LSS, he saw the children at least once per week at the grandmother's house from the time he was released from prison in January 2013, until the grandmother passed away. He added, "I wasn't supposed to but [the grandmother] would call me over. And she just told me not to tell nobody [*sic*] because I wasn't supposed to be going over to visit them." According to the respondent, he told his caseworker that he was providing the children with food and clothing during visits and he provided to the caseworker a list of the items he had purchased.

¶ 21 The respondent testified that the children call him "dad" and he had a "very strong relationship" with them until their grandmother passed away and they moved in with their new foster family. The respondent described the relationship with the children as "shaky" after they moved in with the foster family and explained that "they seem a little distant from me now." He noted that he had only visited the children three or four times since they began residing with the new foster family.

¶ 22 The respondent testified that he was on house arrest when he was released from prison. He denied that Rachel Smith ever came to his house while he was there and indicated that the lady who was staying at his residence would not lie to the caseworkers who came to the home inquiring of his whereabouts. He testified that he was allowed to

be employed while on house arrest, but he was required to come home after work. He was employed for eight months at a car wash, working Monday through Saturday, 9 a.m. to 5 p.m. He was aware at one point that LSS had a phone number for him that was incorrect. He testified that he told the caseworker that the phone number was incorrect and after checking, it was discovered that LSS had been unable to reach him by phone because the number they were using was not the latest number he had provided.

¶ 23 The respondent testified that he received one service plan by mail at the prison, but never received any ACR notice or letter from the Department, nor did he receive any follow-up correspondence to inform him of the results of the ACR. He stated that he did receive letters from LSS regarding visitation while he was in prison, but he never received a service plan in the mail after his release from prison. He indicated, however, that his public defender did show him a service plan. The respondent alleged that the only requirements of the service plan that he did not complete while incarcerated were the anger management class and maintaining visitation with the children. The respondent reported that he currently resides in a stable home that he is purchasing via contract for deed and he now has another child. He further stated that he has the financial ability to provide for the children and is currently employed part-time at a furniture and appliance store.

¶ 24 On February 22, 2016, the circuit court entered orders, finding that the State proved by clear and convincing evidence that the respondent is unfit as a parent. The circuit court noted, *inter alia*, that the respondent received consistent unsatisfactory

ratings on his service plans, that his visits with the children were sporadic at best, and that he was uncooperative with the Department.

¶ 25 A best-interest hearing was conducted on March 29, 2016. There, Alyssa Cline testified that she is employed by LSS as a child welfare specialist, is the current caseworker for the respondent and the children, and has been their caseworker since August 2015. Cline testified that the children are currently in a traditional foster home where they have resided for two years, both are "extremely bonded to their caregivers," and both consider their foster parents as their parents. Cline reported that the children are doing extremely well in school, they have no developmental delays, nor are they receiving special services for medical issues. They also participate in softball every year.

¶ 26 Cline opined that it would be in the children's best interest for the respondent's parental rights to be terminated because the respondent has not been involved, has not participated in services, and has not visited the children in a very long time. She specified that she was assigned the case in August 2015 and "it was long before I got the case" that the respondent visited the children, at least seven or eight months. She added that the respondent was given opportunities to visit the children every month, but he "never availed himself of that." She testified that another caseworker "had reached out to him multiple times, and there are case notes documenting her conversations with him, her attempts at phone calls with him, and dropping by his residence to establish visitation and services." She explained that the children need stable parents who are there for them and to care for them.

¶ 27 The respondent testified that he has resided at the same residence for 2½ years and he has another child who is younger than the children at issue in this case. He testified that he was not allowed to visit the children at all in 2015. The last time he remembered visiting with them was before the permanency goals were switched to substitute care pending the termination of his parental rights. He confirmed that the children were placed with a foster family two weeks after their grandmother passed away and testified that he attempted to contact them at the foster home. He managed to call them two times on a cell phone number until a caseworker "made a big deal about it and told me not to call." The respondent testified that the previous caseworker arranged visits by scheduling them through the mail. The last visit he recalled occurred in October 2014 and no caseworker had reached out to him in the last two years to encourage further contact with the children. He had not initiated contact with LSS to determine who the current caseworker was, nor had he asked his attorney to obtain that information. He indicated that he discovers who the caseworkers are each time he attends a court proceeding but he does not give them his contact information because it has not changed and they have access to it through LSS records.

