FILED
March 19, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170778-U

NOS. 4-17-0778, 4-17-0798, 4-17-0801, 4-17-0802 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re E.G., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0778) Scott Wolfe, Respondent-Appellant).	Appeal from Circuit Court of Ford County No. 17JA1
In re E.G., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0798) Meredith Mahon, Respondent-Appellant).	No. 17JA1
In re R.W., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0801) Meredith Mahon, Respondent-Appellant).	No. 17JA2
In re P.W., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. (No. 4-17-0802) Meredith Mahon, Respondent-Appellant).	No. 17JA3 Honorable Kevin Fitzgerald, Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court stated, from the bench, an adequate factual basis for its finding that respondents were unfit and unable, for other than financial circumstances alone, to take care of the children, in that the factual basis was meaningful and factually specific to respondents.

(2) A certified mail receipt, signed by a representative of the Oglala Sioux Tribe more than 10 days before the dispositional hearing, proves compliance with the notice provisions of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912(a) (2012)).

(3) By finding respondents to be unfit and unable, for other than financial circumstances alone, to take care of the children, the trial court did not make a finding that was against the manifest weight of the evidence.

¶ 2 In February 2017, the State filed petitions asking the trial court to adjudicate E.G., born June 11, 2006; R.W., born September 1, 2009; and P.W., born March 11, 2011, neglected minors, and place guardianship and custody with the Department of Children and Family Services (DCFS). Meredith Mahon is the mother of all three children. Scott Wolfe is E.G.'s father, and Michael Widmer (whose parental rights were terminated in previous litigation) is the father of R.W. and P.W. Ultimately, the court adjudicated the children neglected and following a dispositional hearing made the children wards of the court placing guardianship and custody with DCFS. We have consolidated the cases of all three children for purposes of appeal.

¶ 3 Respondents appeal asserting (1) the trial court failed to state an adequate factual basis for its findings that they were unfit and unable to take care of the children, (2) as to E.G., noncompliance with the notice provisions of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912(a) (2012)), and (3) that by finding them to be unfit and unable, for other than financial

circumstances alone, to take care of the children, the court made a finding that was against the manifest weight of the evidence. We affirm the trial court's judgments.

¶ 4 I. BACKGROUND

¶ 5 A. The Parental Relationships

¶ 6 Meredith Mahon is the mother of all three children. Scott Wolfe is E.G.'s father, and Michael Widmer (whose parental rights were terminated in previous litigation) is the father of R.W. and P.W.

¶ 7 B. Why the Children Came into Care

¶ 8 Megan McNeal, a child protection specialist, and Tara Gilman, a child protection supervisor, wrote a shelter care report, which was filed on February 17, 2017. The report revealed the following.

¶ 9 A hotline call was made to DCFS because on February 14, 2017, at P.W.'s school, Widmer and P.W.'s maternal grandmother got into a dispute over which of them should pick up P.W. that day from school. Although Widmer's parental rights had been involuntarily terminated in 2012, in July 2015, after his release from prison, he began visiting the children again. This took place in spite of a child protection specialist warning Mahon against allowing Widmer to have unsupervised contact with the children. Apparently, Widmer did have unsupervised contact with the children. A written pickup schedule at the school provided that, per Mahon's instructions, Widmer would drop off R.W. Monday through Friday and pick him up Monday, Tuesday, Thursday, and Friday. Also, McNeal interviewed R.W. and P.W. at the school on February 15, 2017, and they each told her that R.W. was actually living with Widmer in Loda, Illinois, while P.W. and E.G. were living with Mahon and their maternal grandmother in Paxton, Illinois.

¶ 10 As DCFS had explained to both Widmer and Mahon, it was impermissible for Widmer to have unsupervised contact with any of the children until DCFS evaluated the services he had completed and made a considered decision about what conditions or restrictions, if any, should be imposed upon his interaction with the children. As of 2016, three orders of protection had been entered against Widmer forbidding him to have contact with Mahon and the children.

¶ 11 C. The Petitions for an Adjudication of Wardship

¶ 12 On February 16, 2017, the State filed three petitions for an adjudication of wardship, one for each child. Count I of the petitions pertaining to E.G. and P.W. alleged they were neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2016) (environment injurious to the minor's welfare)) in that Mahon, the minor's "sole caregiver, allow[ed] a sibling of the respondent minor to have contact with an individual who ha[d] been found unfit, and ha[d] had parental rights terminated[,] without proper supervision." That individual was Widmer.

¶ 13 Count I of the petition pertaining to R.W. alleged he was neglected within the meaning of section 2-3(1)(b) in that Mahon, his "sole caregiver, allow[ed] the respondent minor to have contact with an individual who ha[d] been found unfit, and ha[d] had parental rights terminated[,] without proper supervision."

