

ILLINOIS OFFICIAL REPORTS
Appellate Court

In re Joshua S., 2012 IL App (2d) 120197

Appellate Court Caption	<i>In re</i> JOSHUA S., a Minor (The People of the State of Illinois, Petitioner-Appellee, v. Nunu S., Respondent-Appellant).
District & No.	Second District Docket No. 2-12-0197
Filed	July 20, 2012
Held <i>(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)</i>	The trial court's finding that respondent intended to abandon her son after giving birth to him outside her apartment and then leaving him under a tree was not against the manifest weight of the evidence and the order terminating her parental rights was affirmed, notwithstanding the fact that the negotiated guilty plea she entered in her subsequent criminal prosecution for obstruction of justice included an agreement that the State would not seek to terminate her parental rights, since that agreement was against public policy and was unenforceable.
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 09-JA-44; the Hon. C. Stanley Austin and the Hon. Robert J. Anderson, Judges, presiding.
Judgment	Affirmed.

Counsel on
Appeal

Terra C. Howard, of Glen Ellyn, and Jennifer S. Wiesner, of Law Office of Jennifer S. Wiesner, of West Chicago, for appellant.

Robert B. Berlin, State's Attorney, of Wheaton (Lisa Anne Hoffman, Assistant State's Attorney, of counsel), for the People.

Charles A. Rohde, of Rohde Law Office, of Addison, for appellees Kathy H. and Tom H.

Karen Austgen, of Winfield, guardian *ad litem*.

Panel

JUSTICE SCHOSTOK delivered the judgment of the court, with opinion. Presiding Justice Jorgensen and Justice McLaren concurred in the judgment and opinion.

OPINION

¶ 1 The respondent, Nunu S., appeals from an order terminating her parental rights to her minor son, Joshua S., and appointing a guardian with the power to consent to the minor's adoption. On appeal, the respondent argues that the prosecution of the petition to terminate her parental rights was in violation of a constitutionally protected plea agreement. Additionally, the respondent argues that the trial court erred in denying her motion for substitution of judge for cause and in finding that she was unfit. We affirm.

¶ 2

I. BACKGROUND

¶ 3

The record reveals the following facts. The respondent gave birth to the minor outside in the very early morning hours of June 12, 2009. After the minor's birth, the respondent placed him on the ground, under a tree with very low hanging branches. The respondent then returned to her apartment. Later that morning, a man who lived nearby discovered the minor under the tree and called 911. Paramedics attended to the minor, and the Wheaton police department began an investigation. The minor was hospitalized and taken into temporary protective custody by the Department of Children and Family Services (DCFS), and the State filed an abuse and neglect petition that same day.

¶ 4

On June 13, 2009, a criminal prosecution was initiated against the respondent, case number 09-CF-1439, charging her with, in part, one count of obstructing justice. On March 30, 2010, the trial court, Judge C. Stanley Austin, adjudicated the minor abused and neglected. On May 4, 2010, at the dispositional hearing on the abuse and neglect petition, the

trial court adjudged the minor a ward of the court, placed him in the guardianship and custody of DCFS, and set the permanency goal as “return home within 12 months.”

¶ 5 On October 15, 2010, in the criminal case, the respondent entered a negotiated plea of guilty to one count of obstructing justice, in exchange for a sentence of three years’ imprisonment, with one year of mandatory supervised release (MSR), and the dismissal of all remaining charges. Additionally, the State’s Attorney informed the trial court, Judge Blanche Hill Fawell, as follows:

“Part of this agreement will include that from the date of the crime up until today’s date everything that the People have already known or do know about this case will not seek to terminate on that basis. We will not seek to terminate on the basis of her pleading guilty and going to the Department of Corrections.

As we apprised the Court in our 402 conference, up to today’s date she has been compliant with the juvenile proceedings; but that is not to say that if in the future she becomes noncompliant with the juvenile proceedings the People in their discretion may seek to terminate her parental rights.”

Judge Fawell accepted the plea agreement.

