

No. 1-10-3785

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> BERNICE L., a Minor,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	
	)	No. 07 JA 00002
Amber L.,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
Robert L.,	)	Honorable
	)	Maxwell Griffin, Jr.,
Respondent-Appellant.)	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hoffman and Lampkin concur with the judgment.

ORDER

*HELD:* On appeal from proceedings to terminate parents' parental rights, the circuit court's finding that father was unable to discharge his parental responsibilities was not against the manifest weight of the evidence, and it therefore properly found the father unfit and terminated his parental rights.

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Following an evidentiary hearing, the circuit court found that respondent, Amber L., and respondent-appellant, Robert L., were unfit parents. The court subsequently terminated both parties' parental rights to their daughter, respondent-appellee Bernice L. Only Robert has appealed from that decision, asserting that the circuit court erred in finding him unfit under sections 1(D)(m) and 1(D)(p) of the Adoption Act. 750 ILCS 50/1(D)(m), 1(D)(p) (West 2008). Robert also contends it was therefore improper to find it was in Bernice's best interests to terminate his parental rights. We affirm.

## I. BACKGROUND

Because Amber has not challenged the circuit court's termination of her parental rights and is not a party to this appeal, we summarize only those facts particularly relevant to our resolution of Robert's appeal.

On January 3, 2007, the State filed a petition in the circuit court for adjudication of wardship and a motion for temporary custody of Bernice. The pleadings alleged that Bernice, born on November 20, 2006, was the daughter of Amber and Robert. The State's pleadings also alleged that Bernice was neglected because her environment was injurious to her welfare and created a substantial risk of physical injury, pursuant to the Juvenile Court Act (Juvenile Act). 750 ILCS 405/2-3(1)(b), 2-3(2)(ii) (West 2006). These assertions were supported by allegations that Amber brought Bernice to the hospital on December 27, 2006. At that time, Amber was observed engaging in "bizarre behavior" and Bernice was diagnosed with failure to thrive due to malnourishment and Amber's failure to allow Bernice sufficient sleep. Additionally, the State alleged that Robert had "two prior

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indicated reports including sexual abuse and sexual penetration.”<sup>1</sup>

The circuit court appointed separate counsel to represent Amber, Robert, and Bernice, and the following day entered an order allowing the State’s petition and granting temporary custody of Bernice to the Illinois Department of Children and Family Services (DCFS). Robert and Amber were granted the right to supervised visitation, and on April 18, 2007, the circuit court entered a paternity order finding that Robert, Amber’s husband, was Bernice’s father.

Following a hearing on August 22, 2007, the circuit court entered an adjudication order finding Bernice to be neglected due to a lack of care and an injurious environment. 750 ILCS 405/2-3(1)(a), 2-3(1)(b) (West 2006). This order was based upon evidence supporting the allegations contained in the State’s initial petition. A dispositional hearing was held on September 13, 2007, following which the circuit court: (1) found Amber and Robert were unable to care for Bernice, (2) concluded that reasonable efforts had been made and appropriate services had proven unsuccessful, (3) adjudicated Bernice to be a ward of the court, and (3) appointed the DCFS guardianship administrator as Bernice’s guardian with the right to place her in appropriate care.

The circuit court held a number of permanency hearings throughout this case and entered permanency orders on September 13, 2007, March 27, 2008, January 14, 2009, December 18, 2009, and November 1, 2010. While the initial permanency goal was to return Bernice home to her parents, these permanency orders also reflect that neither parent ever made substantial progress toward that goal. Thus, the December 18, 2009, permanency order reflects a change of Bernice’s goal to

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<sup>1</sup> An “indicated report” is defined as a report made under the Abused and Neglected Child Reporting Act where “an investigation determines that credible evidence of the alleged abuse or neglect exists.” 325 ILCS 5/3 (West 2008).

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substitute care pending a court determination on the termination of parental rights.

On June 21, 2010, the State filed a motion to terminate the parental rights of Amber and Robert and appoint a guardian with the power to consent to adoption, pursuant to section 2-29 of the Juvenile Act. 705 ILCS 405/2-29 (West 2008). In that petition, the State alleged that both parents were unfit because they: (1) failed to maintain a reasonable degree of interest, concern or responsibility regarding the child's welfare (750 ILCS 50/1(D)(b) (West 2008)); (2) failed to protect the child from conditions within her environment injurious to the child's welfare (750 ILCS 50/1(D)(g) (West 2008)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, and/or failed to make reasonable progress toward the return of the child to the parent within nine months after an adjudication and/or within any subsequent nine-month period (750 ILCS 50/1(D)(m) (West 2008)); and (4) were unable to discharge parental responsibilities due to mental impairment, mental illness, mental retardation, or developmental disability, and there was sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period (750 ILCS 50/1(D)(p) (West 2008)). The motion also asserted it was in Bernice's best interests that a guardian be appointed with the power to consent to her adoption, alleging that she had been placed in the same foster home since the State filed its initial petition and that foster parent wished to adopt her.

