FOURTH DIVISION
March 22, 2018

Nos. 1-17-2468 and 1-17-2512 (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Q.J., a Minor,	)	Appeal from the
(The People of the State of Illinois, Petitioner-Appellee,	)	Circuit Court of
	)	Cook County
v.	)	
	)	No. 16 JA 802
Quentin J., and Alexis D., Respondents-Appellants).	)	
	)	Honorable
	)	Diana Rosario,
	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court affirmed. Trial court's finding that father was unable to care for minor child was not against manifest weight of evidence.

¶ 2 The female minor, Q.J., was born on September 13, 2016. Q.J.'s parents are respondent Quentin J. (the father) and respondent Alexis D (the mother). On January 31, 2017, Q.J. was adjudicated neglected. On September 11, 2017, Q.J. was made a ward of the court, and the court placed Q.J. under the guardianship of the Department of Children and Family Services (DCFS).

¶ 3 In this consolidated appeal, the father and the mother appeal the trial court's September 11, 2017 dispositional order finding that the father was unable to care for Q.J. The mother,

through counsel, conceded that she was unable to care for the minor and does not appeal that finding against her.

¶ 4 We affirm the trial court's dispositional order. The trial court's finding, that the State proved by a preponderance of the evidence that the father was unable to care for Q.J., was not against the manifest weight of the evidence.

¶ 5 I. BACKGROUND

¶ 6 At the outset, we note that this case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311(eff. Mar. 8, 2016) because it involves a matter affecting the best interests of a child. Rule 311 states in relevant part that, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. Mar. 8, 2016). In this case, the father filed his notice of appeal on September 12, 2017; the mother filed her notice of appeal on October 11, 2017.

¶ 7 The mother filed the record in her appeal on November 9, 2017, and her appellant brief on November 28, 2017.

¶ 8 On November 6, 2017, the father requested an extension of time for filing the record in his appeal. On December 6, 2017, we granted the motion and also consolidated the mother's and the father's appeals. The record in the father's appeal was filed on December 6, 2017, and his appellant brief was timely filed on December 26, 2017.

¶ 9 The appellee briefs were due on January 17, 2018. The State's Attorney timely filed its brief. On January 16, 2018, the Office of the Cook County Public Guardian (the Public Guardian) filed a motion requesting an extension of time to February 7, 2018 to file its brief, which we granted. The reply briefs were due by January 24, 2018. The mother did not file a

reply brief. But on February 26, 2018, the father filed a motion for leave to file a late reply brief *instanter*, which we allowed.

¶ 10 Thus, this consolidated appeal was not ready for disposition until February 26, 2018. In light of these circumstances, there is good cause to issue this decision after the 150-day deadline. We now turn to the merits of this appeal.

¶ 11 The parties stipulated to the following facts at the January 31, 2017 adjudication hearing.

¶ 12 Q.J. was born on September 13, 2016, at Mount Sinai Hospital. On September 14, 2016, Ganeilli McDonald Washington, a child protection investigator from DCFS, was assigned to investigate allegations of drug abuse and positive drug tests at Q.J.'s birth. The mother has four prior indicated reports for substance misuse, inadequate shelter, inadequate supervision, cuts, bruises, welts, abrasions, oral injuries and substantial risk of harm. She has five other minor children who are in DCFS custody, with findings of abuse and neglect having been entered.[1]

¶ 13 Ms. Washington interviewed the mother on September 15, 2016—two days after the child's birth. The mother admitted using an anxiety depression medication to help with pain; heroin addiction; prior use of cocaine and prescription drugs; and prior domestic violence in the home. The mother also stated she would be willing to sign her rights over to the father or allow a relative to adopt Q.J. to avoid the DCFS system.

¶ 14 That same day, Ms. Washington also interviewed the father. The father admitted prior drug use, specifically heroin, and weekly counseling sessions at the Pilsen Wellness Center (Pilsen), where he received methadone and employment with a temporary agency.

[1] Under section 3 of the Abused and Neglected Child Reporting Act, "[a]n 'indicated report' means a report made under this Act if an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2014).

¶ 15 According to two physicians at Mount Sinai Hospital involved in treating Q.J., at birth, Q.J. tested positive for benzodiazepines and exhibited tremors and irritability. According to the mother's treating physician, at the time she gave birth to Q.J., the mother tested positive for cannabis and benzodiazepines.

¶ 16 On September 20, 2016—a week after the child's birth—the State filed a petition for adjudication of wardship. A temporary custody hearing took place, and the court found probable cause that Q.J. was abused and neglected, but there was no immediate and urgent necessity to remove Q.J. from the home. The court therefore found that it would serve Q.J.'s best interest to return home to the father under a 2-25 order of protection. See 705 ILCS 405/2-25 (West 2014) (allowing court to issue order of protection for minor's safety, imposing various conditions). The order required the father to abstain from alcohol or illegal substances other than his methadone treatment, and it required him to limit contact between Q.J. and the mother to one supervised hour per week. (The parties appeared in court on December 8, 2016, where this supervised visitation was increased to 20 hours a week and no more than four nights a week, at the discretion of the agency.)

