

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).

2012 IL App (4th) 120585-U
NOS. 4-12-0585, 4-12-0586, 4-12-0587 cons.

FILED
November 15, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Kia.D., Kis.D., Jash.J., Jas.J., and Jay.J., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v. (No. 4-12-0585))	No. 10JA76
SHAWNA BUTLER,)	
Respondent-Appellant.)	
-----)	
In re: Kia.D., Kis.D., Jash.J., Jas.J., and Jay.J., Minors,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-12-0586))	
DEANDREA DONALD,)	
Respondent-Appellant.)	
-----)	
In re: Kia.D., Kis.D., Jash.J., Jas.J., and Jay.J., Minors,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-12-0587))	Honorable
JASON JACKSON,)	John R. Kennedy,
Respondent-Appellant.)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Cook and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State sufficiently proved it was in the children's best interests that respondent parents' parental rights be terminated in order to allow the children permanency in a safe and stable environment.
- ¶ 2 In June 2012, the trial court terminated the parental rights of respondent mother, Shawna Butler, respondent father, DeAndrea Donald, and respondent father, Jason Jackson, to their children. Respondents each individually appealed, challenging only the court's best-interest

determination. Butler's appeal was docketed as case No. 4-12-0585; Donald's appeal was docketed as case No. 4-12-0586; and Jackson's appeal was docketed as case No. 4-12-0587. We have consolidated the appeals and, after a review of the record before us, we affirm the court's judgment.

¶ 3

I. BACKGROUND

¶ 4

On December 9, 2010, the State filed a petition for adjudication of neglect as to Kia.D. (born October 30, 2001), Kis.D. (born September 13, 2003), Jash.J. (born July 29, 2006), Jas.J. (born July 1, 2007), and Jay.J. (born November 11, 2009) in the Champaign County circuit court. Respondent Butler is the mother of all five minors. Respondent DeAndrea Donald is the father of Kia.D. and Kis.D. Respondent Jason Jackson is the father of Jash.J., Jas.J., and Jay.J.

¶ 5

In support of the petition, the State claimed that on December 1, 2010, respondent mother had left her four youngest children unattended while she reportedly went to a friend's house to get food. The oldest child, Kia.D. was living with his father, Donald, in Peoria at the time. A Catholic Charities worker arrived at the mother's home unannounced to find the children alone. Catholic Charities was involved because an intact family case had been opened in December 2009 based on reports of the mother's inadequate supervision, abuse, and neglect of the minors. The Department of Children and Family Services (DCFS) was notified by the Catholic Charities' worker and took protective custody of the children.

¶ 6

The State alleged the children were neglected pursuant to sections 2-3(1)(a) and (b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a), (1)(b) (West 2010)), due to (1) respondent mother's inadequate supervision, resulting in the minors residing in an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2010)) (count I); (2) respondent mother's failure to provide the minors with an education as required by law (705 ILCS 405/2-3(1)(a) (West

2010)) (count II); (3) respondent mother's failure to provide the minors with adequate shelter (705 ILCS 405/2-3(1)(a) (West 2010)) (count III); and (4) respondent father Donald's failure to correct the conditions which resulted in a prior adjudication of parental unfitness regarding the minors' half siblings, causing the minors to reside in an environment injurious to their welfare when they reside with him (705 ILCS 405/2-3(1)(b) (West 2010)) (count IV).

¶ 7 On January 26, 2011, the trial court entered an adjudicatory order and on February 25, 2011, the court entered a dispositional order. The court found respondents unfit, unable, and unwilling to care for, protect, train, or supervise the minors and made the minors wards of the court. The children were placed in traditional foster homes with Kia.D. and Kis.D. placed together, Jash.J. and Jas.J. placed together, and Jay.J. placed alone.

¶ 8 On October 26, 2011, the State filed a petition to terminate all three parents' rights to the minors. The State alleged the following. In count I, all three parents were alleged unfit pursuant to section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2010)) because they each failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal. In count II, all three parents were alleged unfit pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) because they each failed to make reasonable progress toward the return of the minors within the initial nine-month period following the adjudication of neglect. In count III, all three parents were alleged unfit pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2010)) because they each failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Finally, in count IV, Donald was alleged unfit pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(i) (West 2010)) because he is deprived due to his conviction of at least three felonies, one of which

occurred within the last five years, constituting a pattern of criminal behavior demonstrating his inherent deficiency of moral sense and rectitude.

