

NOTICE  
Decision filed 05/10/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180509-U

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).

NO. 5-18-0509

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> Z.A.B., a Minor	)	Appeal from the
	)	Circuit Court of
(Sara B. and Anthony B. Jr.,	)	Madison County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 17-AD-24
	)	
Curtis B.,	)	Honorable
	)	Maureen D. Schuette,
Respondent-Appellee).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Welch and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court’s order finding—that it was not in the minor’s best interests for Curtis B.’s parental rights to be terminated—was not contrary to the manifest weight of the evidence, we affirm the order.

¶ 2 Sara B. and Anthony B. Jr. appeal the trial court’s September 24, 2018, order finding that although the court had concluded that Curtis B. was an unfit parent, it was not in the minor child’s best interests that his parental rights be terminated. Sara B. and Anthony B. Jr. timely appealed this order on October 18, 2018. We have jurisdiction from this final order pursuant to Illinois Supreme Court Rule 303(a) (eff. July 1, 2017).

We affirm the trial court's order finding that Curtis B.'s parental rights should not be terminated.

¶ 3

### BACKGROUND

¶ 4 Sara B. (Sara) and Curtis B. (Curtis) had a son together, Z.A.B., on April 22, 2013. From April 22, 2013, until August 20, 2015, Curtis and Sara lived together and raised this child. Both extended families were involved in Z.A.B.'s care. On August 20, 2015, Curtis ended his relationship with Sara and returned to his wife. This was the last date he saw his child. Although Curtis frequently contacted Sara about seeing his child, Sara prohibited contact unless she supervised the visit. Curtis chose not to agree to Sara's visitation rules, and did not seek court-ordered visitation.

¶ 5 In October 2015, Sara began dating Anthony B. Jr. (Anthony). In November 2015, Sara sent a text message to Curtis telling him that he had given up his rights a long time ago, that she had no obligation to allow him or his mother to see the child, and that he would never get to see the child again.

¶ 6 On March 17, 2016, when Curtis asked Sara about seeing Z.A.B., Sara responded, "ha, ha, ha, you and [your wife] are unfit to have my child." Curtis tried again in April and in May 2016, only to be told that he could only see his child in a public place, that this rule would not change, and that Curtis should stop contacting her. Sara also told Curtis that his parental rights to see the child had been terminated as well. In July, Curtis contacted Sara and she responded that if he continued to stay with his wife, he would not be able to have anything to do with his child. She also told him that if he did not stop contacting her about seeing the child, she would take legal action against him.

¶ 7 On March 9, 2017, Sara and Anthony filed a petition for adoption of Z.A.B. and a motion to terminate Curtis’s parental rights. Sara and Anthony alleged that Curtis was unfit based on one or more of the following three bases:

“(a) Abandonment of the child;

(b) Failure to maintain a reasonable degree of interest, concern or responsibility for the child’s welfare; and/or

(c) An intent to forgo his parental rights as manifested by his failure for a period of 9 months (i) to visit the child (ii) to communicate with the child although able to do so and not prevented from doing so or (iii) to maintain contact with or plan for the future of the child.”

¶ 8 The petitions were not personally served on Curtis. On April 11, 2017, the Madison County Sheriff’s Office stated that Curtis could not be located at his Edwardsville address. Thereafter, notice was published in a Troy newspaper and Curtis was effectively served by publication.

¶ 9 The court appointed a guardian *ad litem* (GAL) on Z.A.B.’s behalf on May 23, 2017.

¶ 10 On May 24, 2017, the trial court held a hearing on the two petitions filed by Sara and Anthony. Curtis did not appear. Sara testified that she began dating Anthony in October 2015, began living with Anthony in December 2015, and got married on March 31, 2017. Sara testified Z.A.B. only knew Anthony as his father. Anthony testified that he viewed Z.A.B. as his son and that he consented to adopting him. The trial court entered an order terminating Curtis’s parental rights and entered a judgment of adoption in favor

of Sara and Anthony. In addition, the order authorized a change of Z.A.B.'s last name. Thereafter, a certificate of adoption was sent to the Illinois Department of Public Health and a new birth certificate was issued.