¶ 14 D. Status Hearing, in Which Wolfe Asserted His Membership in a Sioux Tribe

¶ 15 On March 6, 2017, the trial court held a status hearing, in which the State's Attorney informed the court that Wolfe claimed to be a member of the Oglala Sioux Tribe, a federally recognized Native American tribe. The State's Attorney said that, accordingly, he was preparing the statutorily required notice. See 25 U.S.C. § 1912(a) (2012) (requirements of the Indian Child Welfare Act). The court asked Wolfe if he was indeed a registered member of the

tribe, and he answered: "Yeah, I was adopted and came through the adoption records. I was a member of the tribe."

¶ 16 On January 23, 2018, we granted a motion by the State to supplement the record with a certified mail receipt. The receipt appears to have been signed on March 20, 2017, by the Indian Child Welfare Act notice administrator of the Oglala Sioux Tribe, Pine Ridge, South Dakota.

¶ 17 E. The Adjudicatory Hearing

¶ 18 On June 2, 2017, the trial court held an adjudicatory hearing in the three cases. At the beginning of the hearing, the State's Attorney told the court the parties had worked out an agreement whereby Mahon would "stipulate to [c]ount I in each of the three cases" and the remaining counts would be dismissed. Defense counsel stated: "That is accurate, Your Honor."

¶ 19 The trial court then admonished Mahon, reciting to her the allegations in count I of E.G.'s and P.W.'s case and the allegations in count I of R.W.'s case. Mahon responded that she understood the allegations. She denied anyone had made any promises or threats "to get [her] to admit those counts today."

¶ 20 The trial court then requested a "[f]actual basis." The State's Attorney recounted the dispute at the school between Widmer and the maternal grandmother, the termination of Widmer's parental rights, and the children's statements that R.W. lived with Widmer. After hearing the factual basis, the trial court asked:

"THE COURT: Do you stipulate to the factual basis?

[DEFENSE COUNSEL]: Yes, Your Honor, I would.

THE COURT: Court finds a factual basis, finds a free, voluntary[,] and knowing admission. Court will adjudicate each minor to be neglected."

¶ 21 After the trial court set an agreed-upon date for the dispositional hearing and admonished Mahon of her obligations to cooperate with DCFS, comply with the service plans, and correct the conditions that required the children to be in care, or risk losing her parental rights, the State's Attorney made a last-minute observation. He said:

"[STATE'S ATTORNEY]: Judge, if I could have a moment, I would just like to add one more thing to the factual basis. I think it will be without objection. I want to clarify that the factual basis I gave were [*sic*] the statements children made during their interviews. I will indicate that [r]espondent [m]other has disputed those statements and doesn't necessarily agree with everything that was said. I just wanted to clarify that for the record."

¶ 22 Mahon and her attorney did not respond, on the record, to this clarification.

¶ 23 F. The Dispositional Hearing

¶ 24 On September 26, 2017, the trial court held a dispositional hearing. Instead of recounting the hearing exhaustively, we will confine our discussion to the following relevant topics.

¶ 25 1. *Wolfe's Visitation with E.G.*

¶ 26 E.G. was born in June 2006, but it does not appear that Wolfe began visiting him until 2015. By court order, visits were always supervised. A caseworker, Grace Mitchell,

testified that, from November 2015 to May 2016, Wolfe visited E.G. 12 times; from May 2, 2016, to August 2, 2017, he did not visit E.G. at all; and from August 2, 2017, to the date of the dispositional hearing, he visited E.G. 3 times. According to the dispositional report, filed on July 27, 2017, "[E.G.] reported minimal contact with his father until June 2016. [He] stated that he met Mr. Wolfe, but added 'he left without saying goodbye.' "

¶ 27 In his testimony in the dispositional hearing, Wolfe explained it was not until 2014 that he even became aware E.G. was his son.

¶ 28 Mahon, on the other hand, maintained that Wolfe had this awareness from the start because she told him in Alabama as soon as she realized she was pregnant. She testified she became acquainted with him in Alabama, in September 2008, when she was volunteering for the American Red Cross. This date cannot be correct, considering E.G. was born in 2006. Mahon also testified she was 21 and Wolfe was 41 when they met and she became pregnant. According to the dispositional report, Mahon was born on May 18, 1985. That would mean she became pregnant with E.G. sometime after May 18, 2006—an impossibility since he was born on June 11, 2006. In any event, Mahon testified she took a pregnancy test in the hotel room in Alabama and told Wolfe she was pregnant by him.

¶ 29 Afterward, Mahon returned home to Paxton, Illinois, and, for a while, she and Wolfe corresponded via e-mail. He asked her how she was doing and if he could send her "baby stuff." He sent her flowers to the Paxton address, where she had always lived. Mahon "disregarded all of it."