¶ 9 Also on October 26, 2011, the State filed an amended petition adding respondent father Jackson to count IV, alleging he too is depraved. On April 30, 2012, the State filed a supplemental petition as to respondent father Donald, alleging he was unfit pursuant to section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2010)) because he is incarcerated and his repeated periods of incarceration has prevented him from discharging his parental responsibilities.

¶ 10 On February 22, 2012, respondent father Jackson stipulated to the allegations set forth in count IV against him—the count alleging depravity. The State dismissed the remaining pending allegations against him.

¶ 11 On April 30, 2012, the trial court conducted a fitness hearing on the State's petitions as to respondent mother and respondent father Donald. Respondent mother stipulated to a finding of unfitness as to count II. She stipulated she was an unfit parent within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) because she failed to make reasonable progress toward the return of the minors within the initial nine-month period following the adjudication of neglect. In exchange for her stipulation, the State dismissed the remaining pending allegations against her.

¶ 12 The State asked the court to take judicial notice of the following related to respondent father Donald: (1) his admissions set forth in his response to the State's request to admit; (2) a conviction of unlawful possession of cannabis in case No. 01-CF-1095, wherein he received a sentence of 18 months in prison; (3) a conviction of obstruction of justice in case No. 02-CF-1385, wherein he received a sentence of 12 months in prison; (4) a conviction of obstruction of justice in

case No. 03-CF-1387, wherein he received a sentence of 30 months in prison; (5) a conviction of resisting a peace officer in case No. 04-CF-1285, wherein he received a sentence of 2 years in prison; (6) a conviction of domestic battery in case No. 06-CF-434, wherein he received a sentence of 24 months' probation and 58 days in jail; (7) a stipulation on the State's petition to revoke his probation in the previous case, wherein he was resentenced to 6 years in prison; (8) a conviction of obstruction of justice in case No. 10-CF-1572, wherein he received a sentence of 2 years in prison; and (9) a conviction of driving under the influence of alcohol while his license was suspended or revoked in case No. 11-CF-1046, wherein he received a sentence of 4 years in prison.

¶ 13 Respondent father Donald testified he was currently incarcerated at Danville Correctional Center with an anticipated release date of May 30, 2014. He had recently been transferred from Pinckneyville Correctional Center so that he could engage in services. He is on a waiting list for programs related to domestic violence, anger management, Alcoholics Anonymous, and "auto class."

¶ 14 After considering the evidence and arguments of counsel, the trial court found the State had proven by clear and convincing evidence that respondent father Donald was an unfit father pursuant to all of the allegations stated in the petition and supplemental petition. On May 7, 2012, the court entered a written order, including its findings of unfitness for both respondent mother and respondent father Donald.

¶ 15 On June 15, 2012, the trial court conducted a best-interest hearing. The State presented the 13-page best-interest report prepared by DCFS. Pursuant to that report, DCFS recommended that all three parents' parental rights be terminated. In particular, DCFS noted the following as to the status of each child. Kia.D., age 10, is living in a traditional foster home with

two of his brothers, Kis.D. and Jay.J. He reported he was "comfortable and happy" in the home where he has resided since he entered care. The foster parent reports that Kia.D. struggles with obeying rules at home and at school, but willingly accepts the consequences. He is very smart and well liked at school. He attends individual therapy with Sally Anderson, who reports that Kia.D. is having difficulty dealing with "so many changes in his life and the uncertainty of what will happen next." The foster parent has said she was willing to sign a permanency commitment.

¶ 16 Kis.D., age 8, reports he is "happy and comfortable" in his current home where he too has been placed since December 2010. He also struggles with rules at school but is "overall doing well." His teacher reported Kis.D. has a strong sense of what is right and wrong. Kis.D. also attends therapy with Anderson, who reported that Kis.D. often reveals he is angry and sad but does not feel he can "disclose" those feelings. He often reenacts his feelings through play therapy demonstrating characters that are constantly fighting.