¶ 17 On January 31, 2017, the adjudication hearing was held. The parties entered into a written stipulation of facts, which we recited above. The parties also stipulated to the admission of seven exhibits. These included Mount Sinai Hospital records for the mother and Q.J. and five juvenile court orders for the mother's other children. After hearing argument, the court found that Q.J. was neglected based on an injurious environment. The court stated that this finding was primarily based on "the mother's extensive history with the DCFS system with five other children who have findings of abuse and neglect as to them and all who became wards of the court." The court further found that the State had not met its burden proof regarding a substantial

risk of physical injury, because the physicians and DCFS intervened in a timely manner. The court entered a written adjudication order consistent with its oral findings and set the dispositional hearing for March 31, 2017, which was rescheduled for April 25, 2017 and then continued to July 11, 2017 (due to an unavailable witness).

¶ 18 On June 27, 2017, the Public Guardian filed an "Emergency Motion to Find a Violation and Vacate 2-25 Order of Protection." The father was present, and the motion was granted without prejudice and continued to July 11, 2017. The court also entered several other orders which included: an amended temporary custody hearing order removing Q.J. from the custody of the father and placing Q.J. in the temporary custody of DCFS; an order that St. Anthony's Hospital and Mount Sinai Hospital release all records and communications regarding the mother's treatment; and a drug test order that the father submit to an immediate urine drop that day.

¶ 19 On July 11, 2017, the date scheduled for both the dispositional hearing and the emergency motion to find a violation and vacate the 2-25 order of protection, the court first heard the emergency motion. The court allowed all the exhibits that would be introduced at the dispositional hearing, which included:

People's Exhibit No. 1 – DCFS Integrated Assessment, dated April 25, 2017;

People's Exhibit No. 2 – JCAP Substance Abuse Screening/Assessment for the father, dated October 6, 2016;

People's Exhibit No. 3 – DCFS Court Report, dated March 27, 2017;

People's Exhibit No. 4 – Mary and Tom Leo Associates Individual Counseling Report for the father, dated November 1, 2016;

People's Exhibit No. 5 – CASA Report to Court, dated March 27, 2017;

People's Exhibit No. 6 – CASA Report Addendum, dated April 25, 2017;

People's Exhibit No. 7 – Pilsen Wellness Center letter to caseworker regarding the mother, dated March 30, 2017;

People's Exhibit No. 8 – CASA Report to Court, dated July 5, 2017;

People's Exhibit No. 9 – Pilsen Wellness Center letter from psychotherapist regarding the mother, dated April 24, 2017;

People's Exhibit No. 10 – Pilsen Wellness Center letter of verification and progress report for the father, dated April 24, 2017;

People's Exhibit No. 11 – Pilsen Wellness Center progress report regarding the mother, dated July 10, 2017;

People's Exhibit No. 12 – Pilsen Wellness Center letter for the father, dated June 30, 2017.

¶ 20 Jennifer Johnson, a DCFS Division of Child Protection (DCP) investigator, was the first witness to testify. On June 8, 2017, Ms. Johnson was assigned to investigate a report concerning the mother, the father, and Q.J. The report indicated that the mother was fighting with someone outside a methadone clinic, and the father intervened. While trying to break up the fight, Q.J. had been "knocked over in the stroller." Ms. Johnson investigated the report that same day, and tried to make contact with the mother and the reporter but was unable to speak to either.

¶ 21 Ms. Johnson left a voicemail for the confidential reporter, and called her again the day before the hearing. Ms. Johnson did not make contact with the reporter until the morning of the July 11, 2017 hearing, when she spoke to the reporter over the phone.

¶ 22 According to Ms. Johnson, the reporter knew the mother "from the neighborhood." The reporter saw the mother having a fight a block away from the methadone clinic with a woman,

whom the reporter stated she did not know. Ms. Johnson testified that, according to the reporter, the mother was with a male and a stroller, the male was trying to break up the fight, and in the midst of the male trying to break up the fight, the baby was knocked over in the stroller. According to the reporter, the male was more concerned with the mother than with ensuring the child was unharmed. The reporter never stated who knocked the stroller over. There was no evidence that Q.J. was injured in the fall in the stroller.[2]

¶ 23 Ms. Johnson then discussed another incident. On June 27, 2017, she was assigned to a second investigation, where protective custody of Q.J. had been taken by overnight DCP investigators. Ms. Johnson's supervisor, Jeanine Jones, told her that protective custody had been taken because the mother and the father were asleep in the waiting room of Mount Sinai Hospital, and the hospital staff had to assist because Q.J. had been crying nonstop, the father had left the hospital, and the overnight DCP worker had to track him down to meet with him to get the minor.

¶ 24 Ms. Johnson reviewed the note created by Ms. Jones regarding her conversation with the overnight DCP investigators, Christine DeGrange and Barbi Brown. The note was admitted into evidence as Minor's Exhibit No. 1.

¶ 25 It was Ms. Johnson's understanding that the mother had gone to Saint Anthony's Hospital and received pain medication and some crutches, but that she later went to Mount Sinai Hospital because she wanted more medication with opiates.