¶ 30 According to the dispositional report, Mahon had a previous case with DCFS which came about when Mahon left one-month-old R.W. in the house unsupervised. Then, not long afterward, she dropped the children off at Widmer's place of business because she could

" 'could no longer deal with them,' " and she returned, intoxicated, to pick them up. Those incidents were in October and November 2009. Widmer, the report noted, was a problematic caregiver. He had "a history of unstable, erratic behavior, in addition to a long history of substance abuse issues and criminal involvement," and, in fact, Mahon had entered into a written agreement with DCFS, promising to prevent him from having unsupervised contact with the children. After Mahon completed services, the children were returned to her. E.G. returned home with a curiosity about the identity of his father. In the hope that E.G. could have "a positive male figure in his life," Mahon "went onto Facebook and searched [for Wolfe's] name, which pulled up a picture." Mahon and Wolfe corresponded on Facebook. Wolfe, who confided he was in "a desperate situation," "asked if he could come to Illinois and stay and meet [E.G.]" Mahon consented. In retrospect, she believed his real aim was to get back together with her and that when he perceived the futility of that aim, he lost enthusiasm as a family man. Wolfe lived with them in Paxton for four weeks and then left.

¶ 31 It was her understanding that he then moved to Champaign, Illinois. "[D]uring that time he didn't have any contact with [E.G.]" other than, if memory served her correctly, sending a Bible to E.G.—"no birthday card, no birthday presents, no money." In 2015, though, in the Champaign County circuit court, he petitioned for visitation and was awarded visitation rights.

¶ 32 Mahon's attorney asked her:

> "Q. How much contact has [Wolfe] had with [E.G.]? Since 2015 how much contact has he had with [E.G.]?
>
> * * *
>
> A. From 2015 not much.

Q. Has he sent letters?

A. No.

Q. Has he sent birthday cards?

A. No.

Q. Has he sent Christmas presents or anything like that?

A. No.

Q. Does he make telephone calls to [E.G.]?

A. No."

¶ 33 2. *Wolfe's Account of Why He Moved Out of Paxton*

¶ 34 In the dispositional hearing, Wolfe testified that "maybe" it was in 2015 (he was not sure of the year) when he lived in Paxton with Mahon, E.G., and the other two children. Everything went all right for a while, but "[p]robably about three months" into his stay, Mahon began using drugs. Wolfe testified:

> "It was probably 1:30, 2:00 in the morning. So I had all three of these boys by myself, other than [Mahon's] mom, and [Mahon's] mom takes a heavy dosage of medication in the evenings, and she wasn't capable of taking care of the boys. And [Mahon] came home, and she was tripping on acid, drinking, and I believe, there was cocaine involved, but I could be mistaken about that. Spoke to her about that.
>
> * * *

So I left because I did not want to be involved in a situation where the Department of Social Services could show up at the house, and then I would be a neglectful parent.

Q. Okay.

A. So I reported it to the police and left the premises.

Q. You did not want to be a neglectful parent?

A. Correct.

Q. And you left your child with an individual whom you just testified to was tripping on acid, using cocaine[,] and coming home at all hours of the morning?

A. That was—I left after this episode had occurred. She was sober—

Q. And you left your child there?

A. She was sober when I left. I reported it to the Department of Social Services, called the 1-800 number[,] and reported it to the Police Department, and that was the best I could do.

Q. You left [E.G.] there?

A. I had no choice."

¶ 35 Wolfe testified that after leaving Paxton, he applied for an order of protection in the Ford County circuit court but was unsuccessful. Then he "opened the family case" in the Champaign County circuit court, in which he won an order of protection forbidding Widmer from having contact with E.G. That was in 2016. He did not follow through, however, and

obtain a plenary order of protection. In the Champaign County case, he also sought custody and visitation of E.G. The court granted him supervised visitation, and he exercised his visitation rights for a number of months. Then he moved to Colorado.

¶ 36 The State's Attorney asked Wolfe:

> "Q. How often did you visit with [E.G.] in person when you were in Colorado?
>
> A. Every two to three weeks, I would drive back out here and visit with [E.G.] Whether all those visits came to fruition is another story, but Ms. Mitchell will have to tell you about [that] because she has all that documented. I don't have all that documented."

¶ 37 Grace Mitchell, the director of the Family Advocacy Center in Champaign County, testified she was in charge of supervising visitation and that, as far as she knew, Wolfe never drove from Colorado to visit with E.G. He visited E.G. 12 times during the period of November 12, 2015, to May 2, 2016. Then Wolfe had surgery, and the visits ceased until August 2, 2017. Thus, there were no visits at all from May 2, 2016, all the way until August 2, 2017. Then the visits started up again. Wolfe had visited E.G. three times since August 2, 2017. "The visits went very well," and E.G. "appeared to have enjoyed the time he spent with his father."