¶ 17 Jash.J., age 5, has been in her current placement since February 2012. Her "behaviors have done a total 180 since placement in this home." Jash.J. alleged her previous foster father had sexually abused her. Though the report was unfounded, it was not in her best interest to return to that home. She "presents very stable and doing well with structure in the home." She participates in therapy with Anderson, who reports Jash.J. "is under a great deal of stress." Anderson recommends that Jash.J. remain in her current placement for as long as possible to "get back into a stable behavioral expectations in order to relearn how to act and calm herself prior to [being] placed anywhere else." Her foster parent is not willing to adopt, but will remain her foster parent as long as necessary.

¶ 18 Jas.J., age four, is placed in the same home with Jash.J. He is reportedly doing well

but still struggles with tantrums and nighttime wetting. His early childhood education teacher reports he is "very intelligent with strong academics" but he "struggles with impulsivity." Anderson reports that Jas.J. is doing well in therapy and seems to do best when "the adults in his life are firm, strict, and structured which likely makes him feel safe." Jas.J. is "also exhibiting a wealth of stability in the foster home."

¶ 19 Jay.J., age two, has transitioned into the foster home with Kia.D. and Kis.D. He has been there since November 2011, is happy, and is doing well in the home. He has speech delays, but the foster parent is working with him.

¶ 20 According to the report, respondent mother remains unstable with regard to her living arrangements, employment, and engaging in healthy relationships. After 17 months, she was only currently beginning to demonstrate her willingness to change. DCFS is still concerned that respondent cannot safely manage her children. She continues to verbalize that she made the right decision at the wrong time in terms of leaving her children unattended on the night they entered care. She also has failed to understand the effect domestic violence has on her children.

¶ 21 Respondent father Donald is currently incarcerated at the Danville Correctional Center, with an anticipated release date of June 30, 2014. Respondent father Jackson continues to struggle with stability in terms of housing, relationships, employment, therapy attendance, substance abuse, and mental-health treatment. He was diagnosed with bipolar disorder, not otherwise specified, and antisocial personality disorder. He had been prescribed psychotropic medication, but did not consistently take it. He completed a domestic-violence program after his third attempt and seemed to internalize the information learned in the program. However, his untreated mental-health concerns and struggles with substance abuse remained primary issues which would prevent him from

properly caring for his children.

¶ 22 The State also presented the guardian *ad litem*'s report prepared by Roderick Warfield, the Court Appointed Special Advocate (CASA). Warfield noted respondent mother continued having trouble with maintaining housing and gainful employment. She was engaged in therapy but had a problem with accountability. Her supervised visits with the minors were "very troubling" at times, as she had problems "maintaining control of her emotions at times during these visits." She often yelled and made threats of physical punishment. Warfield further questioned whether respondent father Jackson was taking his psychotropic medication as reported. He also noted Jackson's unresolved substance-abuse problem.

¶ 23 Warfield opined the minors' placements were "more than adequate." He said the "children appear happy and have adjusted well to their current placements." The children's behavioral issues appeared to be "well managed" in their respective homes.

¶ 24 Warfield had "some very real concerns" about respondent mother's ability to care for the minors. She has anger issues and has demonstrated an inability to maintain stable housing, employment, and relationships. She has also demonstrated poor decision making by allowing her 10-year old child, for example, to cook bacon and eggs for his younger siblings without her guidance or supervision.

¶ 25 Warfield also had concerns about respondent father Jackson's ability to care for the minors. He has no permanent address, is unemployed, continues to use illegal drugs, has anger issues, and has "suspect" parenting skills. Warfield further noted that respondent father Donald continued to engage in criminal behavior and would be unavailable to parent until June 2014. Based on his observations, Warfield recommended that all three parents have their parental rights to their

respective minor children terminated.

¶ 26 Respondent mother testified at the hearing that she has been employed full time at Freedom Oil since May 7, 2012. Medical Staffing Network has current jobs for her, but not in Champaign County, and she currently is without transportation. Her attorney asked her how long she had been in her current residence. She said: "I just moved in today." She said she has paid the deposit on her new two-bedroom apartment and has inspected it for safety.