¶ 6 At a March 1, 2011, permanency review hearing in the juvenile case, the trial court, Judge Austin, changed the permanency goal to “substitute care pending court determination on termination of parental rights.” The trial court noted that the respondent had not made substantial progress toward the return home of the minor. The trial court further noted that the goal change was in the minor’s best interest, as he had been in foster care since birth and would be almost three years of age before the respondent had any chance to be released from prison.

¶ 7 On May 10, 2011, the minor’s guardian *ad litem* (GAL), Kathleen Anderson, filed a petition for termination of parental rights and power to consent to adoption. The petition contained seven counts of unfitness with respect to the respondent. Specifically, the petition alleged that, by leaving the minor outside after his birth without protection, the respondent abandoned the minor (750 ILCS 50/1(D)(a) (West 2008)); engaged in substantial neglect of the minor (750 ILCS 50/1(D)(d) (West 2008)); engaged in extreme cruelty to the minor (750 ILCS 50/1(D)(e) (West 2008)); failed to protect the minor from conditions within his environment injurious to his welfare (750 ILCS 50/1(D)(g) (West 2008)); and failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of the minor during the first 30 days after his birth (750 ILCS 50/1(D)(l) (West 2008)). Additionally, the petition alleged that the respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal or reasonable efforts toward the return of the minor within any nine-month period following his adjudication of neglect (750 ILCS 50/1(D)(m) (West 2008)). Finally, the petition alleged that the respondent had engaged in a repeated and continuous failure to provide the minor with adequate food, shelter, and clothing (750 ILCS 50/1(D)(o) (West 2008)) in that, by abandoning the minor, she caused herself to become incarcerated and unavailable to him.

¶ 8 On May 31, 2011, the respondent filed a motion under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)) to dismiss the petition to terminate her parental

rights. In her motion, the respondent argued that the bases for the petition to terminate her parental rights were the same bases for the criminal case against her. The respondent noted that in the criminal case she had entered a plea agreement wherein the State agreed that it would not seek to terminate her parental rights for any actions or inactions or events occurring prior to October 15, 2010. In other words, the State agreed it would not seek to terminate her parental rights based on the circumstances of the minor's birth. The respondent argued that she was entitled to the benefit of her bargain and that the petition to terminate her parental rights was barred by the plea agreement in her criminal case.

¶ 9 On July 5, 2011, the trial court granted the petition of the minor's foster parents, Kathleen H. and Thomas H., to intervene in this matter. That same day, following a hearing, the trial court denied the respondent's motion to dismiss the petition to terminate her parental rights. The trial judge indicated that the plea agreement, as he read it, barred only the State from bringing a petition to terminate parental rights. The trial court noted that, under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2008)), any interested adult may file a petition to terminate parental rights. The trial court further noted that the GAL was not a party to the plea agreement and that it would be improper to bar her from filing the petition. Accordingly, the trial court denied the motion to dismiss and, citing *In re D.S.*, 198 Ill. 2d 309 (2002), directed the State to prosecute the GAL's petition.

¶ 10 Thereafter, in the criminal case, the respondent filed a petition for a rule to show cause against the Du Page County State's Attorney's office, requesting that it be held in contempt for the failure to honor the plea agreement. On August 10, 2011, a hearing was held on that petition. The State admitted that the plea agreement was improper, argued that the only proper remedy was to vacate the plea, and stated that it stood ready to do so if a motion to vacate were filed. The respondent stated that she "may not be seeking" to vacate the sentence but, rather, wanted to seek the benefit of what she agreed to in the plea agreement. At the close of arguments, the trial court, Judge Fawell, entered an order striking the petition. Judge Fawell found that the plea agreement was improper and that the respondent's sentence was void. Discussing the plea agreement, Judge Fawell stated:

"So we all made a mistake. I mean, that's honestly what happened. I don't believe the State had—that they knew when they entered it that it couldn't be done. I certainly did not know at the time or I would have said, no, we can't do this. Everyone entered into it, from what I recall, with the best of intentions thinking that this was the best thing for [the respondent], but it can't be done and it's not their fault."