[2] In her brief, the mother states that "the reporter did *not* say whether he actually attended to the child." (Emphasis in original.) But Minor's Exhibit No. 2 contained a copy of the initial intake report stating that "the infant's stroller was knocked over with the baby strapped inside" and that the reporter, not the father, "moved the stroller upright and consoled the baby."

¶ 26 Although neither investigation had concluded by the July 11, 2017 hearing, the time of Ms. Johnson's testimony, she stated that she and her supervisor had decided that both the mother and the father would be indicated for risk of harm in the father's care based on the first incident regarding the fight outside the methadone clinic, during which Q.J.s stroller was knocked over. The court admitted into evidence Minor's Exhibit No. 2, the contact notes from the investigation that involved protective custody being taken of Q.J.

¶ 27 The next witness was Ethelyn Brown, the DCFS caseworker who had been assigned to Q.J.'s case since it came into the system. On June 27, 2017, she spoke to two DCP workers from the nightshift, who came to her office with Q.J. They told Ms. Brown that they had received a call from Mount Sinai Hospital; security at the hospital said they had tried to awaken the parents, the baby had cried for ten minutes, they had watched the child to make sure that she wasn't kidnapped, and they called the police, who called DCFS.

¶ 28 Ms. Brown was aware of the other pending investigation involving Q.J. and the altercation between the mother and another person.

¶ 29 Ms. Brown talked to the mother about the incident at Mount Sinai Hospital. The mother had called Ms. Brown from the emergency room and told her that she had injured her leg and gone to Mount Sinai Hospital to get pain medication, and that Q.J. had been taken because they had fallen asleep at the hospital.

¶ 30 Ms. Brown testified that the father also called her on her cell phone at 6:30 a.m. on June 27, 2017. The father said he was upset. He told her that the mother had hurt her leg, and Saint Anthony Hospital would only give her Tylenol because she was pregnant. He also said that the mother had gone to Mount Sinai Hospital because she wanted more medication for her leg, that she shouldn't have gone to Mount Sinai Hospital, that they called the police, and that they called

DCFS, and DCFS was coming. He also told Ms. Brown that they knew the mother at Mount Sinai and "he felt like they were targeted."

¶ 31 Ms. Brown testified that the father did not attend the random urine drop that the court had ordered on June 27, 2017. Ms. Brown learned from the father's counselor at Pilsen that the father had dropped there earlier that day and the urine drop was clean, but he had not been tested for alcohol. The drop that was ordered by the court would have tested for alcohol. Ms. Brown was not, at that time, recommending that the father participate in an updated substance abuse assessment, because his urine drops had all been clean. These included the drops from Pilsen as well as the drops that Ms. Brown sent him for, but not all drops were tested for alcohol. Ms. Brown would be discussing with her supervisor and the father's counselor whether any further assessment or treatment might be necessary for the father.

¶ 32 The proceedings on July 11, 2017, ended, and the hearing on the emergency motion resumed on August 17, 2017.

¶ 33 On cross-examination, Ms. Brown testified that, given her extensive history with this family (*i.e.*, since Q.J.'s case came into the system), she was quite familiar with the parents and Q.J. Q.J. had been in the care of the father since birth. Ms. Brown had observed Q.J. with her father repeatedly throughout that timeframe and had not had any concern over the way Q.J. was parented by him. Nor had she had any concerns for Q.J.'s health, safety or emotional well-being based on the father's care.

¶ 34 Ms. Brown was questioned regarding her testimony on direct examination as to the two incidents that caused her concern over Q.J.'s well-being, one being the incident at Mount Sinai Hospital, where Q.J. was crying and her parents were asleep in the waiting room. Ms. Brown did not speak to anyone at Mount Sinai Hospital or St. Anthony Hospital. She received her

information from the DCFS investigators, who said the parents were slumped over in their chairs, Q.J. was crying for ten minutes, and they weren't able to wake the parents. There was an allegation that the father had been drinking for some period of time. But when Ms. Brown talked to the DCP investigators, they had no information from anyone that the father smelled like alcohol or that he had been stumbling around as if drunk.

¶ 35 Based on Ms. Brown's review of the Mount Sinai Hospital records, the police officers talked to the father. Ms. Brown had no information from any source that the father had been arrested.

¶ 36 Regarding the incident outside Pilsen, Ms. Brown's source of information was DCP. Ms. Brown spoke to the parents about the incident. They told her the only thing that had happened was that there was an altercation and the mother got in an argument with a lady. They denied that the stroller was knocked over or that Q.J. was physically involved in the incident.

¶ 37 Concerning the father, Ms. Brown stated he usually takes Q.J. everywhere he goes. In the nine or ten months she had had the case, the father took good care of Q.J. When he first got Q.J., Q.J. was having withdrawal symptoms, and he took her back and forth to the doctor two to three times a week. He took Q.J. for all her shots and evaluations. Ms. Brown evaluated the father for services and requested that he stay in his program at Pilsen, do random toxicology, and engage in individual therapy. The father gets methadone and drug treatment counseling at Pilsen and had participated consistently since 2015. Pilsen had reported that the father was making progress, and his urine drops had never tested positive for anything other than methadone. Although the father told Ms. Brown that he had an individual counselor, she had been unable to confirm it.