¶ 28 The respondent testified that it is in the children's best interest for them to be with him because he is their biological father who loves them unconditionally. He understands that the foster parents want to adopt the children, but he never had a chance to bond with them and desires to do so now. The circuit court took the matter under advisement and entered orders on March 29, 2016, finding it in the children's best interest to terminate the respondent's parental rights. The respondent filed timely notices of

appeal. The cases were consolidated by this court on February 6, 2017, for all purposes relative to this appeal.

¶ 29 ANALYSIS

¶ 30 The respondent raises the following issues on appeal: (1) whether the circuit court erred in finding him unfit as a parent; (2) whether the circuit court erred in finding it in the children's best interest to terminate his parental rights; (3) whether he was deprived of due process from lack of service and/or lack of notice; and (4) whether LSS willfully obstructed visits between him and the children, thereby warranting an affirmative defense to termination.

¶ 31 I. Unfitness

¶ 32 The first issue on appeal is whether the circuit court erred by finding the respondent unfit as a parent. " 'Because the trial court's opportunity to view and evaluate the parties and their testimony is superior to that of the reviewing court, a trial court's finding as to fitness is afforded great deference and will only be reversed on review where it is against the manifest weight of the evidence.' " *In re Shanna W.*, 343 Ill. App. 3d 1155, 1165 (2003) (quoting *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000)). " 'A decision regarding parental fitness is against the manifest weight of the evidence where the opposite result is clearly the proper result.' " *Id.* (quoting *In re Latifah P.*, 315 Ill. App. 3d at 1128). The function of this court "is not to substitute our judgment for that of the trial court on questions regarding the evaluation of the witnesses' credibility and the inferences to be drawn from their testimony; the trial court is in the best position to

observe the conduct and demeanor of the parties and witnesses as they testify." *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999).

¶ 33 The Act, as amended, provides a two-stage process whereby parental rights may be involuntarily terminated. 705 ILCS 405/2-29 (West 2016). Under this bifurcated procedure, the Department must make a threshold showing of parental unfitness based upon clear and convincing evidence and thereafter, a showing in a separate hearing that it is in the children's best interest to sever the parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990). The grounds that support a finding of unfitness are set forth in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2016). Although section 1(D) provides various grounds under which a parent may be deemed unfit, a finding of unfitness may be entered if there is sufficient evidence to satisfy any one statutory ground. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). "It is necessary that the State prove by clear and convincing evidence one statutory factor of unfitness for the termination of parental rights to ensue." *In re M.S.*, 302 Ill. App. 3d at 1002. "Therefore, this court need not consider other findings of unfitness where sufficient evidence exists to satisfy any one statutory ground." *Id*.

¶ 34 1. *Interest, Concern, or Responsibility*

¶ 35 In this case, the respondent contends that the finding of unfitness on the basis of his failure to maintain a reasonable degree of interest, concern, or responsibility (750 ILCS 50/1(D)(b) (West 2014)) is against the manifest weight of the evidence. "In determining whether a parent has shown [that], courts consider a parent's efforts to visit and maintain contact with the child, as well as other indicia of interest, such as inquiries

into the child's welfare." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). "The interest, concern[,] or responsibility must be objectively reasonable." *Id.* "However, a parent need not be at fault to be unfit, and she is not fit merely because she had demonstrated some interest in or affection for her child." *Id.* "If personal visits were somehow impractical, courts consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts." *Id.* "Completion of service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility." *Id.* at 1065. "Courts will consider the parent's efforts which show interest in the child's well-being, regardless of whether those efforts were successful." *Id.*

¶ 36 In this case, we find no evidence indicative of an objectively reasonable interest, concern, or responsibility on the part of the respondent toward the children. See *id.*. Rather, the record shows a lack of effort on the part of the respondent to visit and maintain contact with the children and a failure to complete the objectives of his service plans. See *id.* at 1064-65.