¶ 11 On December 2, 2011, the fitness hearing on the termination petition commenced before Judge Robert J. Anderson, as Judge Austin had recused himself two days earlier based on scheduling constraints. Before opening arguments, the respondent renewed her objection to the prosecution of the termination petition by the State's Attorney's office. The trial court asked whether the respondent had made a motion to withdraw her plea in the criminal case. The respondent indicated that she had not and noted that more than 30 days had passed since the entry of the plea. The trial court then asked whether the respondent had attempted to file a late motion to withdraw her plea. The respondent indicated that she did not wish to do that; rather, she wished the State to be bound by the plea agreement that she entered into. The trial court overruled the respondent's objection and noted that the respondent's remedy lay in the

criminal court rather than in juvenile court.

¶ 12 The respondent testified that she was born in Burma. She left Burma in 2005 to live in Malaysia. Through the assistance of Catholic Charities, she came to the United States in 2007. She lived for a short time in Boston, Massachusetts, and then moved to Louisville, Texas. While in Louisville she became pregnant. When the minor's father learned of the pregnancy, he distanced himself from her. She then moved to Wheaton to live with her cousin and her cousin's husband in an apartment. Other than the minor's father, she never told anyone she was pregnant.

¶ 13 On the evening of June 11, 2009, she left the apartment to go for a walk. While she was out, she gave birth to the minor in the early morning hours of June 12, 2009. She left the baby outside on the ground. The ground where she gave birth was "bloody," so she moved the minor to a "safer place." She went back to her apartment to tell her cousin to get help, but her cousin did not wake up. She then went into the bathroom. Her cousin then started pounding on the bathroom door. The police came to the apartment, but she did not tell them she had just given birth, because she was afraid of the police.

¶ 14 The respondent acknowledged that, between the time she first went home and the second time the police came to her apartment, she did not return to retrieve the minor, because she was asleep. The respondent did not tell anyone that she was pregnant and she never sought medical treatment. The respondent further testified that she had originally planned to go back and get the minor. However, things changed when she returned to the apartment and her cousin and her cousin's husband were yelling at her. She could not tell them what had happened. She then drank some hot water to warm herself and grabbed a blanket. She could not remember what happened after that.

¶ 15 The respondent testified that when she delivered the minor it was cold outside. She was wearing a shirt, pants, and a coat while outside giving birth. She acknowledged that she left the minor unclothed. She was "shocked" that she did not know to put clothes on the minor. When the prosecutor asked the respondent about leaving the baby outside on such a cold night, the respondent said she "didn't mean it." The respondent did not have any clothes for the baby, because she did not know when she would give birth.

¶ 16 Officer Jill Uhlir of the Wheaton police department testified that at about 1:45 a.m. on June 12, 2009, the respondent was reported missing by her cousin, Ngun S. Officer Uhlir went to the apartment, where the respondent and Ngun lived, to take the report. After searching for the respondent, Officer Uhlir returned to the apartment at 6 a.m. Ngun told the officer that the respondent had returned and was in the bathroom. Officer Uhlir spoke to the respondent when she exited the bathroom. The respondent appeared calm and not afraid, sad, or nervous. The respondent did not say anything about having given birth and indicated that she did not need medical attention.

¶ 17 Detective James Volpe of the Wheaton police department testified that, after responding to the 911 call regarding the discovery of the minor, he learned that a person had been reported missing from a nearby apartment complex. He then went to the respondent's apartment. The respondent was sleeping and Ngun woke her up. Detective Volpe asked the respondent if she had just given birth. The respondent said no. The detective asked again but

received the same response. Detective Volpe testified that he then spoke with Ngun alone outside the apartment. When they reentered the apartment, Ngun started speaking to the respondent very rapidly in a language the detective did not understand. Ngun then started crying hysterically, and the detective asked what was said. Ngun said something to her husband, who then made a statement to the detective. Based on that information, Detective Volpe ordered an ambulance for the respondent. Detective Volpe testified that the respondent never asked about the minor's welfare.