¶ 11 Curtis filed a motion to vacate those orders on June 22, 2017. He stated that he was unaware of the adoption. In his motion to vacate the judgments, he informed the court that he had health insurance on Z.A.B., that he had repeatedly tried to see Z.A.B., and that Sara had not allowed him to see Z.A.B. since he moved out of her house. The trial court held a hearing on Curtis's motion, and on July 25, 2017, the orders were vacated. The court clarified this order on October 11, 2017, to affirmatively state that both the adoption and the finding of unfitness were vacated.

¶ 12 On November 30, 2017, Sara and Anthony filed an amended petition to terminate parental rights and an amended petition for adoption of Z.A.B. In addition to the three grounds of unfitness alleged in the initial pleadings, Sara and Anthony added the following three grounds:

“(d) Desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding[;]

(e) An intent to forgo his parental rights as manifested by the father's failure, where he and the mother of the child were unmarried to each other at the time of the child's birth to commence legal proceedings to establish his paternity under the Illinois Parentage Act of 1984, the Illinois Parentage Act of 2015, or the law of the jurisdiction of the child's birth within 30 days of being informed that he is the father or the likely father of the child[; and/or]

(f) Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.”

¶ 13 Fitness Hearing

¶ 14 The trial court held a hearing on Curtis’s fitness on two dates in January 2018. Several witnesses testified during the hearing.

¶ 15 *Sara*

¶ 16 Sara testified that Z.A.B. was then 4½ years old. She began a relationship with Curtis in 2011. Curtis was married. He lived with her on and off through 2015. A portion of this time, Curtis was employed. Curtis was eventually named as Z.A.B.’s father on the birth certificate shortly after his birth after DNA confirmation was attained. Curtis moved out of her house in September 2015<sup>1</sup> when Z.A.B. was two years old. Although Curtis was not steadily employed while he and Sara lived together, he did not watch Z.A.B. when Sara was at work. Instead, Sara’s mother watched Z.A.B. Sara testified that Curtis had not seen Z.A.B. since he moved out of her house, and that he had not sought court-ordered visitation.

¶ 17 Sara acknowledged that after the separation, Curtis repeatedly asked to see Z.A.B. She testified that she informed Curtis that he could see Z.A.B. if his wife was not present and the visit was in a public place.<sup>2</sup> Curtis did not agree to her terms for visits. Curtis did not give Z.A.B. gifts. Sara admitted that in January 2016 she changed her phone number

---

<sup>1</sup>Curtis testified that his departure date was on August 20, 2015.

<sup>2</sup>Although Sara did not want Curtis’s wife, Britni, present for any visits with Z.A.B., she did not ever provide any evidence, testimony, or allegations that Britni’s presence would have a detrimental impact on Z.A.B.

and “guessed” that Curtis had the new number. The communication with Curtis was always by email. On two occasions in late 2016, Sara sent Curtis photographs of Z.A.B. by email.

¶ 18 On cross-examination, Sara acknowledged that although Curtis was unemployed during a portion of the time they lived together, she had accepted that situation. She also acknowledged that her requirement that Curtis’s visits with Z.A.B. be supervised was inconsistent with her refusal to allow Curtis and his mother to visit with Z.A.B. Similarly, Sara expressed irritation that Curtis did not care for Z.A.B. while she worked and they were together, but later when he sought visitation, she claimed that he lacked the skills to care for a child.

¶ 19 Sara confirmed that she sent numerous emails refusing to allow Z.A.B. to be in the presence of Curtis’s wife; telling Curtis that he gave up his parental rights; telling Curtis that if he did not sign paperwork relinquishing his parental rights that she would take him to court to have him declared unfit; telling Curtis to stop contacting her or she would call the police and press harassment charges against him; informing Curtis incorrectly that his parental rights had been terminated; and telling Curtis that so long as he is with his wife, he would have nothing to do with his son. Sara also acknowledged numerous emails she sent to Curtis’s mother in which she disparaged Curtis and the family, threatened to call the police, threatened to sue her, and informed his mother that they would have no involvement with Z.A.B.’s life.