¶ 38 3. *Wolfe's Second Relocation to Illinois*

¶ 39 Wolfe testified that shortly after E.G.'s case was filed, he moved from Colorado to Missouri, where he bought a house. Because E.G. did not want to change schools, Wolfe moved again, this time from Missouri to Urbana, Illinois. He rented out the house in Missouri, and he now lived in a four-room apartment in Urbana, which he leased week to week, until

October 15, 2017, when he expected an apartment to open up at Town and Country Apartments, which he would lease year by year. Wolfe was about to begin a permanent job at Midas, just across the street from the week-to-week apartment. He also had an interview for a paralegal position at Parmele Law Firm, but he did not know if anything would come of that.

¶ 40 4. *The Relationship Between Mahon and Widmer*

¶ 41 a. What E.G. Said About Widmer

¶ 42 When being interviewed for the dispositional report, E.G. stated the following about Widmer, who (according to the dispositional report) was imprisoned from 2012 to 2014 on a conviction of intimidation:

> "[E.G.] expressed strong opinions about Mr. Widmer. He described Mr. Widmer as 'violent,' as he has been physically abusive (caused severe bruising on [E.G.]'s buttocks, witnessed him cause [P.W.] to bleed after striking him) and emotionally abusive (screaming in [E.G.'s] face within extremely close proximity). *** [E.G.] reported that Mr. Widmer 'drinks beer too much' and 'walks around the house naked when there are other people there.' [E.G.] described this as one of his worst memories, and he could recall no happy memories from his childhood thus far.
>
> * * *
>
> He has been exposed to violence between his mother and Mr. Widmer, recalling Mr. Widmer 'slapping' Ms. Mahon and his mother grabbing a knife to threaten Mr. Widmer. He also

witnessed Mr. Widmer 'choking' his mother and Ms. Mahon 'screaming' at Mr. Widmer."

¶ 43 b. What R.W. Said About Widmer and Mahon

¶ 44 R.W. stated the following when being interviewed for the dispositional report:

"[R.W.] reported that he resided with his father prior to the DCFS involvement. He could not recall how long he had been living there, but stated it had been 'less than a year.' [R.W.] stated that he wanted to live with his father and his mother allowed this. [R.W.] stated that his brothers 'hated' Mr. Widmer. Although Ms. Mahon would occasionally come to Mr. Widmer's house, [E.G.] and [P.W.] would begin crying to leave as soon as they arrived. [R.W.] stated, 'They didn't care about me, they just wanted to leave.' [R.W.] stated that he had infrequent contact with his mother and siblings.

[R.W.] denied that he ever received discipline by his father as he was 'always good.' He could not report on the rules of the home, as he stated that he did not misbehave. He denied experiencing abuse or neglect by either his father or his mother. [R.W.] did report witnessing volatility in his parents' relationship. He stated that they would call each other names and occasionally hit each other. He denied feeling frightened during these events, adding that he 'felt normal, not scared.' "

¶ 45 c. Mahon's Testimony

¶ 46 Even though she had obtained three orders of protection against Widmer—one in 2009 and two in the fall of 2016—Mahon, in her testimony, denied that Widmer had been abusive toward her. She could not recall if, in any of her petitions for orders of protection, she had alleged physical abuse; all she could recall for certain was she had alleged property damage. Widmer, Mahon admitted, could come across as intimidating and dominating, and he was defiant toward authority, but she personally did not regard him as intimidating or dominating. In 2009, she petitioned for an order of protection against him only because DCFS had required her to do so. She was playing along, nothing more.

¶ 47 Mahon thought it was completely unnecessary for DCFS to remove the children from her custody. She denied allowing the children to have unsupervised contact with Widmer.

¶ 48 While Widmer was incarcerated, Mahon visited him, but only (she testified) to keep him informed as to how R.W. was doing. R.W. had been admitted into the psychiatric unit of a hospital, and although Widmer no longer had any legal rights regarding R.W. (given that his parental rights had been terminated), Mahon thought it was only fair and decent to keep him apprised of R.W.'s welfare. The guardian *ad litem* asked Mahon:

> "Q. *** And if I said the jail log shows between February and last week, you made 21 visits with Mr. Widmer, you couldn't disagree with that; could you?
>
> A. Yes, I could.
>
> Q. All right. How many do you think there were then?
>
> A. From February to current?
>
> Q. Yes.

A. 21? I would say more from February to May there was 21. So I am going to give you a shorter amount.

Q. So at least that amount?

A. I don't know."

¶ 49 5. *The Trial Court's Decision and Rationale*

¶ 50 After closing arguments by the attorneys, the trial court ruled as follows:

"THE COURT: Thank you. The [c]ourt will make all three [m]inors [w]ards of the Court. Guardianship granted to [DCFS]. I think both parents are unfit. With respect to Mr. Wolfe, he has only temporary housing. There has been no home study done. His employment has yet to start. He has just started in counseling, and all of that can probably be overcome within a relatively short time. I think he is unable because he didn't have a relationship with [E.G.] that would allow [E.G.] to be returned to—or placed in his care at this time.