¶ 37 Regarding service plans, it was testified by every LSS employee at the fitness hearing that several were implemented and the respondent never rated satisfactory on any of those plans. The service plans were tailored to accommodate the respondent and the requirements were designed to be feasible for him to satisfy while he was incarcerated and after his release. Nevertheless, he consistently rated unsatisfactory on all of the service plans. Although it was testified that the respondent alleged that he was unable to complete any services because he was incarcerated, the respondent himself testified that

NA/AA groups were in fact available at the prison, but he did not attend because the groups were not certified, could not be documented, and he had to "get on the list" in order to participate in the groups. Regarding the service plan requirement to visit the children, the respondent took seven months to place LSS on the approved visitor list and his explanation for that length of time was because of the trouble of changing the name of the caseworker with each visit. Testimony further showed that notwithstanding the fact that the caseworker contacted the prison several times attempting to set up visitation, seven months still expired before the respondent successfully placed LSS on the visitor list.

¶ 38 The respondent stated in his brief that "the caseworkers could not confirm that [he] was ever given a service plan until he returned one to *** Hernandez on November 30, 2012, mailed from [the prison]." However, Andrea Quigley testified that although she had no proof regarding when the service plans were mailed or whether the respondent received the service plans, the requirements of the initial service plan dated May 3, 2011, were set forth in the integrated assessment, which the respondent did in fact receive, complete, sign, and return. Hernandez did confirm that the respondent acknowledged receipt of the September 20, 2012, service plan. Although the respondent complains that the circuit court gave no weight to his alleged completion of certain classes and counseling after his release from prison, we note that those were requirements of his parole—not the service plan—and are of no consequence to the termination proceedings.

¶ 39 Rachel Smith testified that after the respondent was released from prison, a service plan of January 2013 was implemented that required nothing more than that the

respondent maintain contact with LSS, keep them advised of his address, and attempt to visit the children. Nevertheless, Smith reported that visitation was "sporadic at best" and the respondent failed to maintain contact with her and LSS, although she made multiple attempts to contact him. Smith emphasized that in order to satisfy the service plan, it was essential for the respondent to maintain contact with her, "and that did not happen." Smith added that several unsuccessful attempts were made to obtain the respondent's work schedule so visits with the children could be arranged. Smith also went to the respondent's home several times but was consistently told by an unknown female who answered the door that he was not there. Smith indicated that she became aware in May 2013 that the respondent had changed addresses, but he never provided her with the new address and she went to great lengths searching public records in an effort to discover his address. Smith also asked the respondent directly at six court hearings to provide his work schedule to her in order to facilitate visitation, but he never provided the information.

¶ 40 Smith testified that the next service plan was dated September 9, 2013, and she again attempted to notify the respondent of the service plan by phone calls, letters, and going to his residence several times, but contact was never made, visits with the children were impossible, and the respondent was again rated unsatisfactory on the service plan. Given it was the burden of the respondent to maintain contact with LSS according to the requirements of the service plan and he failed to do so, we refuse to entertain the respondent's suggestion that he did not receive a service plan by means of any fault on the part of LSS.

¶ 41 We acknowledge the respondent's testimony that every time he saw Smith in court, he asked her about visits with the children, but he never subsequently received instructions for visitation through the mail. We also note his statement that Smith "never tried to help me see my kids." Notwithstanding the conflicting testimony between Smith and the respondent, we reiterate that the function of this court "is not to substitute our judgment for that of the trial court on questions regarding the evaluation of the witnesses' credibility and the inferences to be drawn from their testimony[ ] [and] the trial court is in the best position to observe the conduct and demeanor of the parties and witnesses as they testify." *In re M.S.*, 302 Ill. App. 3d at 1002. Accordingly, we defer to the circuit court in this regard.