¶ 20

*Pamela Good*

¶ 21 Pamela Good was a photographer and a friend to Sara and Anthony. She also knew Curtis's wife, Britni. Good used to photograph Curtis and Britni's children. Several years later, she met Sara. She knew that Curtis and Sara were involved in a relationship and she photographed Z.A.B. Curtis was only present on one photo session with Z.A.B. when he was about eight or nine months old. During that session, Good said that Curtis did not appear interested in Z.A.B. She also testified that Curtis does not appear to have any care or concern for his children with Britni on the basis that she does not see Curtis at Britni's house.

¶ 22

*Anthony*

¶ 23 Anthony testified that he has never had any interaction with Curtis. He testified that he was not aware that Curtis had provided any financial support for Z.A.B. Anthony stated that Z.A.B. refers to him as "Dad."

¶ 24

*Curtis*

¶ 25 Curtis testified that he was contesting the adoption because he wanted to be part of his son's life. He lived in Edwardsville with his mother and stepfather as of the date of the hearing. Curtis was married to Britni, although they did not then live together. Curtis and Britni have four children. He began a relationship with Sara in 2011 when he was separated from Britni. When he moved in with Sara, he was not then employed because he had been a stay-at-home father to his children, while Britni worked. Z.A.B. was born in 2013. From 2011 to 2013, Curtis was employed nights at a dog kennel in Edwardsville. In April 2013 when Z.A.B. was born, Curtis had stopped working at the kennel and was

not employed. By September 2013, he was working full-time as a courier for a St. Louis logistics company. He left this company in May 2015. Curtis permanently separated from Sara on August 20, 2015.

¶ 26 Curtis remained unemployed from May 2015 until September 2016 when he was hired by a logistics company as a crane operator. His employment for this company was terminated in May 2017, but he was hired back in July 2017. As of January 2018, he remained employed full-time with this company.

¶ 27 Curtis testified that while he lived with Sara, he paid for water and utility bills and also purchased food. He testified that if he was not working, he would stay with Z.A.B., but acknowledged that this did not happen very often. Curtis stated that after separating from Sara, he emailed Sara advising her that he would provide whatever Z.A.B. needed, but she made no requests and instead said she needed nothing.

¶ 28 Soon after Curtis moved out of Sara's house, he began repeatedly requesting visitation with Z.A.B. Visitation was not allowed, and over time, he made fewer requests. Beginning in October 2016, he added Z.A.B. to his employer's health and dental insurance coverage. He also had an employer-provided life insurance policy with Z.A.B. designated as his beneficiary.

¶ 29 Curtis testified about a couple of Sara's emails that threatened that she was going to start spending time with another man; that this other man would take over the role of "daddy" to Z.A.B.; and that so long as he stayed with his wife, he would never see Z.A.B. Curtis testified that Sara even told him that his parental rights had been terminated and then sent him a photo of an altered birth certificate bearing Anthony's name as Z.A.B.'s



father. He testified that there was a time in 2016 when Sara blocked his emails—which was the only form of communication they had.

¶ 30 Curtis said that he was willing to pay child support for Z.A.B. On cross-examination, he indicated that he did not have a checking account and was reticent to pay Sara cash because he had no way to document the payments. However, he had opened a savings account and has money direct-deposited into the account for Z.A.B.

¶ 31 On cross-examination, Curtis admitted that he had not filed paperwork to obtain court-ordered visitation due to finances in that he was unable to pay an attorney to file the paperwork for him. When asked why he did not file the paperwork *pro se*, he stated that he was not familiar with the law and that Sara had an attorney and he feared that he would not be able to counter Sara's attorney on his own.