¶ 18 Paramedic Thomas Maish of the Wheaton fire department testified that he responded to an address in Wheaton for a report of an abandoned baby. When he arrived, the minor's pulse was weak and his respirations were slow and shallow. He believed the minor had hypothermia. He treated the minor and transported him to the emergency room. Dr. Michael Balbus, a neonatologist who treated the minor at the hospital, testified that the minor's exposure to the cold after his birth had caused hypothermia and severe metabolic acidosis. Although a head scan, EEG, and MRI of the brain showed normal results, it was still possible that the severe metabolic acidosis could result in developmental difficulties that would become apparent only when the minor was older.

¶ 19 George Chakrabarty testified that he speaks fluent Burmese and works as a translator for Accurate Translation. On June 12, 2009, his employer contacted him about translating for the Wheaton police department. He went to the police station and accompanied two officers to the hospital. One officer was male and one was female, "Officer Patty Potter." They arrived in the respondent's hospital room at about 3 p.m. They interviewed the respondent for about three hours. The interview was digitally recorded. Chakrabarty testified that he had reviewed the digital recordings of the interview and that they were true and accurate.

¶ 20 Detective Patricia Potter of the Wheaton police department testified that she interviewed the respondent at the hospital on June 12, 2009. Detective Ted Fanning and Chakrabarty were also present. The interview was digitally recorded. Detective Potter identified People's Exhibit No. 19 as audio discs containing a recording of the interview. People's Exhibit No. 19 was admitted into evidence.

¶ 21 The audio discs of People's Exhibit No. 19 were then played in open court. During the course of the interview, Detective Fanning asked the respondent about what she had told her cousin once she was at the hospital. The respondent stated that her cousin had asked her why, after going through all of the hardship of delivering the baby, she had thrown it away. The respondent told her cousin that she was afraid that she would not be able to care for the baby. The respondent said that her cousin assured her that she would be allowed to care for the baby and that she would have help. The respondent said that she was happy her cousin knew about the baby, and made those statements to her, and that she wanted the minor back and believed she could take care of him. The respondent acknowledged that she never told Officer Uhler that she had a baby. The respondent said, "before she delivered the baby, she didn't love the baby, or anything you know, but when she come back, and start thinking about the baby, how she want the baby, after that she was thinking about talking to her cousin, and go and get the baby."

¶ 22 Detective Potter then resumed the witness stand. Detective Potter acknowledged that

during the interview the respondent stated several times that she was thinking about going back for the baby. When Detective Potter asked the respondent why she had not put the baby on a doorstep, the respondent said that she was planning on going back for the baby. However, Detective Potter testified that the respondent's answer contradicted an earlier statement where the respondent had stated that she left the minor out in the open hoping that someone would find him. The respondent told Detective Potter that, during the pregnancy, she had mixed feelings. Sometimes she hoped the baby would die, sometimes she was happy about the baby, and at other times she was sad about the baby. However, the respondent also said that she believed she could now love the baby. The respondent also stated that she had heard of women and their babies dying during childbirth and that she had hoped that this would happen to her and the minor.

¶ 23 Jennifer Blandford testified that in June 2009 she was an intake worker in the foster care department of the Evangelical Child and Family Agency (ECFA). She was responsible for transporting the minor to the foster home provided by ECFA. She testified that the respondent had weekly visits with the minor between July and December 2009. All the visits went well and the respondent's parenting skills were improving. The respondent never missed a visit when she was not incarcerated.

¶ 24 Blandford participated in an "Integrated Assessment" of the respondent on August 27, 2009, along with a Burmese interpreter. She asked the respondent about the circumstances of the minor's birth. The respondent said that the minor was born outside. The respondent assumed that someone would hear him crying and find him. After giving birth the respondent went back to her apartment and cleaned herself up. The respondent stated that she thought about going back for the baby but decided not to. The respondent stated that no one knew about her pregnancy. The respondent stated that she was now ready to care for the minor and wanted him back. When asked what had changed since his birth, the respondent said only that she wanted her son back.

