

against Tahj's mother when she was eleven years old and is not scheduled for release until 2029. The parties agree that Tahj was conceived as a result of that rape. Tahj has expressed an unwillingness to have further contact with his father. Although there appear to be no immediate prospects for Tahj's adoption, his foster parents are willing to become his legal guardians. The State petitioned for the termination of Mr. Buckner's parental rights. Following a hearing, the circuit court found Mr. Buckner unfit on multiple grounds, concluded that it was in Tahj's best interest for Mr. Buckner's parental rights to be terminated, and entered a permanency goal of guardianship.

¶ 3 Mr. Buckner makes two arguments on appeal: (1) that the circuit court had no authority to terminate his parental rights except to facilitate Tahj's adoption, and (2) that the circuit court's finding that termination of Mr. Buckner's parental rights was in Tahj's best interest was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 4 **BACKGROUND**

¶ 5 Tahj D. is a fifteen-year-old boy whose family has a long history of involvement with the Department of Child and Family Services (DCFS) and the juvenile court system. Because this appeal involves only the termination proceedings against Tahj's father, Mr. Buckner, a brief summary of the proceedings leading up to the termination hearing is sufficient.

¶ 6 The circuit court took temporary custody of Tahj in the fall of 2009, when Tahj was seven years old. Tahj had been living with his mother, who is not a party to this appeal. His father, Mr. Buckner, was and still is incarcerated. At the temporary custody hearing, the circuit court denied Mr. Buckner's request for visitation with Tahj, unless and until DCFS determined that such visits would be in Tahj's best interest.

¶ 7 On March 2, 2010, the circuit court adjudicated Tahj neglected and abused, based on an

injurious environment (705 ILCS 405/2-3(1)(c) (West 2008)) and a substantial risk of bodily injury (705 ILCS 405/2-3(2)(iii) (West 2008)), and on April 23, 2012, Tahj's mother's parental rights were terminated involuntarily. That same day, Mr. Buckner voluntarily relinquished his parental rights and signed a specific consent for Tahj to be adopted by his then-foster parents. That arrangement did not work out, however, and by October 22, 2012, Tahj had been moved to a new placement. This had the effect of voiding Mr. Buckner's relinquishment of his parental rights and his consent for Tahj's adoption.

¶ 8 Arrangements were subsequently made for Tahj to be adopted by a new set of foster parents, and, on April 26, 2013, Mr. Buckner again voluntarily relinquished his parental rights and signed a specific consent for adoption. By February 18, 2016, however, this new placement had also failed. Termination proceedings against Mr. Buckner were reinstated, and a bifurcated fitness and best interest hearing was held on June 12, 2017.

¶ 9 At the fitness portion of the hearing, the State presented evidence that Mr. Buckner was incarcerated, serving a 30-year sentence for aggravated predatory criminal sexual assault. The circuit court found that Mr. Buckner was unfit by clear and convincing evidence, on grounds of depravity (750 ILCS 50/1(D)(i) (West 2016)) and because his incarceration prevented him from discharging his parental duties (750 ILCS 50/1(D)(r), (s) (West 2016)). The court noted that Mr. Buckner had had no contact with Tahj since the case was initiated and would be incarcerated until long after Tahj was emancipated.

¶ 10 At the best interest portion of the hearing, the court considered evidence bearing on whether the termination of Mr. Buckner's parental rights was in Tahj's best interest. Benita Norwood, who had been Tahj's caseworker since January 2016, when Tahj was 13 years old, explained that Tahj was living in a nonrelative specialized foster home with his two foster

parents, one other foster child, and an adopted adult child. According to Ms. Norwood, Tahj had stabilized in the home, was fully integrated with the family, and had bonded with his foster parents. Although Ms. Norwood indicated that Tahj had been hospitalized in April 2017 following an “anger outburst” at school, she testified that he was prescribed medication following that incident and was otherwise doing well. Tahj had monthly visits with his biological siblings, received weekly individual therapy and mentoring services, and had made progress with some “sexual concerns” and displays of aggression at school.