¶ 32 The GAL asked Curtis why he did not just agree to Sara's requests that the visits be supervised. He testified that he believed that they would have argued and he did not want to have Z.A.B. present in that situation. Curtis said that he had birthday gifts for Z.A.B. at his home.

¶ 33 *Sheila Torimino*

¶ 34 Sheila Torimino testified that she is Curtis's mother. Torimino testified that Curtis regularly had visitation with his four children at her home. She emailed Sara on numerous occasions asking to see Z.A.B. Sometimes, Sara would respond and send her a photograph in an email. However, since Curtis and Sara had separated, Sara had only allowed Torimino to see Z.A.B. one time at a McDonald's restaurant. Torimino said that she tried to send Z.A.B. a gift, but Sara said that she did not want the gift. She asked if

she could see Z.A.B. at Christmas, to which Sara responded that she would never see Z.A.B. again.

¶ 35 Torimino testified that Sara frequently blocked and then unblocked communications. She would block emails and phone numbers so that Torimino could not reach out to her. Then, Sara would unblock the contact in order to send a message to Torimino. When Torimino would attempt to reply, the phone or email would be blocked again.

¶ 36 On cross-examination, Torimino admitted that she hung up on Sara's attorney who called about obtaining the health insurance information for Z.A.B. She explained that she did so because she presumed that the attorney was not really an attorney. Torimino had been contacted on more than one occasion by men impersonating police officers. These men would tell her to stop contacting Sara. When she attempted to learn more about the police involvement with her interactions with Sara, she learned that the "officer" who contacted her did not exist and that the police knew nothing about complaints made by Sara.

¶ 37 *Britni*

¶ 38 Britni married Curtis on February 15, 2006. She lives in Troy with her four children. She testified that she and Curtis were continuing to work on their relationship and that as of that date, they were still living separately. She confirmed that Curtis was not employed while they were living together. He became employed after he moved in with Sara. Britni described Curtis as a great father and testified that he was completely devoted to his children. Curtis sees his children most every afternoon after school, and on

weekends. From time to time, he spends the night at her Troy house. In 2011 and 2012 while he lived with Sara, he had visitation with their children every weekend. In 2013, she obtained a restraining order against Sara due to ongoing harassment and threats, and thereafter every weekend, he had visitation with the children at his mother's house instead of at Curtis and Sara's house. Curtis buys clothing, diapers, and shares expenses equally with her. She indicated that although Curtis filed for divorce, they terminated the divorce case in 2014. Britni has never seen Z.A.B.

¶ 39

*Fitness Order*

¶ 40 On January 31, 2018, the court found that Sara and Anthony proved the allegations of their amended petition to terminate parental rights by clear and convincing evidence, and concluded that Curtis was an unfit parent. The court did not specify which of the six alleged grounds were established, but found that "more than one of these criteria are met." The court stated that Curtis only provided financial support for Z.A.B. during the time he lived with Sara. The court found that Curtis was not convincing about why he refused the opportunities to see Z.A.B. in a supervised environment and about why he failed to initiate court proceedings to obtain visitation.

¶ 41 The trial court found that Sara's conduct was a contributing factor to Curtis's failure to have visits or provide support for Z.A.B. in that she sent manipulative and false emails to serve her own interests. "Mother also clearly attempted to thwart any chance for Father to defend himself in this action and even went so far as to tell him that his rights had been terminated long before this hearing was even conducted."

¶ 42 Despite finding that Sara’s behavior was a contributing factor in Curtis’s failure to provide financial support and/or to have ongoing visitation, the court found that the evidence of Sara’s conduct was insufficient to excuse Curtis’s failure to participate in Z.A.B.’s life.

¶ 43 *Motions in Response to Fitness Finding*

¶ 44 On February 21, 2018, Curtis filed a motion to reconsider the January 31, 2018, order, stating that on February 15, 2018, he had filed a separate petition for allocation of parental responsibilities in Madison County circuit court. Curtis changed attorneys, and then on March 28, 2018, Curtis filed an amended motion arguing that Sara’s interference was significant and was not properly weighted. Curtis claimed that Sara’s actions prevented him from discharging his obligations to Z.A.B. and therefore the finding of unfitness was not supported by the evidence. On June 20, 2018, the trial court issued its order denying Curtis’s amended motion.