¶ 38 Ms. Brown had observed the bond between Q.J. and the father. Ms. Brown testified that Q.J. loves the father, laughs, giggles, looks to him, and wants him to hold her all the time.

¶ 39 On redirect examination, Ms. Brown testified that, in April 2017, she had referred the father to an agency other than Pilsen, namely, Mary and Tom Leo Associates. DCFS made that referral because the father was parenting a child on his own and dealing with his relationship with the mother and her issues, and he was under a great deal of stress. But when Ms. Brown followed up with the counselor a month later, the counselor told her that the father had told her he felt her questions were inappropriate and the therapy was supposed to be about him, not about his relationship. He told her he was going to get a counselor at Pilsen. Ms. Brown stated that the recommended service of individual therapy was outstanding because she had been able to verify that the father was actually seeing a counselor.

¶ 40 Ms. Brown testified that she and her supervisor had concerns due to the two indicated DCP reports and about the father's judgment due to his being out at 3 o'clock in the morning at the hospital, and that he was there because the mother was there to get pain pills which she had been denied the day before at a different hospital.

¶ 41 Ms. Brown and her supervisor discussed the case and decided that it would be in Q.J.'s best interest that she be removed from the father's care. There were services that needed to be completed in order for Q.J. to be safe with her parents. The father had to continue with Pilsen and engage in therapy to address those issues related to his relationship with the mother and his judgment as it related to that relationship. The father also had to continue to provide urine drops. Ms. Brown stated that, despite two requests from her in the last couple of months, the father had not provided a urine drop since June 2017.

¶ 42 Ms. Brown also testified that one of the conditions in the 2-25 order of protection, when Q.J. was placed in the father's care, was that he was prohibited from living with the mother. By agreement, he had been allowed to supervise up to 20 hours of visits between Q.J. and the

mother each week, which could include an overnight visit. But, since September 2016 when Q.J.'s case came into the system, the father had not been permitted to reside full-time with the mother while he had Q.J. in his care. Once Q.J. was removed from the father's care, Q.J.'s visits with her parents were limited to a single 2-hour visit per week.

¶ 43 The court admitted Minor's Exhibits No. 3 and No. 4, the certified and delegated records from Pilsen for the mother and the father, respectively. The court also admitted Minor's Exhibits No. 5 and No. 6, the certified and delegated records for the mother from Mount Sinai Hospital and St. Anthony Hospital, respectively.

¶ 44 The next witness to testify was the father, called by his own counsel. The father stated that he had been in individual counseling at Pilsen since May 2017. His counselor was Timothy Hughes.

¶ 45 Regarding the June 6, 2017 incident, the father testified that he, the mother, and Q.J. were walking down the street toward the bus stop in the 3100 block of West Cermak. He was pushing the stroller. Before they got to the corner, a woman that the mother knew from her past bumped into the mother, and the two got into an argument. The father testified that the woman who bumped into the mother was big, about six feet, one inches tall and weighing about 310 pounds. He also stated he had seen the woman a few times before, and that there was some tension between her and the mother. The father told the mother that it was not worth fighting, that they did not need that in their lives. The woman said "yeah, that's right, b****, you already got some five kids in the system, you better worry about this one." The father testified that he never let the stroller go, and it never tilted over. He said he grabbed the mother's hand, while holding the stroller with his other hand, and they continued down the street.

¶ 46 The father also testified about the second incident. He stated that, on June 25, 2017, he brought Q.J. for an overnight stay with the mother, which he supervised. He testified that he arrived at the mother's house at around 8 p.m., put Q.J. to bed, and watched a movie with the mother. Around 11 p.m., the father heard a sound. The mother had slipped in the kitchen and was holding her leg. She was in great pain, so he called an ambulance. The father accompanied the mother in the ambulance with Q.J. in a car seat.

¶ 47 The ambulance went to St. Anthony's Hospital and arrived at 11 p.m. The father took Q.J. to his mother's house, which is right next door to the hospital. When he returned to the hospital, the mother was about to be discharged. They had taken an x-ray, wrapped her leg, and given her crutches. But the mother was in so much pain that she could not walk. They gave her Tylenol. Around midnight, the two then went to his mother's house.

¶ 48 At 6 a.m., the father and the mother, along with Q.J., went to the methadone program and got medicated. That Monday evening, because the mother could not put her weight on the crutches without pain, they took the bus to Mount Sinai Hospital so that the mother could get a plastic cast, not drugs. The father testified that they arrived at Mount Sinai at around 7 or 8 p.m., and left around 5 a.m. the next morning.

¶ 49 The father testified that Q.J. was asleep the entire time that he was at the Mount Sinai Hospital. He stated that he was getting tired, and the security guard kept coming in and the father believed the security guard had a problem with interracial couples. The father testified that he never fell asleep at the hospital.