¶ 25 Denice Plump testified that she was the child protection specialist who conducted the DCFS investigation regarding the minor. As part of that investigation, Plump interviewed the respondent at the hospital on June 12, 2009, at about 2:30 p.m. She used an interpreter through a language line. The respondent appeared to understand the questions, as she gave appropriate answers. The respondent told her that, after delivering the minor, she placed him under a tree. She denied covering him up. When asked what her plan was for the baby, the respondent stated that she had no plan at that time. The respondent asked for the minor to be returned to her. When Plump asked what had changed her mind, the respondent stated that her cousin had agreed to help out with the baby.

¶ 26 Other witnesses testified but their testimony will not be set out as it is not necessary to resolve the issues raised on appeal.

¶ 27 On January 17, 2012, the trial court found that the respondent had been proven unfit. Although the trial court determined that the State had not proven that the respondent had engaged in a continuous or repeated failure to provide for the child, it found that the State had proven the other six allegations of unfitness contained in the GAL's petition to terminate the respondent's parental rights. The trial court noted that it did not believe the respondent's

testimony that she intended to return for the minor. The trial court noted that the respondent had made statements to DCFS and ECFA that she did not intend to return for the child. The trial court noted that there was evidence that the respondent was from another culture and might have been fearful of authority and of the stigma of being pregnant out of wedlock. Nonetheless, the trial court found that this was no excuse for leaving her newborn infant alone, cold, wet, and naked outside, at a critical time in his life. The trial court went on to state:

“I’m finding that it’s in the best interest of the minor and the public that the parental rights of both parents in the case be terminated, that they be permanently terminated and that a guardian of the—”

At that point the trial court was interrupted by the State, when it inquired as to whether the trial court was prepared to go on to a best-interest hearing. The trial court acknowledged that it was ready to go forward on the best-interest hearing.

¶ 28 On January 19, 2012, the case resumed for the best-interest hearing. Before the commencement of the hearing, the trial court clarified that, when ruling on the issue of fitness at the last hearing, it had intended to order a hearing on whether it was in the best interest of the minor to terminate the respondent’s parental rights. The trial court stated that it had made no determination as to the best-interest issue and that such a determination would be made following the hearing. The hearing commenced.

¶ 29 On January 20, 2012, the respondent filed a motion for substitution of judge for cause pursuant to section 2-1001(a)(3) (735 ILCS 5/2-1001(a)(3) (West 2008)). The parties appeared before the Honorable Rodney W. Equi, the presiding judge of the domestic relations division, for a hearing on the motion. Following argument, the trial court denied the motion. The trial court acknowledged that it considered the arguments and the transcripts from the January 17 and 19 hearings. The trial court noted that Judge Anderson was well aware that termination of parental rights was a two-step process. The trial court determined that, given Judge Anderson’s January 19 clarification of what he had intended to say at the January 17 hearing, it could not find that Judge Anderson had predetermined the result or that the respondent suffered actual prejudice.

¶ 30 Thereafter, the best-interest hearing resumed. Following the presentation of evidence, the parties made closing statements. On February 6, 2012, the trial court rendered its ruling. The trial court stated that it had considered the evidence, the case law, and the appropriate statutory factors. The trial court found that it was in the minor’s best interest to terminate the respondent’s parental rights. The trial court appointed a guardian with the power to consent to adoption of the minor. The respondent filed a timely notice of appeal.

¶ 31

II. ANALYSIS

¶ 32

The respondent’s first contention on appeal is that the prosecution and resulting termination of her parental rights was barred by her constitutionally protected plea agreement. The respondent notes that her parental rights were terminated based on the circumstances surrounding the birth and initial abandonment of the minor. The respondent argues that her plea agreement barred termination of her parental rights based on those

circumstances and that she is constitutionally entitled to the enforcement of the plea agreement. Accordingly, she argues that the trial court erred in denying her section 2-619 motion to dismiss the petition to terminate her parental rights. A section 2-619 motion assumes that the allegations of the complaint are true, but asserts an affirmative defense or other matter that would defeat the plaintiff's claim. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "Section 2-619 motions present a question of law, and we review rulings thereon *de novo*." *Id.*