¶ 45 *Best Interests Hearing*

¶ 46 On September 24, 2018, the trial court held a hearing on the best interests of the minor. Several witnesses testified during the hearing.

¶ 47 *Curtis*

¶ 48 Curtis testified that while he wanted to be involved with Z.A.B., Sara would not allow his involvement. He testified about various text messages and Facebook posts from Sara that denigrated his wife Britni and connected his inability to see Z.A.B. with her continued presence in his life—stating that she did not want Z.A.B. to be around Britni.

¶ 49 Sara never complained about Curtis’s parenting abilities while they were together as a family. During that same time, Curtis testified that he had a loving attachment with Z.A.B. He took Z.A.B. to his mother’s home on the weekends for visits with his other children. Z.A.B. was bonded with his children, and they all cared for one another. Curtis’s mother would take all of the children to church. The children have not seen one another since he separated from Sara.

¶ 50 Curtis has provided health and dental insurance for Z.A.B. since 2016.

¶ 51 *Sara*

¶ 52 Sara disputed that Curtis took care of Z.A.B. She claimed that she did not know if Curtis took Z.A.B. to his mother’s house on the weekends for visits with his siblings. She admitted that she did not want Britni in Z.A.B.’s life. Sara testified that it was in Z.A.B.’s best interests for Curtis’s parental rights to be terminated because he had not been involved in Z.A.B.’s life. On cross-examination, she admitted that Curtis was good enough to take care of Z.A.B. and to be his father when they were together as a couple.

¶ 53 Sara testified that shortly after she began dating Anthony, Z.A.B. referred to him as “daddy.” After she moved in with Anthony in January 2016,<sup>3</sup> Anthony took care of Z.A.B. financially. Sara stated that three of Anthony’s four children live with them, and that Z.A.B. views them as siblings. Z.A.B. is bonded and attached to Anthony’s children. Z.A.B. also knows Anthony’s brother and his extended family, and celebrates holidays and birthdays with them.

---

<sup>3</sup>At the initial termination hearing in May 2017, Sara testified that she and Anthony began living together in December 2015.

¶ 54

*Anthony*

¶ 55 Anthony confirmed that his four other children have a loving relationship with Z.A.B. He agreed that Sara restricted Curtis’s access to Z.A.B., but argued that she had given him options that he was not willing to accept.

¶ 56

*Sheila Torimino*

¶ 57 Curtis’s mother testified that she loves Z.A.B. Prior to August 2015, she saw Z.A.B. every week. She confirmed Curtis’s testimony that Z.A.B. was present every weekend with Curtis’s other children. Torimino testified that up until August 2015 when Curtis and Sara separated, she saw obvious signs that Z.A.B. and Curtis loved each other.

¶ 58

*GAL Laura Andrews*

¶ 59 Laura Andrews, the court-appointed GAL for Z.A.B., testified that she could not recommend that Curtis’s parental rights be terminated—that it was not in Z.A.B.’s best interests to terminate Curtis’s parental rights. Andrews testified that it would be better for Z.A.B. to have both sides of his family involved in his life rather than just Sara’s side. She stated that she believed Sara restricted Curtis’s access to Z.A.B and that Curtis attempted to see the child. Andrews testified that the fact that Curtis did not file a petition to seek visitation once he realized that Sara was restricting this ability to see Z.A.B. was relevant to the question of whether Curtis was a “fit” parent but did not directly bear on her “best interests of the child” consideration.

¶ 60

*Arguments to the Court and the Best Interests Ruling*

¶ 61 Sara’s attorney argued that Andrews had not considered all of the statutory best interests factors including the child’s physical safety; the child’s welfare including food,

shelter, health, and clothing; the child's ties to other family members; and the child's sense of attachment.