¶ 50 The father stated that, normally, when he went to the hospital with the mother, he would go in the back with her, but this time they wanted him to stay up front. He testified that he was trying to get in contact with her, and they were stopping him. They called DCFS. He felt like

something was not right, so he decided to leave, but the security guard tried to stop him from leaving. He testified:

> "Me and the security guards couldn't see eye to eye because the security guard tried to consume the job of a police officer. He tried to detain me. I told him I walked in here on my own free will and I'm walking out on my own free will, man, get out of my way, me and my baby is leaving. You can't go nowhere. What you mean I can't go nowhere? You can't stop me from leaving, this is a public hospital. That's when the police was called."

¶ 51 The father testified that the police arrived and he spoke to them. He said that the police allowed him to leave the hospital. He left with Q.J. at about 5 a.m. He testified that Q.J. was asleep in the stroller. When he was a few blocks from the hospital, a different police officer and a woman from DCFS drove up in a car and the mother was in the backseat, handcuffed.

¶ 52 Since Q.J. has been removed from his care, the father spends most of his time at the mother's house and does not "leave [her] side too much."

¶ 53 During argument on its emergency motion, the Public Guardian asked that the court find that the father had violated several paragraphs of the order of protection entered on September 20, 2016, and to find that it was in Q.J.'s best interest to vacate the order of protection. As part of its argument, the Public Guardian noted that the hospital records admitted into evidence showed that, at St. Anthony's Hospital, the mother had asked for Dilaudid for pain, the doctor did not believe it was appropriate because she had no fracture and was on methadone, and the mother was upset when she did not get it.

¶ 54 The emergency room records from Mount Sinai on the next day indicated that the couple was passed out in the waiting area with a small child in the stroller crying. The medical records

for both hospitals listed the same address for the father and the mother. Various other entries in the record were noted. One note stated that the father attempted to run with the child out the emergency department door and was stopped on a street corner by the police. Another note from Mount Sinai Hospital states that the mother said she injured herself when she fell down four stairs, and then fell a second time on the same leg when she tried to get up. The mother also said her husband was drunk and fell on her at least 30 times that day. The mother also said that the "Norco 10s" she had been taking were not good enough. The notes stated that the mother was "hostile" when questioned about what was done for her earlier at St. Anthony's Hospital.

¶ 55 The court found that it was in Q.J.'s best interest to vacate the order of protection and remove Q.J. from the father's care. In making its finding, the court found that the caseworker and DCP investigator were "highly credible witnesses and very reliable." The court also found that the father had violated the order of protection and that the father was not caring appropriately for the minor. The court also stated that the father's testimony was not corroborated by the evidence. Q.J. was placed in the temporary custody of DCFS.

¶ 56 After ruling on the motion, the court began the dispositional hearing. The court began by taking judicial notice of all of the evidence and testimony, including exhibits, presented during the hearing on the emergency motion.

¶ 57 The State's first witness was the DCFS caseworker, Ms. Brown who testified both on August 17, 2017, and September 11, 2017.

¶ 58 After Q.J.'s case came into the system, Ms. Brown assessed the mother for services and recommended continued drug treatment at Pilsen; individual counseling; random urine drops and medication monitoring; and psychiatric services to see if medication was necessary. The mother

was also in therapy to address the trauma she had suffered throughout her entire life, including having several children removed from her care, and the trauma of her own childhood.

¶ 59 Ms. Brown testified regarding People's Exhibit No. 11 which showed that, on June 15, 2017, the mother had tested positive for opiates and benzodiazepine, as well as methadone. According to the toxicology detail, the mother was confirmed positive for morphine and hydrocodone. A month before the hearing, Ms. Brown spoke to the mother's substance abuse counselor, who was concerned about the medication she was taking and its effect on her unborn child. In the program, the mother was slurring her words and was slumped over. The program believed she needed a higher level of care and DCFS was recommending an inpatient program to get the mother's medication stabilized, but the mother was not willing to go. At the time of the dispositional hearing, the services Ms. Brown was recommending for the mother were psychiatric care, inpatient drug treatment, and individual therapy.

¶ 60 Before Q.J. was removed from the father's care, the mother could visit with Q.J. 20 hours a week. Ms. Brown attempted to verify the number of hours that the mother was seeing Q.J.; she asked the parents to give her a schedule, but they did not. She made unannounced visits to the mother's home, but nobody responded.

¶ 61 With respect to the father, Ms. Brown stated that the father's interaction with Q.J. is appropriate. Q.J. is currently placed in a nonrelative foster home with another sibling. Q.J. had some developmental delays and was scheduled for another developmental evaluation the week after the hearing.

¶ 62 Ms. Brown recommended that the DCFS Guardianship Administrator be appointed with the right to place Q.J. because there were services that the parents needed. She testified that the

parents had made it very clear they were going to be together, and she believed that both of them could benefit from the services offered by DCFS.

¶ 63 The dispositional hearing was continued until September 11, 2017, and commenced with cross-examination of Ms. Brown. She testified that, since the last court date of August 17, 2017, the mother had not entered an inpatient substance abuse program. At the end of August, Ms. Brown spoke to the mother, who said she was unwilling to enter such a program. The mother was under the impression that, because she was moving, she needed to be around to sign papers to make sure she did not lose her Section 8 housing. Ms. Brown requested that the mother provide a urine drop, but she did not comply.