¶ 11 According to Ms. Norwood, Tahj wished to stay with his foster family. He understood the reason for Mr. Buckner’s incarceration and had consistently informed both Ms. Norwood and his previous caseworker that he wished to have no contact with either Mr. Buckner or Mr. Buckner’s family. According to Ms. Norwood, Tahj had also made this known to his foster parents and his therapist.

¶ 12 Ms. Norwood stated that she believed the termination of Mr. Buckner’s parental rights was in Tahj’s best interest. She acknowledged that, although Tahj’s foster parents were willing to continue to provide for his care, be named his guardians, and provide a permanent home for him, they did not wish to adopt Tahj. Ms. Norwood was then asked to explain why she still felt termination was appropriate:

“MS. PIPOLO [assistant State’s attorney]: Q Why are you still recommending terminating parental rights if the parents are willing to only do guardianship?

A. Well, after staffing this with my supervisor, we thought that we’d stay in touch. The home is stabilized. He is bonded with the family. He stated he doesn’t want to have any contact with father or father’s family. And we feel it’s in his best interest.

Q. So if termination of parental rights is not done, is the concern that the father

would still be able to have contact with the minor?

A. Correct.”

¶ 13 The State also introduced three exhibits: a permanency report, a service plan, and a therapy report, documents that Ms. Norwood testified were all part of her agency’s file for Tahj’s case. The service plan, dated March 27, 2017, noted that “Tahj maintains he doesn’t wish to be adopted and doesn’t want to leave his current home with [his current foster parents]. In the therapy report, dated April 11, 2017, therapist Chuck Lederman noted that correspondence from Mr. Buckner had been given to Tahj, but that Tahj had indicated to both his case worker and to Mr. Lederman, that he was not interested in having any kind of contact with his father. Mr. Lederman wrote in the report that he and Tahj discussed Mr. Buckner’s desire to visit with Tahj and that Tahj “clearly and consistently voiced that at this time he has no interest in any kind of contact with his father or anyone on his [father’s] side of the family.” Mr. Lederman discussed with Tahj “his father’s parental rights possibly being terminated and the consequences of this,” but wrote that this “did not change [Tahj’s] feelings about contact with his father.”

¶ 14 In his closing argument, counsel for Mr. Buckner agreed that Tahj’s foster parents were meeting his needs but argued that it was not necessary to terminate Mr. Buckner’s parental rights to make them his legal guardians. Counsel also pointed out that, although Tahj, who was then fourteen years old, did not want any contact with Mr. Buckner, he might change his mind about that as he grew older.

¶ 15 The circuit court agreed with both points made in the closing argument but found that, under the circumstances, where Mr. Buckner was incarcerated for the aggravated sexual assault of Tahj’s mother, and Tahj had clearly expressed his desire to have no further contact with his father, termination of Mr. Buckner’s parental rights was in Tahj’s best interest. The circuit court

judge pointed out that, “if at some point [Tahj] want[ed] contact with his father, the fact is he could have it.” The judge also noted, “we don’t need to appoint a guardian to consent to adoption because he’s not going to be adopted.” The court entered an order finding it was in Tahj’s best interest to terminate Mr. Buckner’s parental rights and appoint a guardian with the right to consent to Tahj’s “placement.”

¶ 16 It subsequently came to light, however, that Vincent Buckner, whom the lawyers and the court believed had chosen not to attend the termination hearing, had in fact wanted to attend and to testify as the respondent in this matter, but had been prevented from doing so by a medical emergency. The court agreed to vacate its termination order and reopen the best interest hearing for additional evidence.