¶ 33 We hold that the portion of the plea agreement relating to the State's representation that it would not seek to terminate the respondent's parental rights on the basis of events that had occurred prior to October 15, 2010, is against public policy and thus unenforceable. "Plea agreements are governed to some extent by principles of contract law, subject to considerations of constitutional due process." *People v. Hare*, 315 Ill. App. 3d 606, 609 (2000). Whether an agreement is contrary to public policy depends on the particular facts of the case. *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1063 (2007). Public policy is reflected in this state's constitution, statutes, and judicial decisions. *Id.* An agreement is against public policy if it "is so capable of producing harm that its enforcement would be contrary to the public interest." *Id.* Determining whether a plea agreement is against public policy is an issue of law, which we review *de novo*. *Id.*

¶ 34 In *Rife*, this court noted the public policy, set forth in section 502(f) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2008)), that, although parties to a dissolution judgment could include terms in an agreement related to custody, support, and visitation of their children, they could not circumvent the trial court's authority to determine at a later date whether the best interests of the children required modification of any of those terms. *Rife*, 376 Ill. App. 3d at 1064. Although the marital settlement agreement in that case did not bar modification of child custody, support or visitation, this court held that, because it deterred the petitioner from seeking modification based on the best interests of the children, its enforcement was contrary to the public interest. *Id.* In making our determination, this court relied on *Blisset v. Blisset*, 123 Ill. 2d 161, 168 (1988), where our supreme court held that "[p]arents may not bargain away their children's interests."

¶ 35 The public policy relevant in the present case is set forth in the Act and in this state's judicial decisions. It is well established that, under the Act, the juvenile court and the State's Attorney have the duty to act in the best interest of the minor and for the minor's own protection. *In re D.S.*, 198 Ill. 2d 309, 328 (2001); *In re J.J.*, 142 Ill. 2d 1, 11 (1991) ("[u]nder the Juvenile Court Act, both the State's Attorney and the juvenile court are charged with acting in the best interest of the minor"). A trial court, if convinced that it is in a child's best interest, can order the State to prosecute a petition for termination of parental rights against the State's wishes without violating the separation-of-powers doctrine. *In re D.S.*, 198 Ill. 2d at 327. Furthermore, under the Act, any interested adult, such as the GAL in the present case, can file a petition for termination of parental rights. 705 ILCS 405/2-13(1) (West 2008). Based on the foregoing, the State's Attorney clearly did not have the power to tie the hands of the juvenile court and the GAL to act in the best interest of the minor. Moreover, the State's Attorney failed to act in the best interest of the minor as he was bound

to do (*In re J.J.*, 142 Ill. 2d at 11) and the respondent lacked the authority to negotiate away the best interest of the minor (*Blisset*, 123 Ill. 2d at 168). Accordingly, the portion of the plea agreement in the criminal case, in which the State agreed not to seek termination based on events prior to October 15, 2010, was completely unenforceable as it was contrary to public policy.

¶ 36 We find further support for our determination in *People v. Provenzano*, 265 Ill. App. 3d 33 (1994). In that case, the State, as part of a plea agreement, had agreed to release a tax lien against the defendant, which lien had been filed by the Department of Revenue. *Id.* at 34. Pursuant to the plea agreement, the trial court ordered the Department to release its lien. *Id.* at 35. The Department, having filed a special and limited appearance to challenge the trial court's authority to order it to release its lien, appealed from that order. *Id.* This court held that the State's Attorney lacked the authority to bind the Department and that the trial court lacked the authority to order the Department to release its lien. *Id.* at 38. Accordingly, we concluded that the defendant was not entitled to specific performance of his plea agreement. *Id.* In the present case, the respondent is similarly not entitled to specific performance of her plea agreement. As in *Provenzano*, the State's Attorney in this case lacked the authority to limit the rights of the GAL and the juvenile court to act in the best interest of the minor.