¶ 64 Regarding the father, since August 17, 2017, he had provided a urine drop at the request of Pilsen. Ms. Brown spoke to the father's substance abuse counselor, who told her that it came back positive for benzodiazepines. The counselor also told Ms. Brown that the father denied it, and that Pilsen would be now requiring the father to go to the program daily and submit to more random urine drops.

¶ 65 The counselor did not say anything about the father being on prescribed medication or that he had any reason to be taking benzodiazepines. And since her conversation with the counselor, the father had not provided Ms. Brown with any documentation or information that he had been prescribed benzodiazepines. Ms. Brown also testified that the father did not comply with her request that he provide a urine sample on September 8, 2017.

¶ 66 Father's Exhibit No. 1, an August 31, 2017 letter sent to Ms. Brown from the father's substance abuse counselor at Pilsen regarding the positive urine result, was also admitted into evidence. The counselor stated that, although the father had been compliant with meeting for at least one hour once a week with his substance abuse counselor, and the positive drop did not

require different services for the father, he was "stripped" of the privilege of taking the methadone dose at home four days a week and, instead, would have to go to the clinic six days a week. The father would "need to work his way back up to gain these [privileges] as he did the first time." The father was now also "expected to provide more frequent and random unannounced urine collections." The letter recommended that the father attend Level I care at Pilsen's outpatient methadone program, attend a 12-step based community support group at least once a week, and continue to attend mental health outpatient counseling services.

¶ 67 Ms. Brown also testified that, after the father had been unsuccessfully discharged from individual therapy at Mary and Tom Leo Associates, the father reported to her that he was seeing a mental health counselor at Pilsen. Pilsen had told Ms. Brown that the father's former counselor no longer worked there. Afterwards, the father told Ms. Brown that someone named "Annie" would be his new counselor. At the time of the hearing, Ms. Brown was still trying to verify that the father was engaged in that service. And she was still recommending that Q.J. be made a ward of the court for the same reasons she had provided on the earlier court date. After the court hearing, Ms. Brown planned to ask the parents to participate in a JCAP assessment because they would have a recovery coach that would be responsible for their urine drug testing.

¶ 68 At the close of evidence, both the State and the Public Guardian asked that Q.J. be adjudged a ward of the court, that the mother and the father be found unable at this time, and that Q.J. be placed into the guardianship of the DCFS guardianship administrator with the right to place Q.J.

¶ 69 The court found as follows:

> "The Court heard the testimony of the caseworker as well as considered and reviewed the evidence and took judicial notice of the evidence for the hearing related to

the motion to vacate the order of protection. Court finds that based on the evidence and as well as the testimony, that the People have met its burden of proof.

Court finds that the evidence is very clear. From the testimony that I heard, both the natural mother and the natural father, they need to participate in services and to be successful in services for the return home of the minor. The Court finds that the minor is adjudged a ward of the court, it being in the best interest and welfare of the minor and the public.

The mother is unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor. And the father is unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor.

According to the testimony that I heard and since the last court date, the mother has not started or has not engaged in an inpatient substance abuse program that has been referred. And the father did have a positive drop since the last court date.

In addition to that, looking at Father's Exhibit No. 1, there is a recommendation— there's three recommendations listed on here that [the father] needs to continue to attend level one of care at the Pilsen Wellness outpatient methadone program and follow through with treatment recommendations and work to achieve his treatment plan goals and objectives. He also needs to attend a 12-step based community support group at least once a week. And he also needs to continue to attend mental health outpatient counseling services. Reasonable efforts have been made to prevent or eliminate the need for removal of the minor from the home.

> Appropriate services aimed at family preservation and family reunification have been unsuccessful. And it is in the best interest of the minor to remove the minor from the custody of the parents, guardian, or custodian. Temporary custody is terminated, and appointment is vacated. And the minor shall be placed in the custody or guardianship of Debra Dyer-Webster, DCFS guardianship administrator, with the right to place the minor."

¶ 70 Both parents appealed.

¶ 71 II. ANALYSIS

¶ 72 Both parents raise the same issue in their opening briefs: Whether the circuit court's finding, at the dispositional hearing, that the father was unable to care for Q.J. was against the manifest weight of the evidence. The mother, through counsel, conceded at the dispositional hearing that she was unable to care for Q.J. and does not appeal that finding against her.[3]

¶ 73 Under the Juvenile Court Act (705 ILCS 405/2-27(1) (West 2014)), before committing a minor to the custody of a third party, such as DCFS, the trial court must first determine whether the parent is unfit, unable, or unwilling to care for the child, *and* whether the best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents. (Emphasis in original.) *In re M.M.*, 2016 IL 119932, ¶ 21; see also *In re Ryan B.*, 367 Ill. App. 3d 517, 520 (2006) ("Because biological parents have a superior right of custody to their children, both parents must be adjudged unfit, unable or unwilling to care for the minor before placement with

---

[3] The Public Guardian notes the mother indicated in her notice of appeal that she was appealing the adjudication findings, as well as the dispositional findings, and that she stated in her opening brief that she was appealing the finding at the dispositional hearing that it was in Q.J.'s best interest to be made a ward of the court. The Public Guardian, citing *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010), *In re Rayshawn H.*, 2014 IL App (1st) 132178, ¶ 39, and Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017), further notes that the mother did not make any argument in her brief and has forfeited these issues. We agree.