¶ 42 Besides compliance with service plans, visitation with the children is an additional factor courts consider to determine whether a reasonable degree of interest, concern, or responsibility has been shown. See *In re Daphnie E.*, 368 Ill. App. 3d at 1064. The respondent suggests that visitation was willfully obstructed by LSS, but the record reveals otherwise. As previously noted, the respondent took seven months after the first service plan was established to place LSS on the list of approved visitors, visitation was "sporadic at best," and all of the LSS employees consistently testified that repeated attempts were made to contact the respondent to set up visitation with the children, to no avail. The evidence indicates that the lack of visitation was attributable to the respondent and to the respondent alone and the lack of visitation and the failure to stay in contact with LSS made it impossible for the respondent to successfully complete his service

plans, which in turn demonstrates a lack of a reasonable degree of concern, interest, and responsibility. See *id.* at 1065.

¶ 43 Although the record shows that the respondent visited the children at the grandmother's house prior to her death, those visits were unofficial and undocumented. In order to comply with the service plan, the respondent was required to abide by the procedure of LSS to schedule and complete the visits, which was never done. The respondent testified that documented visits commenced in March 2014—which was after the petitions to terminate his parental rights were filed. He further testified that he attempted to call the foster parents directly by cell phone, which the caseworker stopped because he was required to schedule visits through LSS. These last ditch efforts at the conclusion of the case were insufficient to establish a satisfactory rating on the service plan and the permanency goals never changed.

¶ 44 We are mindful of the evidence that the respondent sent letters and cards to the children from prison, and that he purchased food and other items which were given to the children at the undocumented visits at the grandmother's house. While this is all indicia of some interest and concern for the children, a parent "is not fit merely because [he] ha[s] demonstrated some interest in or affection for [his children]." *In re Daphnie E.*, 368 Ill. App. 3d at 1064. We look at the evidence in general to determine if the respondent's interest, concern, and responsibility toward the children was objectively reasonable. See *id*. Here, it simply was not. Because an opposite ruling is not clearly the proper result, we cannot say the circuit court finding the respondent unfit for failure to show a reasonable amount of interest, concern, or responsibility toward the children was

against the manifest weight of the evidence. See *In re Shanna W.*, 343 Ill. App. 3d at 1165.

¶ 45 Because we need not consider other findings of unfitness where sufficient evidence exists to satisfy any one statutory ground (see *In re Donald A.G.*, 221 Ill. 2d at 244), we decline to address the respondent's arguments relative to the circuit court's finding of unfitness on the basis of failure to make reasonable progress.

¶ 46 II. Best Interest

¶ 47 The second issue on appeal is whether the circuit court erred in finding it in the children's best interest to terminate the respondent's parental rights. "Once the circuit court has found by clear and convincing evidence that a parent is unfit ***, the State's interest in protecting the child is sufficiently compelling to allow a hearing to determine whether the termination of parental rights is in the best interest[ ] of the child." *In re D.M.*, 336 Ill. App. 3d 766, 771 (2002). "[D]uring a [best-interest] hearing, the court focuses upon the child[ren]'s welfare and whether termination would improve the child[ren]'s future financial, social[,] and emotional atmosphere." *Id.* at 772. The standard of review for the circuit court's best-interest determination is whether the finding is against the manifest weight of the evidence. See *In re B.R.*, 282 Ill. App. 3d 665, 670 (1996). Section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2016)) contains the factors to be considered by the court in a best-interest proceeding according to the age and developmental needs of the children.