¶ 37 In arguing that she is entitled to enforcement of her plea agreement, the respondent relies on *Santobello v. New York*, 404 U.S. 257 (1971), and *People v. Whitfield*, 217 Ill. 2d 177 (2005). The respondent notes that, in *Santobello*, the Supreme Court held that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled." *Santobello*, 404 U.S. at 262. In that case, the prosecution failed to keep its promise not to recommend a sentence, and the *Santobello* Court vacated the defendant's conviction. The Court remanded the case for the state court to determine whether the appropriate remedy was to order specific performance of the plea agreement or allow the defendant to withdraw his plea. *Id.* at 262-63.

¶ 38 In *Whitfield*, the defendant entered a plea of guilty to first-degree murder, in exchange for a 25-year sentence. *Whitfield*, 217 Ill. 2d at 179. However, the defendant was never admonished that he would be statutorily required to serve a 3-year period of mandatory supervised release (MSR) following his 25-year sentence. *Id.* at 180. The defendant sought postconviction relief, arguing that the addition of the MSR term was a breach of the plea agreement because he received a "more onerous" sentence. *Id.* at 186. The *Whitfield* court declared that, if a defendant can show that his guilty plea was entered in reliance on a plea agreement, "he may have a due process right to enforce the terms of the agreement." *Id.* at 189. The *Whitfield* court concluded that the defendant's guilty plea was induced by the promise of a specific sentence and that adding the statutorily required term of MSR to the defendant's negotiated sentence was an unfair breach of the plea agreement. *Id.* at 201-02. In determining an appropriate remedy, the *Whitfield* court acknowledged the remedies set forth in *Santobello*: that either the promise must be fulfilled or the defendant must be given the opportunity to withdraw his guilty plea. *Id.* at 202. The *Whitfield* court determined that the appropriate remedy was "to modify defendant's sentence to a term of 22 years of imprisonment, to be followed by the mandatory 3-year term of supervised release." *Id.* at

205. Recognizing that the three-year term of MSR was mandated by statute and could not legally be struck from the defendant's sentence, the court reasoned that its remedy approximated the penal consequences set forth in the plea agreement. *Id.* at 202, 205.

¶ 39 While the respondent correctly relies on the foregoing cases for the proposition that a defendant has a due process right to enforce the terms of a plea agreement, we nonetheless find her reliance on those cases unpersuasive. *Santobello* and *Whitfield* are distinguishable from the present case as neither involved a plea agreement that was contrary to public policy. In *Whitfield*, the plea agreement could not be enforced precisely as formulated, because the three-year term of MSR was statutorily mandated. Nonetheless, by reducing the defendant's sentence to 22 years, the *Whitfield* court was able, within the bounds of the law, to fashion a "benefit of the bargain" remedy that closely resembled the plea agreement. In the present case, there is no similar remedy. As stated, the GAL and the juvenile court cannot be bound to ignore the best interest of the minor. The benefit of the bargain in this case cannot be lawfully realized. Accordingly, the appropriate remedy for the respondent was the opportunity to withdraw her guilty plea. The respondent was not deprived of that opportunity. Thus, the trial court did not err in denying the respondent's motion to dismiss the petition to terminate her parental rights.

¶ 40 The respondent's second contention on appeal is that the trial court erred when it denied her motion for substitution of judge for cause. The respondent notes that, following Judge Anderson's ruling at the end of the fitness hearing, he started to say that it was in the best interest of the minor that the respondent's parental rights be terminated. However, he was then interrupted and stated only that he was ready to move forward to the best-interest hearing. The respondent argues that this showed that the trial court had prejudged the second phase of the termination proceeding. Furthermore, the respondent argues that Judge Equi applied the wrong standard in denying her motion for substitution of judge for cause, because at the end of his ruling he stated that he was denying "the motion for substitution as a matter of right."

¶ 41 A trial judge is presumed to be impartial, and the burden is on the party alleging partiality to overcome this presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). The moving party must establish "actual prejudice" in a petition seeking substitution of judge for cause, *i.e.*, either prejudicial trial conduct or personal bias. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30. The trial court is in the best position to determine whether it has become prejudiced. *In re C.S.*, 215 Ill. App. 3d 600, 601 (1991). "A trial court's determination on allegations of actual judicial prejudice in a motion to substitute for cause will not be reversed unless against the manifest weight of the evidence." *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 373 (2009), *aff'd*, 2011 IL 109039.