¶ 17 At the continued hearing on October 24, 2017, Tahj’s paternal grandfather, Willie Buckner, testified that he last saw Tahj at a Burger King restaurant in August of that year, where Tahj’s mother brought him to pick up some money that Willie wanted to give Tahj for his birthday. According to Willie, Tahj “didn’t talk too much,” and had “just come to pick up the money.” The two spent only about five minutes together. Willie had seen Tahj about a month before that, speaking to him for “[j]ust a few minutes, 15, 20 minutes,” outside of Tahj’s mother’s house. Willie asked Tahj if he had written his father a letter, and Tahj replied that he had, but had never mailed the letter. Willie recalled a similar visit with Tahj just a few weeks prior to that one.

¶ 18 Willie also testified that he had had three or four telephone conversations with Tahj that year. On one occasion Tahj asked Willie to drive him somewhere but then never called him back. On another, he asked Willie to help him buy something that he needed for school. Prior to 2017, however, it had been a “few years” since Willie had seen Tahj because he “could never catch up,

find out where [Tahj] was at.” Willie testified that, before DCFS and court involvement, he used to visit Tahj “all the time” and that he wanted to maintain a relationship with Tahj in the future.

¶ 19 Mr. Buckner then testified on his own behalf. Mr. Buckner acknowledged that he is currently incarcerated, and has been incarcerated since Tahj was “[f]ifteen months old” or “[t]wo years old.” According to Mr. Buckner, Tahj “lived with [him] periodically,” before Mr. Buckner was incarcerated, and Tahj’s mother initially brought Tahj to the Cook County Jail to visit him three or four times over an 18-month period. Mr. Buckner agreed, however, that since he was transferred from the Cook County Jail to prison he had had no contact with Tahj. He sought visitation with Tahj but that request was denied. According to Mr. Buckner, Tahj had never written him any letters. Mr. Buckner explained that, with adoption no longer a possibility, he did not feel it was in Tahj’s best interest for Mr. Buckner’s parental rights to be terminated; he was “biologically connected to the child” and felt that “all children are going to be reaching towards, that, their father and mother to—when they are in harm’s way for help.”

¶ 20 In his closing argument, counsel for Mr. Buckner argued that this new testimony demonstrated that Tahj had “rekindled the relationship with his grandfather” and “[did] want to be connected with his family and with his father.” He reiterated that there was nothing to be gained by terminating Mr. Buckner’s parental rights.

¶ 21 In rebuttal, the State emphasized that Tahj was conceived as a result of Mr. Buckner’s predatory criminal sexual assault of Tahj’s mother when she was only 11 years old. The State argued that a few visits with or requests for money from his paternal grandfather did not contradict Tahj’s clearly expressed desire to have no further contact with Mr. Buckner or Mr. Buckner’s family.

¶ 22 The circuit court agreed with the State that termination of Mr. Buckner’s parental rights

was in Tahj's best interest. Addressing Mr. Buckner, the court stated:

“The fact is, Mr. Buckner, Tahj is the product of aggravated rape. You were what, 40 when you raped his mother? Okay. You traumatized his mother.

I have known [Tahj's mother] now since this case came in. I know how many children she had when it came in. I know how many other children she's had since then.

Okay. So what you did to her when she was 11—you must have heard this. Okay. It traumatized her and changed the whole course of her life.

Okay. So what you said—what your—the argument is *** that you raped an 11-year old. And now there is—she chose to keep the child, and now you want to have a relationship with that child. Okay. The fact is it's only in your best interest. Okay. That somehow you feel that somehow you need this connection with him.

Okay. You're not coming out till 2029. He will be what, 27 years old at that point?

* * *

Okay. He wanted your rights terminated. All Right. You may not understand it, but I believe it will give him comfort knowing that you are not legally his father.

You have no right to have anything to do with him. Okay. If he's sick, you can't make decisions for him. Okay. If he dies without a will, you don't inherit. Okay. And I think that from Tahj's point of view now or in the future, okay, him knowing that you have no contact with him, all right, would give him comfort and probably help him deal with the rest of his life, which I have to worry about more than you.”