So I think he needs to go through counseling, himself, and I think, if he is going to be the return-home parent for [E.G.], there has got to be family counseling. And I think we also need to take into account that would mean removing [E.G.] from his brothers and from an environment that he has been comfortable with. So, that is down the road. But right now, I think he is unfit, and I think, he is unable.

I think mom is—I think he is willing. I think mom is unfit. I don't know if she really understands the danger that she has placed these children in allowing Mr. Widmer to have access to them. And if you read the report, the access was far more than she testified to. There was testimony that [R.W.] went and lived with Mr. Widmer or Mr. Widmer was living with them for periods of time. It was unfettered access to these children. I don't think she understands the danger that she put them in. There are all kinds of incidents of him being physically abusive, verbally abusive to these children throughout the time that he was allowed to have contact with them. And until she understands that and can provide a safe environment for the kids, she is going to remain unfit. She certainly is willing.

And I think that maybe if she—and visiting Mr. Widmer 21 times within a short period of time, I think, suggests that the relationship is ongoing. It certainly wouldn't require 21 visits to update him on [R.W.'s] condition. So, I agree with [the guardian *ad litem*'s] assessment of that. And she is—I don't think she understands the danger he imposes. I think, she needs to understand and be able to articulate it. She's got three Orders of Protection against him, and then her only concern she testifies to is he has a conflict with authority, and that when he is around the kids, DCFS gets involved.

> There is no recognition that he poses a danger, not only to the children but to herself. The [c]ourt will set the goal return home within 12 months."

¶ 51 II. ANALYSIS

¶ 52 A. Wolfe's Arguments (Case No. 4-17-0778)

¶ 53 1. *The Asserted Lack of a Written Factual Basis*

¶ 54 Wolfe complains the trial court failed to provide a written factual basis for its finding that he was unfit and unable to discharge his parental responsibilities. To "commit" E.G. to DCFS "for care and service," the court had to do more than find Wolfe to be, "for some reason other than financial circumstances alone," "unfit or *** unable" to take care of E.G. 705 ILCS 405/2-27(1) (West 2016). The court also had to "[put] in writing the factual basis supporting" its finding. *Id.*

¶ 55 Wolfe acknowledges that, at the conclusion of the dispositional hearing, the trial court orally stated a rationale for finding him unfit and unable. He further acknowledges that, under *In re Madison H.*, 215 Ill. 2d 364, 377 (2005), a factual basis stated orally by the court, on the record, can satisfy section 2-27(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-27(1) (West 2016)). Even so, he maintains that for two reasons the court's oral rationale in this case was insufficient: (1) it was not "detailed enough," and (2) it had to do with his "financial circumstances alone" (705 ILCS 405/2-27(1) (West 2016)). We now consider each argument made.

¶ 56 a. The Required Degree of Detail

¶ 57 The trial court's stated rationale for finding Wolfe to be unfit and unable to take care of E.G. had to be "fact-specific to" Wolfe and had to give him "fair notice of the reasons for [the court's] decision." *Madison H.*, 215 Ill. 2d at 377-78.

¶ 58 The criteria in *Madison H.* are fulfilled. The trial court's rationale was fact-specific to Wolfe. It was not "generic" or boilerplate. *Id.* at 378. No further details were necessary to give Wolfe "fair notice" of the reasons why the court found him to be unfit and unable. *Id.* The court's statement, for example, that Wolfe "didn't have a relationship with [E.G.]" or that he "ha[d] only temporary housing" was informative enough without further elaboration.

¶ 59 b. Financial Circumstances Alone

¶ 60 Wolfe argues: "It is not sufficient to say he is unfit because he has not started a job and does not have a stable home when he just moved here for the sake of the child. These issues related to the short period of time he has to start working and find a home are, 'financial circumstances alone' and should not be a reason for a finding of unfitness." 705 ILCS 405/2-27(1) (West 2016).

¶ 61 By "mov[ing] here for the sake of the child," Wolfe has demonstrated a commendable willingness to take care of the child—and the trial court found him willing to do so. But the question is his *fitness* and *ability* to take care of the child, and he cannot do so unless he has stable housing. Granted, not having started his job yet would seem to fall into the category of "financial circumstances alone," but, on the record before us, we are unclear the same is true of his lack of stable housing. *Id.* The record appears to contain no actual evidence that financial circumstances alone forced Wolfe to rent an apartment on a week-to-week basis instead of renting one on a more long-term basis. Children need stable housing, and housing

could be regarded as unstable or insecure if the landlord is always free to end the lease the next week. To be sure, Wolfe testified he would have more permanent living quarters the next month, when an apartment became available at Town and Country Apartments, but that was only a plan, a prospect. Until a long term lease for a new apartment was signed and he moved in, he had unstable housing. Those were the circumstances existing at the time of the dispositional hearing.