¶ 48 Here, the evidence supports the circuit court's judgment that it was in the children's best interest to terminate the respondent's parental rights. Alyssa Cline testified

the children are in a foster home where they have resided for two years, and both are extremely bonded to their foster parents, who the children consider as parents. The children are both doing very well in school, have no developmental delays, and are not receiving treatment for any medical issues. They play softball every year and are well-adjusted to life with their foster parents. Cline observed that the respondent has not been involved, has not participated in services, and has not visited the children in a very long time, specifically seven or eight months before she was assigned to the case in August 2015. Cline emphasized that the respondent was given opportunities to visit the children each month, but never took advantage of those opportunities. She added that a caseworker attempted to contact the respondent several times and there are case notes documenting the conversations, the attempted phone calls, and the times contact at his actual residence was attempted. Cline opined that it is in the children's best interest for the respondent's parental rights to be terminated because the children need stable parents who will care for them and support them.

¶ 49 The respondent confirmed that he had not visited the children since October 2014. He admitted that he attempted to contact the children by calling the foster parents directly, which the caseworker stopped. He further admitted that he had not initiated contact with LSS, nor asked his attorney for assistance in doing so. He alleged that he "was not allowed" to visit the children in 2015, which is contrary to Cline's testimony regarding the attempts to contact the respondent and his declining the opportunities to visit the children. Again, it is not our duty to determine the credibility of the witnesses, but we defer to the circuit court in that regard. See *In re M.S.*, 302 Ill. App. 3d at 1002.

Because an opposite ruling is not clearly the proper result, we cannot say the circuit court's finding it in the children's best interest to terminate the respondent's parental rights was against the manifest weight of the evidence. See *In re Shanna W.*, 343 Ill. App. 3d at 1165.

¶ 50 III. Due Process

¶ 51 The third issue on appeal is whether the respondent was deprived of due process from lack of service and/or lack of notice of the proceedings in this case. "Because contentions of due process violations are a question of law, we review this matter "*de novo.*" *In re A.M.*, 402 Ill. App. 3d 720, 723 (2010). "Parents have a fundamental liberty interest in the care, custody, and control of their children, which is protected by the due process clause of the fourteenth amendment." *Id.* "Procedures involving the termination of parental rights must comply with the requirements of due process." *Id.* at 723-24. "A parent has a due process right to adequate notice in juvenile proceedings." *Id.* at 724. "Also, section 1-5 of the [Act] entitles the respondent the right to be present at the proceedings." *Id.* However, pursuant to section 2-15(7) of the Act: "The appearance of the minor's legal guardian or custodian, or a person named as a respondent in a petition, in any proceeding under this Act shall constitute a waiver of service of summons and submission to the jurisdiction of the court ***." 705 ILCS 405/2-15(7) (West 2016).

¶ 52 In the case of *In re A.M.*, a petition was filed alleging the minor was without proper care due to the respondent's incarceration. 402 Ill. App. 3d at 720. After the respondent was released, he appeared in court with counsel on August 9, 2007, and a paternity test was ordered. *Id.* at 721. On October 2, 2007, the respondent again

appeared with counsel and the circuit court confirmed that he was the minor's biological father. *Id*. The respondent appeared in court with his counsel again on October 30 and November 13, 2007, for an adjudication proceeding, which was continued. *Id*. The respondent failed to appear on December 18, 2007, and his counsel requested a continuance, which the circuit court granted. *Id*. At a January 3, 2008, hearing, the respondent was not present but his counsel was. *Id*. At the hearing, the circuit court scheduled the adjudication hearing for January 22, 2008, and ordered the State to send notice to all parties, with the respondent's notice to include language that he would be found in default if he failed to appear. *Id*.

¶ 53 The respondent was not present at the adjudication hearing on January 22, 2008, and his counsel requested a continuance, which was denied. *Id*. The State indicated that notice was sent to the respondent's last known address and was not returned. *Id*. The circuit court found that the respondent received notice of the hearing and was defaulted. *Id*. The respondent was not present at the dispositional hearing on February 19, 2008, although notice of the hearing was sent to his last known address. *Id*. He again failed to appear at the permanency review hearing on June 24, 2008, although notice was sent to his last known address. *Id*. at 721-22. Respondent's counsel asked to be excused from any further appearances until the respondent contacted him, which the circuit court granted. *Id*. at 722. After that time, despite being provided notice, neither the respondent nor his counsel attended any court hearings until after the termination of the respondent's parental rights. *Id*.