¶ 42 In the present case, we cannot say that Judge Equi's denial of the motion to substitute for cause was against the manifest weight of the evidence. At the January 19, 2012, hearing, Judge Anderson clarified that, at the end of the fitness hearing, he had intended to order a hearing on whether it was in the best interest of the minor to terminate the respondent's parental rights. Judge Anderson further explained that he had made no determination on the best-interest issue and would do so only following the presentation of the evidence at the best-interest hearing. Due to Judge Anderson's subsequent clarification, we cannot say that

he had prejudged the issue of best interest or that he was prejudiced against the respondent. Furthermore, despite Judge Equi stating that he was denying the “motion for substitution as a matter of right,” the record demonstrates that he used the proper standard, applicable to substitution for cause, in ruling on the motion. Specifically, Judge Equi stated that, based on Judge Anderson’s clarification, he could not “find that [Judge Anderson’s] initial statements rise either to the level of actual prejudice or a predetermination of the result of the case.” The foregoing shows that Judge Equi properly used the “actual prejudice” standard.

¶ 43 The respondent’s final contention on appeal is that the trial court’s finding of unfitness was against the manifest weight of the evidence. A proceeding on a petition for termination of parental rights involves a two-step, bifurcated approach where the trial court first holds a hearing to determine whether a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)). 705 ILCS 405/2-29(2) (West 2008); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If the parent is found unfit, the trial court conducts a subsequent hearing to determine whether the termination of parental rights is in the child’s best interest. 705 ILCS 405/2-29(2) (West 2008); *In re D.T.*, 212 Ill. 2d at 352.

¶ 44 Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if properly proven, is sufficient to enter a finding of unfitness. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. Proof of parental unfitness must be clear and convincing, and a trial court’s finding of unfitness will not be disturbed unless it is against the manifest weight of the evidence, *i.e.*, unless the opposite conclusion is clearly evident. *Id.* The trial court is generally in the best position to assess the credibility of the witnesses and, therefore, we will not reweigh or reassess credibility on appeal. *Id.* As cases concerning parental unfitness are *sui generis*, unique unto themselves, courts generally do not make factual comparisons to other cases. *In re Adoption of G.L.G.*, 307 Ill. App. 3d 953, 963 (1999).

¶ 45 Section 1(D)(a) of the Adoption Act (750 ILCS 50/1(D)(a) (West 2008)) permits a finding of unfitness based on abandonment of the child. “Abandonment means conduct on the part of a parent which evinces a settled purpose to forego [*sic*] all parental duties and relinquish all parental claims to the child.” *In re Adoption of Mantzke*, 121 Ill. App. 3d 1060, 1066 (1984). The crucial determination in a case alleging abandonment is whether the parent intended to abandon the child. *Id.* at 1067.

¶ 46 In the present case, the trial court specifically discredited the respondent’s testimony that she intended to return for the minor. The trial court noted that there was evidence that the respondent had made statements to DCFS and EFCA indicating that she did not intend to return for the minor. Specifically, Plump testified that the respondent stated that she had no plans for the minor when he was born and left under a tree. Additionally, the respondent told Blandford that at some point after she returned to her apartment, she thought about going back for the baby but decided not to go back. The determination that the respondent intended to abandon the minor after his birth is also supported by other evidence. The evidence shows that the respondent never told anyone, other than the minor’s father, about her pregnancy. She never received prenatal care. She gave birth outside and left the child under a tree. When she went home, she drank some hot water and went to sleep. She did not tell Officer Uhlir that she had just given birth, and she denied giving birth when questioned by Detective

Volpe. The respondent told Detective Potter and Blandford that she assumed that someone would hear the minor crying and find him. We acknowledge that the record shows that the respondent may have later changed her mind and wanted the minor returned to her. However, based on the foregoing evidence the trial court's determination that the respondent intended to abandon the minor after his birth was not against the manifest weight of the evidence.

¶ 47

III. CONCLUSION

¶ 48

For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 49

Affirmed.