¶ 62 2. *Proof of Timely Notice to the Oglala Sioux Tribe*

¶ 63 Wolfe objects to the lack of a return receipt from the Oglala Sioux Tribe, of which he claims to be a registered member. Section 1912(a) of the Indian Child Welfare Act of 1978 provides:

> "(a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of *** an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail *with return receipt requested*, of the pending proceedings and of their right of intervention. *** No foster care placement *** shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe ***." (Emphasis added.) 25 U.S.C. § 1912(a) (2012).

The appellate court has held: "In order to establish compliance with the *** notice provision [quoted above], trial courts have a duty to ensure that the record includes, at a minimum, (1) the original or a copy of the actual notice sent by registered mail pursuant to section 1912 [(25 U.S.C. § 1912 (2012))], and (2) the original or a legible copy of the return receipt or other proof

of service." *In re K.T.*, 2013 IL App (3d) 120969, ¶ 14. Wolfe acknowledges "there is evidence the notice was sent" to the Oglala Sioux Tribe, but he observes "there is no evidence it was received."

¶ 64 That was true when Wolfe wrote his brief. Afterward, however, on January 4, 2018, a United States Postal Service certified return receipt was filed with the Ford County circuit court. On January 23, 2018, we granted a motion by the State to supplement the record with this return receipt. It appears that a representative of the Oglala Sioux Tribe, in Pine Ridge, South Dakota, signed the receipt on March 20, 2017, more than 10 days before the dispositional hearing. See 25 U.S.C. § 1912(a) (2012). Because the record now contains "a legible copy of the return receipt or other proof of service," Wolfe's concern about compliance with the notice requirements of the Act appears to have been alleviated. *K.T.*, 2013 IL App (3d) 120969, ¶ 14.

¶ 65 3. *Whether the Finding of Parental Unfitness Is Against the Manifest Weight of the Evidence*

¶ 66 Wolfe frames the final issue in his brief as follows: "Whether the finding that based on the preponderance of the evidence Mr. Wolfe [is] unfit and unable to care for his child given the allegations related solely to a sibling of the child being at risk with the mother's boyfriend was an abuse of discretion." Actually, a finding based on the preponderance of the evidence is reviewed under the manifest-weight standard. The appellate court has held:

> "Once a child has been adjudged neglected and/or abused, a trial court may commit [him or] her to wardship upon a determination that the parent is either unable or unwilling or unfit, for some reason other than financial circumstances alone, to care for, protect, train[,] or discipline the child and that the health, safety, and best interests of the child will be jeopardized if [he or] she

> remains in the custody of the parent. [Citations.] Any one of these three grounds alone—either unable or unwilling or unfit—provide a proper basis for removal. [Citation.] The trial court's determination regarding this, similar to an adjudicatory finding of neglect or abuse, will be reversed only if the factual findings at the dispositional hearing are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order." *In re Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30.

Wolfe challenges the factual finding that he is unfit and unable to take care of E.G. Thus, the question is whether this factual finding is against the manifest weight of the evidence, not whether it is an abuse of discretion. See *id.*

¶ 67 A finding is against the manifest weight of the evidence only if the finding appears to be unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). A dispositional finding of parental unfitness or inability is against the manifest weight of the evidence only if it is "clearly" apparent, from a review of the record, that the court should have found the alleged unfitness or inability to be unproved by a preponderance of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007).

¶ 68 The trial court decided the State had carried its burden of proving Wolfe was "unfit or *** unable, for some reason other than financial circumstances alone, to care for, protect, train[,] or discipline" E.G. 705 ILCS 405/2-27(1) (West 2016); see *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. Although the court found him to be presently *willing* to take care of

E.G., he had to be more than willing to do so; he also had to be *fit* and *able* to do so. See 705 ILCS 405/2-27(1) (West 2016); *In re Lakita B.*, 297 Ill. App. 3d 985, 992-93 (1998).

¶ 69 As Wolfe points out, none of the reasons why the trial court found him to be unfit and unable had anything to do with the neglect alleged in the petition for an adjudication of wardship. Clearly, the text of section 2-27(1) of the Juvenile Court Act of 1987, lacks any requirement that the parental unfitness or inability relate to the neglect or abuse alleged in the petition. We decline to read such a requirement into the statute. See *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 510 (2006). Under the plain text of the statute, the question is whether the parents are, for some reason other than financial circumstances alone, willing, fit, and able to take care of the child—period—not whether their unwillingness, unfitness, or inability relates to the allegations in the petition for adjudication of wardship. See 705 ILCS 405/2-27(1) (West 2016).