¶ 62 Curtis's attorney argued that the record was clear that he had made efforts to see and financially help Z.A.B., but had been prevented from doing so by Sara. He argued that there was no question of the child's safety, and the child's identity was still evolving. He concluded by stating that there are no risks to the child by the expanded family relationship, and that it would allow Z.A.B. the opportunity to know all of his family, and to hopefully "be saved from the poison that has been spewed from the mother on paper, in litigation, and [in] interactions."

¶ 63 The trial court noted that Curtis was "good enough" to be a father while he lived with her and "good enough" to be a father before he went back to his wife, that Curtis repeatedly asked to see the minor child, and that Curtis provided health and dental insurance. The court stated that it found that Sara failed to facilitate and encourage a relationship with Curtis. After considering all of the best interest factors, the court found that it was not in the minor's best interests to terminate Curtis's parental rights.

¶ 64

#### ANALYSIS

¶ 65 Sara and Anthony timely appeal to this court and ask us to reverse the trial court's best interests order.

¶ 66 Before we address the best interests issue, we note that this case presents an uncommon set of facts. In cases such as this one where the biological parent has not consented to adoption of his or her child, the parent must be found to be unfit based upon past conduct pursuant to section 2-29(4) of the Juvenile Court Act of 1987. 705 ILCS

405/2-29(4) (West 2016) (“A finding of the unfitness of a parent must be made in compliance with the Adoption Act \*\*\* and be based upon clear and convincing evidence.”); *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 426, 869 N.E.2d 214, 217-18 (2007) (citing *In re Adoption of Syck*, 138 Ill. 2d 255, 276, 562 N.E.2d 174, 183 (1990)). Our supreme court has held that after the trial court finds that the natural parent is unfit, the trial court must proceed to a second step before ruling on the adoption petition: the court must find that termination of the parent’s rights is in the minor child’s best interests. *Regan v. Joseph P.*, 286 Ill. App. 3d 889, 892, 677 N.E.2d 434, 436 (1996) (citing *Adoption of Syck*, 138 Ill. 2d at 276).

¶ 67 Here, the trial court found that although Curtis is an “unfit” parent, his parental rights should not be terminated. We briefly address the grounds alleged and the trial court’s conclusion.

¶ 68 Sara and Anthony’s amended petition to terminate Curtis’s parental rights alleged six grounds from the definition of “Unfit Person” included in section 1 of the Adoption Act: child abandonment (750 ILCS 50/1(D)(a) (West 2016)); failure to maintain a reasonable degree of interest, concern, or responsibility for the child’s welfare (750 ILCS 50/1(D)(b)); an intent to forgo his parental rights for the 12 months immediately following his last contact with the child by not visiting or communicating or planning for the child’s future (750 ILCS 50/1(D)(n)(1)); desertion of the child for the 3 months preceding the filing of the adoption petition (750 ILCS 50/1(D)(c)); intent to forgo his parental rights by his failure to commence legal proceedings to establish paternity within 30 days of being informed he is the father (750 ILCS 50/1(D)(n)(2)); and continuous



failure to financially provide for the child's food, clothing, or shelter (750 ILCS 50/1(D)(o)).

¶ 69 The trial court's fitness order did not specify what grounds were established. The order stated that Sara and Anthony established more than one ground by clear and convincing evidence. Each of the statutory grounds is independent, and so if one of the six grounds was established, the court's conclusion can be affirmed. *In re Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139-40 (2007).