¶ 23 The circuit court entered an order reiterating its unfitness findings as to Mr. Buckner and finding it was in Tahj's best interest to terminate Mr. Buckner's parental rights and appoint a

guardian with the right to consent to Tahj's adoption. The court then set a permanency goal of guardianship, which it noted could be changed to adoption if that became a possibility. At the close of the hearing, the court remarked: "All I want him to do is have a family that love[s] him, and it seems like he is finally at that place. He wants this. I think it will give him a lot of comfort."

¶ 24

JURISDICTION

¶ 25 On October 27, 2017, Mr. Buckner timely filed a notice of appeal from the circuit court's October 24, 2017, termination order. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(6), governing interlocutory appeals from orders terminating parental rights. Ill. S. Ct. R. 307(a)(6) (eff. Sept. 15, 2017).

¶ 26

ANALYSIS

¶ 27 The termination of parental rights occurs in two stages. The circuit court first determines if the parent is an "unfit person" pursuant to one or more grounds set out in the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2-29(2) (West 2016). This determination must be "made *** without regard to the likelihood that the child will be placed for adoption, and be based upon clear and convincing evidence." 705 ILCS 405/2-29(4) (West 2014). Only then does the court decide whether the termination of parental rights is in the best interest of the minor. *Id.* § 2-29(2) (West 2014). The State must prove this by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The bifurcated nature of the proceedings means that a court may find that the termination of parental rights is not in a minor's best interest, even if the minor's parents are found unfit to care for the minor. See, e.g., *In re M.F.*, 326 Ill. App. 3d 1110, 1118-19 (2000) (affirming finding of unfitness, but concluding that termination would provide no benefit and would only "deprive [the minor] of an already established relationship with her mother").

¶ 28 On appeal, Mr. Buckner does not challenge the circuit court’s unfitness findings, but only its finding that termination of his parental rights is in Tahj’s best interest.

¶ 29 A. Statutory Construction

¶ 30 The parties in this case agree that Tahj has no current prospects for adoption. Mr. Buckner’s first argument is that “[n]either the Juvenile Court Act nor the Adoption Act include provisions allowing for the termination of parental rights as a goal in and of itself.” According to Mr. Buckner, an order terminating parental rights is only statutorily authorized if it is entered to facilitate a minor’s adoption. This is an issue of statutory construction, which we review *de novo*. *In re Detention of Powell*, 217 Ill.2d 123, 135 (2005).

¶ 31 The termination of parental rights—by consent or by court order—is certainly a prerequisite to a minor child’s adoption. 705 ILCS 405/2-29 (West 2016). Indeed, as Mr. Buckner points out, the grounds for a finding that a parent is unfit are found in the Adoption Act (750 ILCS 50/1(D) (West 2016) and the Juvenile Court Act speaks of termination occurring in conjunction with the “appointment of a guardian with the right to consent to adoption” (705 ILCS 405/2-13, 2-19 (West 2016)). Moreover, where it is not possible for a minor to return home, adoption is a preferred permanency option to guardianship. 705 ILCS 405/2-28 (West 2016).

¶ 32 While these provisions certainly speak to the *preferences* established by the legislature, and although we agree that termination of parental rights in the absence of a pending adoption is somewhat unusual, Mr. Buckner has pointed to no statutory provision limiting a circuit court’s ability to terminate parental rights to situations where termination is necessary to facilitate an impending adoption. Indeed, this court has already made clear that neither the lack of a pre-adoptive placement nor the slim prospects for one in the future will result in a *per se* finding that

the termination of parental rights is not in a minor's best interest. *In re Shru R.*, 2014 IL App (4th) 140275, ¶ 25; *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). We have accordingly affirmed a circuit court's termination of parental rights where no adoptive placement was available on a number of occasions. In *In re B.S.*, 317 Ill. Ap. 3d 650, 665 (2000), for example, we noted that "[t]hrough the current availability of an adoptive home is one of the considerations when deciding whether termination of a parent's rights is in the best interests of a child, it is not the only one." We determined that it could be "just as important to free children from continued involvement with a mother whose chaotic and disruptive lifestyle [wa]s a detriment to their welfare." *Id.* See also *In re D.M.*, 336 Ill. App. 3d 766, 775 (2002) (affirming the circuit court's termination order, despite the fact that no adoptive home for the minor had been found); *In re Tashika F.*, 333 Ill. App. 3d at 170-71 (same).