¶ 70 The most important reason why the trial court found Wolfe to be unfit and unable to take care of E.G. is he "didn't have a relationship with [E.G.] that would allow [E.G.] to be *** placed in his care at this time." (Most likely, the other deficiencies could soon be remedied, the court noted.) This was not to deny the existence of a relationship between Wolfe and E.G. It is just that the *quality* of the relationship was inadequate. Wolfe and E.G. were acquainted, and they could have a good time together during visitations, but, in the court's assessment, theirs was not "a relationship *** that would allow [E.G.] to be *** placed in [Wolfe's] care at this time." The inadequacy of the relationship lay in its inconstancy. The relationship was established late, and then it was allowed to languish. As the guardian *ad litem* aptly put it, Wolfe was "a feather in the wind." His consistency, his dependability, as a parent was legitimately in question.

¶ 71 It appears that from E.G.'s birth, in 2006, all the way until 2015, Wolfe had no contact with E.G. It is true that, in the dispositional hearing, Wolfe claimed it was not until 2014 that he learned E.G. was his son. The trial court, however, was "in a much better position [than we] to assess the credibility of witnesses and [to] weigh the evidence," and the court did not have to believe Wolfe in this respect. *Lakita B.*, 297 Ill. App. 3d at 994. The court may have believed her basic point that she told Wolfe, as soon as she realized she was pregnant, that she was pregnant by him. She testified she told Wolfe, while they were together in Alabama, that she was pregnant by him. According to her, Wolfe was with her when she took the pregnancy test, and he acknowledged, at the time, that the child was his. Even though Mahon had always lived at the same address in Paxton (according to her testimony), some nine years went by without Wolfe's ever attempting to establish a relationship with E.G.

¶ 72 Even when in 2015 Wolfe moved in with Mahon and the three children in Paxton, ostensibly to establish a relationship with E.G., the experiment proved to be short-lived. He moved back to Colorado after three months and had no further contact with E.G. for more than a year. His own testimony as to why he suddenly left arguably puts in question the durability of his commitment as a parent.

¶ 73 According to Wolfe's testimony, it was late at night, and he was home, in Paxton, with the three children (E.G., R.W., and P.W.). Mahon's mother was there, too, but she was of no help because in the evening she always was medicated. Around 1:30 or 2 a.m., Mahon came home, high on narcotics. Wolfe called the police and abruptly departed, presumably to Colorado. It appears, from his testimony, that he had two reasons for leaving: (1) it was inconvenient or troublesome to be put in the position of watching three children without help, and (2) he thought he would have looked bad, as a parent, if the police found him in the company

of people under the influence of drugs. So, choosing, on this occasion, to put himself before his child—which is what it came down to—he left E.G. in the care of two drug-addled adults, gambling that E.G. would be all right until the police arrived, and afterward. Maybe this was when Wolfe " 'left without saying goodbye,' " to quote what E.G. told a caseworker. Subsequently, it appears, E.G. never heard from Wolfe again for over a year. Arguably, this episode does not reflect well on Wolfe's judgment and dependability as a parent.

¶ 74 It is true that when Mahon's attorney questioned Wolfe on the advisability of leaving E.G. in the care of adults impaired by drugs, Wolfe explained that he waited until Mahon was "sober" before he left. This explanation, however, may well have come across as a damage-controlling revision, which the trial court did not have to believe. After all, if Wolfe's concern was to avoid having his image as a parent tainted by being found in the company of adults under the influence of drugs, the only way to alleviate that concern was to be gone by the time the police arrived.

¶ 75 Now, happily, Wolfe is very much present. As the trial court found, he now has the willingness to raise E.G.—and he deserves credit for that—but his tenacity as a parent, his staying power, is still legitimately in question, and in this regard he might benefit from services. A trier of fact could legitimately take the view that for most of E.G.'s life, Wolfe failed to exercise a reasonable degree of interest, concern, and responsibility as to E.G.'s welfare. For approximately the first nine years of his life, E.G. did not know Wolfe—and the trial court did not have to believe it was entirely Mahon's fault.

¶ 76 Not only the late start but the inconsistency is troubling. According to Mitchell's testimony, Wolfe visited E.G. 12 times from November 2015 to May 2016, but afterward, from May 2, 2016, to August 2, 2017, he never visited E.G. at all. That was a year and three months

without any contact whatsoever with E.G.—no letters, no birthday card, no phone calls, nothing, according to Mahon's testimony. Then, on August 2, 2017, Wolfe resumed visitation, and as of the date of the dispositional hearing, he had visited E.G. three times. In sum, the evidence lends some support to the finding that Wolfe is unfit or unable to raise E.G. because, historically, Wolfe appears to have had difficulty forming a lasting, durable relationship with E.G. On the record before us, we cannot characterize the finding as arbitrary or unreasonable. See *Eychaner*, 202 Ill. 2d at 252. We are unconvinced the finding is against the manifest weight of the evidence. See *Harriett L.-B.*, 2016 IL App (1st) 152034, ¶ 30.