¶ 70 In Illinois, a parent can rebut the allegations of unfitness by submitting objective evidence explaining any impediments or obstacles that prevented the parent from participating in the child's life. "Where a parent's attempt to see a child has been officially frustrated, it is the intent to establish and/or maintain contact with the child rather than actual contact which is determinative." *Regan*, 286 Ill. App. 3d at 893. The courts must consider the circumstances involved in determining whether or not a parent is unfit. "[I]t is the parent's efforts to carry out parental responsibilities, rather than their success, which should be considered." *In re Adoption of Mantzke*, 121 Ill. App. 3d 1060, 1067, 460 N.E.2d 80, 84 (1984). Illinois courts have held that certain obstructive behaviors by a child's guardian were sufficient to rebut an allegation of unfitness. See *Adoption of C.A.P.*, 373 Ill. App. 3d 423 (failing to notify the father of new addresses, having the father arrested at visitation pickups, and refusing offers of financial assistance constituted impediments or obstacles that rebutted a finding of unfitness on the statutory bases of abandonment and failure to maintain a reasonable degree of interest, concern, or responsibility as to the child); *In re Adoption of H.B.*, 2012 IL App (4th) 120459, 976

N.E.2d 1193 (refusing to allow the mother to see the child, refusing to allow the mother to speak to the child by phone, and telling the mother that the child did not want to see her constituted impediments or obstacles that rebutted a finding of unfitness on the statutory bases of desertion, abandonment, failure to maintain a reasonable degree of interest, concern, or responsibility as to the child, and intent to forgo her parental rights for 12 months after the last contact with the child).

¶ 71 In this case, there was ample evidence admitted into evidence that Sara made Curtis's attempts to see Z.A.B. very challenging. However, the issue of the court's finding that Curtis was unfit is not before this court because Curtis did not file a cross-appeal. We reference this earlier trial court judgment of unfitness and the associated basic tenets of law because of the unique factual circumstances that resulted in the subsequent court conclusion that Curtis's parental rights should not be terminated.

¶ 72 We turn to the trial court's finding that it would not be in Z.A.B.'s best interests to terminate Curtis's parental rights. Sara and Anthony seem to argue that because the trial court found that Curtis was an unfit parent, the court must necessarily conclude that the best interests of Z.A.B. warrant termination. The argument that if the parent is unfit the parental rights must be automatically terminated is simply incorrect. The best interests step in the adoption process is completely independent from the fitness step which focuses on the child and not on the parents. *Regan*, 286 Ill. App. 3d at 892 (citing *Adoption of Syck*, 138 Ill. 2d at 276); 705 ILCS 405/2-29(2) (West 2016). Therefore, a finding of unfitness does not automatically result in termination of a parent's rights.

¶ 73 Sara and Anthony had the burden of proof by a preponderance of the evidence that termination of Curtis’s parental rights was in Z.A.B.’s best interests. 705 ILCS 405/2-29(2) (West 2016); *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). On review of a trial court’s order involving the termination conclusion, we must determine if the decision is contrary to the manifest weight of the evidence. *Adoption of C.A.P.*, 373 Ill. App. 3d at 427; *In re S.J.*, 368 Ill. App. 3d 749, 755, 859 N.E.2d 281, 286 (2006). A decision is against the manifest weight of the evidence if the opposite conclusion is readily apparent. *Adoption of C.A.P.*, 373 Ill. App. 3d at 427.

¶ 74 Sara and Anthony primarily cite to one case as authority to support their position that it was in Z.A.B.’s best interests that Curtis’s parental rights be terminated. The case they cite is *In re Adoption of J.J.S.*, 2017 IL App (5th) 170243-U. Unpublished decisions are filed pursuant to Illinois Supreme Court Rule 23(b) (written order) or Rule 23(c) (summary order). Ill. S. Ct. R. 23(b), (c) (eff. July 1, 2011). Illinois Supreme Court Rule 23(e)(1) states that: “An order entered under subpart (b) or (c) of this rule is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case.” Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). As this case does not involve any of the exceptions, we will not consider the unpublished order in considering this issue. We remind counsel that unpublished orders are not precedential and may not be cited as authority unless the order is cited pursuant to Illinois Supreme Court Rule 23(e) in situations of double jeopardy, *res judicata*, collateral estoppel, or law of the case.