¶ 33 Contrary to Mr. Buckner's assertion, the circuit court had statutory authority to terminate his parental rights, even in the absence of a pre-adoptive placement for Tahj. We next consider whether the court's finding that termination would be in Tahj's best interest was against the manifest weight of the evidence.

¶ 34 B. The Best Interests of Tahj D.

¶ 35 "[A]t a best interests-hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d 347, 364 (2004). When determining what will be in a minor's best interest, the circuit court must consider, "in the context of the child's age and developmental needs," the following factors:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-4.5 (West 2016).

¶ 36 The circuit court's "final determination regarding a minor's permanency lies within its sound discretion and that decision will not be overturned unless it is against the manifest weight of the evidence," *i.e.*, "when the opposite conclusion is clearly apparent." *In re Lishon M.*, 2014 IL App (1st) 133119, ¶ 20. "[T]here is a strong and compelling presumption in favor of the result reached by the trial court" because, "in determining the child's best interests the trial court is in a superior position to observe and evaluate the witnesses' demeanor." *Connor v. Velinda C.*, 356

Ill. App. 3d 315, 323 (2005).

¶ 37 Factors of particular relevance here are “the development of the child’s identity” (705 ILCS 405/1-4.5(b) (West 2016)) and “the child’s wishes and long-term goals” (*id.* § 2-4.5(e)). Mr. Buckner insists that “[t]here is no benefit to [a] child to be deprived of his or her family identity when there is no adult willing to step into that role through adoption.” As the circuit court made clear, however, that is not necessarily true. Tahj is a child of a rape. He was conceived when Mr. Buckner, an adult, sexually assaulted Tahj’s mother, an 11-year-old girl. Tahj knows this and has consistently expressed his desire to have no contact with Mr. Buckner. It seems clear to us, under these circumstances, that the circuit court viewed termination of Mr. Buckner’s parental rights not as the deprivation of a beneficial family identity, but as a chance for Tahj to be freed from the stigma of an ongoing tie with someone who had harmed his mother and caused her a great deal of trauma. This finding was not against the manifest weight of the evidence.

¶ 38 Mr. Buckner’s arguments to the contrary are unpersuasive. He first contends that severance of the parent-child relationship will harm Tahj financially because it “will bar Tahj from receiving any inheritance from his biological family on his father’s side” and prevent Tahj from sharing in any recovery if there is ever a wrongful death action brought on behalf of Mr. Buckner or a member of Mr. Buckner’s family. This is pure speculation. Although Mr. Buckner insists that Tahj’s paternal grandfather “has been a source of financial support for Tahj” and “has money that can be passed down to Tahj” upon his death, the evidence presented at the hearing in this case established only that Willie Buckner once gave Tahj money for his birthday and that once or twice Tahj asked Willie for money. There is no evidence that Tahj stood to inherit anything of value from his paternal grandfather. Even if he did, the termination of Mr. Buckner’s

parental rights does not in any way prevent Willie from making a specific bequest to Tahj. And the suggestion that Mr. Buckner or his father might someday be killed, a lawsuit filed, and that recovery on a wrongful death claim might be apportioned to various family members, stacks speculation upon speculation. Remote possibilities like these cannot be weighed against Tahj's clearly expressed desire to sever ties with Mr. Buckner.

¶ 39 Mr. Buckner also argues that termination of his parental rights does nothing to promote Tahj's stability. He implies that Tahj's history of aggressive behavior and past placement failures are the reason that his current foster parents are willing to be his guardians but not to adopt him, and that this has nothing to do with whether Mr. Buckner's parental rights are terminated. This may very well be true. But a child's need for permanence and stability are only one factor a court considers. 705 ILCS 405/104.5(g) (West 2016). Termination of Mr. Buckner's parental rights will not *impair* Tahj's ability to maintain a permanent and stable placement, and the circuit court's finding that termination is otherwise beneficial for Tahj for the reasons discussed above is not against the manifest weight of the evidence.