¶ 54 In particular, on December 23, 2008, March 10, 2009, and April 28, 2009, neither the respondent nor his counsel attended a permanency review hearing, a status hearing, or a first appearance hearing, respectively. *Id.* The circuit court continued the fitness hearing to June 2, 2009, because the respondent was again incarcerated. *Id.* Neither the respondent nor his counsel appeared at the fitness hearing, notwithstanding the fact that notice was sent to counsel. *Id.* The circuit court found the respondent unfit in an order entered on June 9, 2009, and notice was sent to the respondent and his counsel regarding the best-interest hearing scheduled for June 30, 2009, at which neither appeared. *Id.* at 723.

¶ 55 The circuit court entered an order on July 21, 2009, finding it in the minor's best interest to terminate the respondent's parental rights. *Id.* The respondent filed a motion to vacate the order, arguing that he was incarcerated and unable to advise counsel to defend against the petition to terminate his parental rights. He failed to explain his lack of participation from the last time he appeared in court until his incarceration. *Id.* The circuit court denied the motion, finding that notice was given to the respondent and his counsel regarding the petition to terminate, the fitness hearing, and the best-interest hearing, but the respondent failed to respond or object. *Id.*

¶ 56 The respondent argued on appeal that he was deprived of due process because of inadequate notice while he was incarcerated. *Id.* This court applied section 2-15(7) of the Act (705 ILCS 405/2-15(7) (West 2008)), and held that because the respondent appeared at proceedings on four occasions prior to the adjudication, dispositional, termination, and best-interest hearings, and did not object to the jurisdiction of the circuit

court on those occasions, he waived the requirement that he be provided with notice of the proceedings. *Id.* at 724. This court further found that although the respondent had a liberty interest in the care, custody, and control of the minor child and the circuit court invited risk of erroneously depriving the respondent of that interest by excusing his attorney from appearing until the respondent contacted him, it held that the risk of the deprivation was minimal in comparison to the State's interest in adjudicating the respondent's parental rights and preserving the minor's best interest in an expeditious fashion. *Id.* at 724-25.

¶ 57 Applying these principles to the case at bar, the respondent appeared at several of the proceedings throughout this case and never raised an objection to the circuit court's jurisdiction, thereby resulting in a waiver of service of summons and submission to the jurisdiction of the court. See *id.* Moreover, waiver notwithstanding, unlike the case of *In re A.M.*, here, as the State indicates in its brief, the respondent was present at every proceeding except the first shelter care hearing and one brief hearing where his counsel was present. Moreover, unlike *In re A.M.*, here, the respondent's counsel was not excused, but in fact appeared on the occasions when the respondent did not, thereby strengthening the assertion that notice was indeed adequate. For these reasons, we reject the respondent's due process argument.

¶ 58 IV. Obstruction of Visitation

¶ 59 The final issue on appeal is whether LSS willfully obstructed visits between the respondent and the children, thereby warranting an affirmative defense to termination. "Supreme Court Rule 341(e)(7) [now Rule 341(h)(7)] requires that arguments in a brief

contain a reference to the record and a citation of authorities relied upon." *Charter Bank v. Eckert*, 223 Ill. App. 3d 918, 928-29 (1992). "Failure to cite relevant authority in support of a bare argument will not merit consideration of the issue on appeal." *Id.* at 929. Here, the respondent devotes one paragraph to this issue in his brief, but there is neither an accompanying reference to the record nor any citation of authority to support his argument. Accordingly, he failed to comply with the requirements of Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) and we decline to consider this issue. See *id*.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, the orders entered by the circuit court of Saline County on February 22, 2016, and March 29, 2016, are affirmed.

¶ 62 Affirmed.