¶ 75 While we do not consider the unpublished order cited by Sara and Anthony, we still must determine if the trial court's best interest determination is contrary to the manifest weight of the evidence. *Adoption of C.A.P.*, 373 Ill. App. 3d at 427. Here, the trial judge expressly stated that she considered all of the best interests factors before reaching her ultimate decision. Section 1-3(4.05) of the Juvenile Court Act provides a comprehensive list of best interest factors that the trial court must consider within the context of the child's specific age and developmental needs:

“(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 405/1-3(4.05) (West 2016).

While the trial court must consider all of the factors, not one factor is determinative. *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 48, 44 N.E.3d 577. In addition, the trial court’s ultimate determination and order does not need to reference and discuss each factor. *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19, 8 N.E.3d 1258.

¶ 76 Here, Sara and Anthony have consistently argued that the best interests of Z.A.B. could never support a relationship with Curtis because Curtis has not seen, visited, or interacted with Z.A.B. since August 2015. They have argued that Anthony is the only father that Z.A.B. has known. They specifically point to Anthony’s presence at every one of Z.A.B.’s life events—birthdays, first days of school, holidays, and extracurricular Cub Scouts activities. Sara and Anthony also have argued that the only siblings he knows are his stepsiblings: Anthony’s children from another relationship. Finally, they have argued the converse facts as “proof” that Z.A.B.’s best interests favor termination—that Z.A.B. does not know who Curtis is, does not know Curtis’s other children, does not know Curtis’s extended family, and therefore, is not bonded with Curtis and or his family members.

¶ 77 We agree with the trial court’s assessment at the conclusion of the best interests hearing that Sara’s own behavior and actions largely created this lack of connection between Curtis, his family, and Z.A.B. Although a parent’s behavior is not specifically at

issue at the best interests stage of an adoption case, to provide context, we briefly highlight some of the salient aspects of Sara's behavior in this case. Curtis and his family frequently requested the opportunities to spend time with Z.A.B. They made these requests so often that Sara threatened legal and criminal action. Apparently, Sara went so far as to have someone call Curtis and his mother pretending to be a police officer in an effort to stop their requests. Curtis could have filed a petition in court. In fact, Curtis has now finally filed his petition to obtain court-ordered visitation in order to establish and protect his parental rights. Sara also lied to Curtis and his family by telling them that his parental rights had been terminated. There was no concern that Curtis was a bad father when Sara was living with him. She even confirmed this at the best interests hearing. Sara's goal was to punish Curtis for the choices he made in his personal life. The trial court expressed disapproval of her behavior, and we concur with this assessment.

¶ 78 We also note that preserving Curtis's parental rights will not alter Z.A.B.'s bond and attachments with Anthony, Anthony's children, and his relatives. Preserving Curtis's parental rights does not modify the fact that Z.A.B. will likely continue to reside with Sara and Anthony. Anthony will not be forced to stop participating in Z.A.B.'s activities, such as Cub Scouts. And, Z.A.B. will likely continue to attend the same school and maintain the same friends.

¶ 79 We concur that Z.A.B.'s best interests are served by preserving Curtis's parental rights. Eventually, the court may establish a regular visitation schedule for Curtis, which will allow Z.A.B. to renew his previous bonded relationship with his father, his siblings, and his paternal grandparents. In addition, Curtis will have the court-ordered ability to

provide for Z.A.B.'s food, shelter, health, and clothing. He testified that he is willing to pay child support, has provided health and dental insurance for Z.A.B. since 2016, and has set aside gifts and money for Z.A.B. We have carefully reviewed the record and briefs on appeal, and find no basis in fact or law to conclude that the trial court's order finding that it was in Z.A.B.'s best interests to preserve Curtis's parental rights was contrary to the manifest weight of the evidence. *Adoption of C.A.P.*, 373 Ill. App. 3d at 427.

¶ 80

#### CONCLUSION

¶ 81 For the foregoing reasons, we affirm the judgment of the Madison County circuit court finding that Curtis's parental rights should not be terminated.

¶ 82 Affirmed.