¶ 77 B. Mahon's Arguments (Case Nos. 4-17-0798, 4-17-0801, 4-17-0802)

¶ *78* 1. *Her Argument That the Finding of Neglect Is Against the Manifest Weight of the Evidence*

¶ 79 In the adjudicatory hearing, the trial court found the three children, E.G., R.W., and P.W., to be neglected as alleged in count I of the petitions for an adjudication of wardship. On appeal, Mahon challenges that finding as being against the manifest weight of the evidence. We note that (1) defense counsel told the court it was "accurate" that Mahon wished to stipulate to count I in all three cases; (2) Mahon personally assured the court that she understood the allegations in the petitions and that no threats or promises had been made to her; and (3) after the State's Attorney recited a factual basis, defense counsel told the court: "Yes, Your Honor, I would [stipulate to the factual basis]." "[A] respondent parent's stipulation of facts can provide a sufficient basis by itself for a trial court's finding of neglect." *In re R.B.*, 336 Ill. App. 3d 606, 618 (2003). Such a stipulation "has the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of that fact." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 462 (1992).

¶ 80 Nevertheless, Mahon argues the stipulation is invalid because, later in the hearing—after the trial court found a factual basis and a knowing and voluntary stipulation by her to count I and after the court, in reliance on the stipulation, adjudicated the children to be neglected—the State's Attorney remarked that Mahon "ha[d] disputed [the] statements [the children made in their interviews] and [that Mahon did not] necessarily agree with everything that was said."

¶ 81 But this was a remark by the State's Attorney, not by defense counsel. Why did the trial court have to take the State's Attorney's word over defense counsel's word? The State's Attorney had no authority to speak for Mahon, and, after all, the court had just heard Mahon's attorney state on the record: "Yes, Your Honor, I would [stipulate to the factual basis]." Evidently, then, regardless of any position Mahon had taken in the past, Mahon *now* agreed with the factual basis. The law is that, generally, a client is bound by his or her attorney's stipulations. *National Union Fire Insurance Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 60. Mahon does not cite any case that would exempt her from this general principle. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, *with citation of the authorities *** record relied on*." (Emphasis added.)); *Hollenbeck v. City of Tuscola*, 2017 IL App (4th) 160266, ¶¶ 27-28 (an argument unaccompanied by a citation to relevant legal authority is forfeited).

¶ 82 2. *A Written Factual Basis for the Finding That Mahon Was Unfit and Unable To Take Care of the Children*

¶ 83 Like Wolfe, Mahon acknowledges that, under *Madison H.*, 215 Ill. 2d at 377, a factual basis stated orally by the court, on the record, can satisfy section 2-27(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-27(1) (West 2016)). She argues, however, that "the oral findings were not sufficient to satisfy this requirement."

¶ 84 We disagree. The factual basis the trial court gave from the bench was factually specific to Mahon. She received fair notice of why the court deemed her to be unfit and unable to take care of the children. See *Madison H.*, 215 Ill. 2d at 377-78. The court explained that, in her testimony and by her behavior, she had demonstrated a lack of comprehension of the danger she had posed to the children by allowing Widmer to have "unfettered access" to them and that until she was able to comprehend and articulate such a danger, she was unfit and unable to take care of the children. This was a meaningful explanation instead of one-size-fits-all verbiage.

¶ 85 Mahon argues: "[T]here was no explanation for [the trial court's] finding that placement with DCFS was necessary [citation] and why the [c]ourt did not take less draconian steps to keep the children from Mr. Widmer and in the home of a parent." She does not specify what these "less draconian steps" would be. Warnings about allowing Widmer to have contact with the children have proved to be futile.

¶ 86 3. *Proof of Timely Notice to the Oglala Sioux Tribe*

¶ 87 Mahon echoes Wolfe's argument that the record lacks proof that the Oglala Sioux Tribe actually received the notice required by section 1912(a) of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912(a) (2012)). See *K.T.*, 2013 IL App (3d) 120969, ¶ 14. This deficiency in the record has been remedied, as we already have discussed. We granted the State permission to supplement the record with a certified return receipt signed by a representative of the Oglala Sioux Tribe on March 20, 2017, more than 10 days before the dispositional hearing. See 25 U.S.C. § 1912(a) (2012).

¶ 88 III. CONCLUSION

¶ 89 For the foregoing reasons, we affirm the trial court's judgment in the three cases.

¶ 90 Affirmed.