DCFS is authorized."); *In Interest of Lakita B*., 297 Ill. App. 3d 985, 992 (1998) (Under the Juvenile Court Act, custody of a minor can be taken away from a natural parent if that parent is adjudged to be either unfit *or* unable *or* unwilling to care for a child.) At the dispositional hearing, the standard of proof to be applied by the trial court is a preponderance of the evidence. *In re April C*., 326 Ill. App. 3d 245, 257 (2001).

¶ 74 "A reviewing court will reverse the juvenile court's determination 'only if the factual findings are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order.' " *In re Jennifer W*., 2014 IL App (1st) 140984, ¶ 44 (quoting *In re Kamesha J*., 364 Ill. App. 3d 785, 795 (2006)). To reverse the trial court's decision under this standard, the opposite conclusion must be clearly evident. *Id*. "Because a trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different decision." *In re April C*., 326 Ill. App. 3d at 257. "Ultimately, there is a strong and compelling presumption in favor of the result reached by the trial court in child custody cases." (Internal quotation marks omitted.) *In re Jennifer W*., 2014 IL App (1st) 140984, ¶ 44 (quoting *In re William H*., 407 Ill. App. 3d 858, 866 (2011) (quoting *Connor v. Velinda C*., 356 Ill. App. 3d 315, 323 (2005)).

¶ 75 The mother contends that the juvenile court's rulings were against the manifest weight of the evidence, because Q.J. had never sustained injury while in the father's care, the father had been going to the clinic at Pilsen since 2015, and Q.J. was well-bonded with him. According to the mother, in its dispositional ruling, the court stated only that the father was unable to care for Q.J. "due to a (single, unconfirmed) positive drop for benzodiazepine—after the child was taken from him." She also argues that what the reporter at the hospital "disparagingly called 'passed

out' in an untimed note might just as easily have been characterized as 'dozing off,' understandably after hours of pain sustained by the mother following her leg injury, and inadequately addressed at St, Anthony's [Hospital], while waiting for care in a second emergency room."

¶ 76 The father argues that the two incidents balanced against "the unquestioned, irrefutable, and overwhelming evidence" established that he "proved his ability to provide far more than adequate care for [Q.J.] over the first nine months of her life."

¶ 77 Based on the evidence presented, the trial court's finding that the father was unable to care for Q.J. was not against the manifest weight of the evidence. We cannot say that the opposite conclusion was clearly evident.

¶ 78 As the Public Guardian correctly points out, the parents' briefs have two fundamental flaws: (1) they ignore virtually all of the negative evidence presented at the hearings on the emergency motion and at disposition (discussed above); and (2) they ignore case law concerning the legal effect of a parent's failure or inability to complete the services recommended for reunification with a minor child.

¶ 79 Contrary to the mother's assertion, the father was not found unable to care for Q.J. simply because of the one positive urine drop, or merely because he was passed out in a hospital waiting room at 2 a.m. During the dispositional hearing, the court took judicial notice of the evidence submitted during the hearing on the emergency motion to find that the father violated the 2-25 order of protection. This evidence included medical records and testimony from investigations, as well as testimony that the parents were noncompliant with services and were living together in violation of the 2-25 order of protection.

¶ 80 During the dispositional hearing, the evidence established that the father was required to continue with methadone treatment, mental health counseling, and random urine drops. But the father was noncompliant with the urine drop requests and had tested positive for unprescribed benzodiazepine during his August 17, 2017 drop; he had failed to comply with a court order to submit to a urine drop that included an alcohol screen; and he had failed to comply with Ms. Brown's two requests for drug drops. As to his required mental health counseling, Ms. Brown had been unable to verify that the father was actually engaged in this required therapy at Pilsen.

¶ 81 And as we have noted, the parents ignore case law concerning the legal effect of a parent's failure or inability to complete the services recommended for reunification with a minor child. As both the Public Guardian and the State point out, this court has repeatedly recognized that a parent's need to participate in recommended services, and to complete them successfully, supports a dispositional finding that the parent is unable at the present time to care for the child.

¶ 82 *In re Chelsea H.*, 2016 IL App (1st) 150560, the trial court's dispositional order found the parents unable to care for their children, and that it was in the children's best interests to be adjudged wards of the court. *Id.* at ¶ 86. This order was based on the parents' failure to complete certain recommended services, including the nurturing parenting program. *Id.* at ¶ 87. In affirming the trial court's ruling, this court explained that the trial court's conclusion that it was in the children's best interests to remain wards of the court to allow the respondents time to complete such services seemed "eminently reasonable." *Id.* And although the mother was "generally compliant with DCFS services," and the failure to complete certain services was due, in part, to scheduling issues beyond the mother's control, the court rejected the mother's argument that the trial court's findings were unreasonable or against the manifest weight of the evidence. *Id.* at ¶¶ 88-90.