¶ 27 Respondent father Donald presented the testimony of Edna Driscoll, his girlfriend. She said Kia.D. resided with she and Donald and did well in school. Donald and Kia.D. interacted well and appeared to have a strong bond. In her opinion, that bond could continue or be renewed after Donald's release from prison. Driscoll and Donald have a 13-month old child and they share parental responsibilities.

¶ 28 Donald also presented the testimony of his mother, Charman Owens. She said Donald was "very good" with Kia.D. They have a strong bond and love each other very much.

¶ 29 After considering this evidence and recommendations of counsel, the trial court found as follows:

"In regard to the parents, the court's conclusion is that in no foreseeable future would any of the parents likely to be available custodians for the children.

In regard to [respondent mother], many of the same issues that led to the initiation of the case are still present despite her involvement and to some extent successful completion of services and the length of period of time that she has had to have an

opportunity to have custody restored[.] *** [W]hen *** the children are in [respondent mother's] care, supervision *** presents problems that look like they would only be exacerbated if there were an attempt to restore custody so *** [respondent mother] continues to suffer from some of the same mental health issues that have *** plagued her for a period of time. So it does not look as though she is going to be available as a custodial option maybe ever but certainly not within the near life of any of the children."

¶ 30 The trial court commented on respondent father Donald's current and repeated incarceration, noting that his children will "grow without him there." As for respondent father Jackson, the court noted that his mental-health and substance-abuse issues will prevent him from appropriately caring for the children. Though Jash.J. and Jas.J. "are not as likely to be adopted in the near future should there be termination[,] *** they have more likelihood of achieving permanency if his parental rights are terminated."

¶ 31 The trial court concluded it was in the children's best interests that parental rights of all respondent parents be terminated. On June 20, 2012, the court entered a written order to this effect. These consolidated appeals followed.

¶ 32 II. ANALYSIS

¶ 33 Respondent mother and respondent father Jackson each stipulated to the trial court's finding that he or she was an unfit parent as alleged in one count of the State's petition. The trial court found the State had sufficiently proved that respondent father Donald was an unfit parent. He, like respondent mother and Jackson, does not challenge the court's unfitness finding. Therefore, the

only issue on appeal is whether the court's best-interest finding was against the manifest weight of the evidence.

¶ 34 We note that trial courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *In re M.H.*, 196 Ill. 2d 356, 363 (2001). Once the court finds the parents unfit, the parents' rights are no longer of concern. The parents' rights must yield to the best interest of the child. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). The court's best-interest finding will not be reversed unless it is against the manifest weight of the evidence. *In re H.D.*, 343 Ill. App. 3d 483, 494 (2003).

¶ 35 The evidence produced during the best-interest hearing demonstrated that each child was in a home where they were loved, secure, and well cared for. Three children (Kia.D., Kis.D., and Jay.J.) were placed in one foster home, and the two other children (Jash.J. and Jas.J.) were placed together in another foster home. Each foster mother reported how well each child was doing in the home. Kia.D., Kis.D., and Jay.J. were in a potential permanent home, as their foster mother had expressed her willingness to adopt. Jash.J. and Jas.J. were doing very well in their home. Though the home was not considered a permanent placement, the foster mother indicated the children could remain for as long as necessary. This was particularly important for these children according to their therapist. They both had shown marked improvement in their current home and any displacement at this point could potentially sabotage that success.

¶ 36 The best-interest report and the CASA report both recommended termination in the best interests of the children. Stability and safety were the primary concerns for these children as it related to each respondent parent. All five minors were thriving in their stable, safe, and secure environments. More importantly, each child expressed his or her happiness in their current home.

¶ 37 A best-interest decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52 (2008). On this record, we cannot say the opposite conclusion is clearly evident or that the trial court's findings were unreasonable, arbitrary, or not based on the evidence. Instead, we find the State clearly demonstrated it was in the children's best interests to afford them the opportunity to seek permanency in a caring and thriving environment, whether that was in their current placement or in another adoptive home. For these reasons, we find that the trial court's order terminating respondent's parental rights as to each child was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgments.

¶ 40 Affirmed.