¶ 40 We also disagree with Mr. Buckner's assertions that the circuit court "simply ignored" the testimony of Willie Buckner. That testimony, establishing that Tahj conceded to a handful of visits in 2017, after years of no contact with Willie, and reached out to Willie on a couple of occasions when he needed money did not compel the circuit court to find that Tahj had a "profound and fundamental need for a connection with his biological kin." Nor did it necessarily mean there was an "ongoing relationship with [Tahj's] grandfather," notwithstanding what Tahj repeatedly told his case worker, foster parents, and therapist about his desire to have no contact with his father's family. The circuit court's best interest finding was fully consistent with the evidence.

¶ 41 Mr. Buckner argues that Tahj's renewed relationship with his mother following the termination of her parental rights shows that children can change their minds. That may be true, but it also shows that the termination of parental rights does not make it impossible for a child to maintain a relationship with a parent. It simply gives control over whether that occurs to the child, rather than to the parent, something the circuit court found would be in Tahj's best interest here.

¶ 42 Mr. Buckner also argues that, because he is incarcerated, Tahj would have no need to be concerned about unwanted contact. This argument only underscores the purely *symbolic* value of a father-son relationship *to Mr. Buckner*. We will assume that Mr. Buckner's desire for such a relationship is genuine. It is also irrelevant. As the circuit court recognized, at a best-interest hearing, the minor's best interest is the only consideration and it is not balanced against any other interest. *In re Curtis W., Jr.*, 2015 IL app (1st) 143860, ¶ 52.

¶ 43 Finally, we find no evidence in the record on appeal to support Mr. Buckner's argument that the circuit court judge's ruling was the product of his anger or disgust for Mr. Buckner, or that it was the court's intent to use the termination proceedings to further punish Mr. Buckner for his crime. The circuit court judge matter-of-factly stated the nature of Mr. Buckner's crime against Tahj's mother. Although the bare fact of that crime is disturbing, it was also quite relevant to these proceedings, not only as the basis for the court's finding of depravity, but as the reason that Mr. Buckner will be incarcerated until long after Tahj reaches adulthood and in understanding Tahj's desire to have no relationship with his father. The record reveals that the circuit court judge was civil and respectful, cognizant of Mr. Buckner's rights, and took pains to explain the reasons for his ruling to Mr. Buckner. There is no indication that that ruling was based on anything other than a careful consideration of what was in Tahj's best interest.

¶ 44 After the opening brief in this appeal was filed, we granted the public guardian leave to file a report apprising this court of changes in Tahj’s current placement. Tahj apparently ran away from home in December 2017 and, although a child-protection warrant was issued, as of the filing of the report on March 16, 2018, his whereabouts were still unknown. The public guardian’s position is that this new information does not change the result in this appeal. Mr. Buckner, however, argues that it undermines the circuit court’s finding that Tahj was fully integrated in a permanent placement. Mr. Buckner argues that this new evidence demonstrates that termination of his parental rights did nothing to alleviate Tahj’s history of disrupted placements. We may not consider this new evidence for the first time on appeal. See *People v. Brooks*, 187 Ill. 2d 91, 128 (1999) (“[t]o be reviewed on appeal, evidence must have been presented to the fact finder at trial”). We note, however, that the basis for the circuit court’s best interest finding was not that the termination of Mr. Buckner’s parental rights would spell an end to Tahj’s history of problems, but that it would be of some comfort to Tahj not to have to recognize his mother’s rapist as his parent under the law.

¶ 45 The circuit court’s finding that termination of Mr. Buckner’s parental rights was in Tahj’s best interest was not against the manifest weight of the evidence.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, the circuit court’s order terminating Mr. Buckner’s parental rights is affirmed.

¶ 48 Affirmed.