¶ 83 In our decision of *In re Malik B.-N.*, 2012 IL App (1st) 121706, the trial court found the mother unable to care for her minor child, and that it was in the minor's best interest that he be removed from the custody of his parents. *Id.* at ¶ 55. In affirming the trial court's dispositional order, this court recognized that the evidence showed that the mother loved her child, wanted him home, and that she had "completed a parenting and an anger management class toward that end." *Id.* at ¶ 59. But the court also noted that she had "not completed the necessary individual and family therapy services for reunification with [her minor child]." *Id.* Thus, because the mother had not completed individual therapy, the evidence supported the trial court's finding that she was unable to care for, protect, train or discipline the minor, and the minor's best interests would be jeopardized if he was in her custody. *Id.* at ¶ 60.

¶ 84 In *In re M.W.*, 386 Ill. App. 3d 186 (2008), the trial court, in its dispositional order, found the mother fit, willing and able to care for and protect her minor child. *Id.* at 187. The Public Guardian and the State appealed the trial court's ruling that the mother was able to care for and protect the minor, arguing that the ruling was contrary to the manifest weight of the evidence where the minor had been found neglected due to an injurious environment and the mother needed to make progress in therapy. *Id.* at 198. This court agreed. *Id.* In reversing the dispositional order, we concluded that "[t]he trial court's decision finding [the mother] fit and returning [the minor] to her under an order of protection was against the manifest weight of the evidence where [the minor] was neglected due to an injurious environment and [the mother] had not made sufficient progress in therapy and counseling to deal with the psychiatric disorder that had prevented her from protecting [the minor]." *Id.* at 200.

¶ 85 In *In re Gabriel E.*, 372 Ill. App. 3d 817, 821 (2007), the mother agreed, at the dispositional hearing, that a finding should be entered that she was unable to care for her children

and that they should be placed in the guardianship of DCFS. During the dispositional hearing, a caseworker testified that the mother had been assessed as needing domestic violence counseling, parenting classes, psychological evaluation, and individual therapy. *Id*. at 821-22. And while the mother had been "making progress," she still needed to complete parenting classes and had tested positive for marijuana, which required her to attend additional classes. *Id*. at 822. Although the mother "had been cooperative with the programs and visited her children, the court noted that she still need to complete various services before reunification could occur." *Id*. at 822. The trial court adjudged the minors wards of the court and found the mother unable to care for the children. *Id*. at 821-22. Because the mother raised no argument on this point, we affirmed the dispositional order. *Id*. at 828.

¶ 86 In *In re Kamesha J.*, 364 Ill. App. 3d 785, 795 (2006), the mother argued that the trial court erred in finding that she was unable to care for her children and in making them wards of the court because she had completed parenting classes sufficient to care for them. We affirmed the trial court's dispositional order that the mother was unable to care for her children where she had completed some, but not all, of her recommended services and continued to make progress in therapy, but needed more counseling. *Id*. at 796.

¶ 87 Here, in its dispositional ruling, the trial court here found "the evidence [was] very clear" that the parents "need[ed] to participate in services and to be successful in services for the return home of the minor." As for the father, the trial court specifically referenced Pilsen's recommendations that he needed to continue to attend Pilsen's outpatient methadone program; follow through with its treatment recommendations; work to achieve his treatment plan goals and objectives; attend a 12-step based community support group at least once a week; and continue to attend mental health outpatient counseling services.

¶ 88 The evidence showed that the father had not completed his recommended services. We consider with that evidence the following: (1) the father's long history of substance abuse that had included alcohol, heroin, cocaine, and marijuana; (2) his noncompliance with requested drug drops for over a month after his drug drop tested positive for unprescribed benzodiazepine; (3) that, regardless of whether he had "dozed off" or "passed out," he had ignored Q.J.'s crying while he had her in an emergency room in the middle of the night, (4) that he had allowed Q.J. to be knocked over in a stroller while he focused on the mother; (5) that the mother had alleged that he was drinking and had fallen on her; and (6) of particular note, that he was still living with the mother and indicated he would continue doing so, though the mother would not follow the substance abuse treatment recommended by Pilsen. With all of this evidence in mind, the trial court's finding that the father was unable to safely parent Q.J. was not against the manifest weight of the evidence.

¶ 89 We have no reason to doubt (nor did the trial court doubt) the father's love for his child, or her bond with him. Nor do we foreclose (as the trial court did not foreclose) the possibility that the father and Q.J. may one day be reunited. Our review is limited to the present, to the findings made by the trial court based on the evidence presented. We have no basis to upset the trial court's determination.

¶ 90 III. CONCLUSION

¶ 91 For the reasons stated, we affirm the trial court's dispositional order finding the father unable to care for Q.J.

¶ 92 Appeal No. 1-17-2468: Affirmed.

¶ 93 Appeal No. 1-17-2512: Affirmed.