A hearing on the State's motion to terminate parental rights was held on November 29, 2010, and December 3, 2010. The circuit court began by taking judicial notice of its prior paternity, adjudication, disposition, and permanency orders. The court also accepted into evidence a number of documents submitted by the State. These exhibits included eight successive DCFS service plans,

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a report regarding Robert's psychosexual assessment, a report on Robert's individual therapy, a parenting competency evaluation, and a Cook County Juvenile Court Clinic (CCJCC) clinical evaluation.

Keesha Brooks testified that she was the caseworker assigned to this case from July of 2007 until June of 2008. She testified that both Amber and Robert had various physical and mental health issues that needed to be addressed. Robert was therefore referred for individual therapy, a mental health examination, psychiatric and psychosexual evaluations, and parenting classes. Some of these referrals arose out of the indicated reports of prior sexual abuse. Robert rejected the need for any services, claiming that the allegations of prior sexual abuse were untrue.

Furthermore, Robert's health issues required him to take a number of medications. As a result of his health issues, Robert failed to fully comply with his required individual therapy and parenting sessions. He also repeatedly fell asleep during those sessions he did attend, as well as during his supervised visits with Bernice. In sum, while Ms. Brooks was assigned to the case Robert was never permitted unsupervised visits with Bernice, never completed his required services, and his progress toward the goal of reunification with Bernice was never rated satisfactory.

Ava Jackson testified that she was assigned to this matter as a caseworker from May of 2008 until May of 2010. At the time she became involved the permanency goal remained to return Bernice to her home, but satisfactory progress had not yet been made toward that goal. During her involvement with this case, however, Robert's compliance and progress with required services was not consistent. Robert completed some of his required services and his progress was rated as satisfactory for those individual efforts. Other services were not completed, however, due to

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Robert's health issues, his sleepiness during sessions and visits with Bernice, and his anger management issues.

For example, Robert's psychosexual evaluation could not be completed because Robert was constantly falling asleep and ultimately began to threaten the evaluator. Robert had also threatened Ms. Brooks during supervised visits with Bernice, a behavior that scared his daughter. While Robert did complete parenting classes and his behavior did improve in individual areas, his overall progress remained unsatisfactory during Ms. Jackson's entire period of involvement. As a result, the permanency goal had been changed to substitute care pending a court determination on the termination of parental rights.

After Ms. Jackson testified, all parties rested their respective cases. The circuit court ultimately found that the State had proven both Amber and Robert unfit. Robert was specifically found unfit on the grounds that: (1) he failed to make reasonable progress toward the return of Bernice during three separate nine-month periods (750 ILCS 50/1(D)(m) (West 2008)), and (2) he was unable to discharge his parental responsibilities due to mental retardation and/or developmental disability (750 ILCS 50/1(D)(p) (West 2008)). The circuit court observed that Robert did complete some of his required services and did show some improvement, but noted that he "was never rated satisfactory in his progress towards the overarching goal of return home."

Moreover, the circuit court also reviewed the evidence contained in Robert's parenting competency evaluation and his CCJCC clinical evaluation. The court noted that the parenting evaluation team had diagnosed Robert with intermittent explosive disorder, shared delusional disorder, mild mental retardation, and anti-social personality traits. That report further found that

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Robert exhibited 19 separate risk factors for child abuse, and had limited recognition of the various issues that impeded upon his ability to regain custody. The circuit court noted that the parenting evaluation concluded that, despite Robert's motivation to make some changes, "his multiple deficits and marginal level of adaptation also render [Robert] essentially unable to provide for the needs of a dependent child."

With respect to the CCJCC evaluation, the circuit court highlighted the reporting psychologist's determination that Robert met the diagnostic criteria for anti-social personality disorder and mild mental retardation. The report further concluded that both of these conditions negatively impacted Robert's ability to parent, they were not amenable to successful treatment, and were likely to present life-long challenges.

This matter thereafter proceeded to a best interest hearing. At that hearing, the State presented testimony from the current caseworker, Tami Gaskins, and Bernice's foster mother, Michelle M. Ms. Gaskins testified that Bernice had been placed with Michelle for nearly four years. Furthermore, Bernice had a number of special needs and Michelle was providing for those needs. Ms. Gaskins had no doubts about Michelle's ability to do so in the future. Ms. Gaskins testified that Bernice and Michelle had a loving relationship, and that while Robert had some connection with Bernice and a desire to have a relationship with her, Bernice needed permanency and it was in her best interest to terminate parental rights.

Michelle testified that Bernice was very attached with her two-year old foster son, and that she herself was very interested in adopting her. She was aware of Bernice's special needs and prepared to address them. She would consider allowing Bernice contact with Robert in the future,

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if that was what Bernice was comfortable with and desired.

Finally, Robert testified on his own behalf. He indicated that he loved Bernice, enjoyed his visits with her, and wanted the opportunity to develop a bond with her. He believed it was in Bernice's best interest to continue his relationship with her.

At the conclusion of the hearing, the circuit court found that it was in Bernice's best interests to terminate the parental rights of her parents. The court therefore entered orders terminating the parental rights of Amber and Robert, and set a new permanency goal of adoption.

## II. ANALYSIS

As noted above, only Robert has appealed from the circuit court's decision. On appeal, he challenges the circuit court's unfitness and best-interest findings. For the following reasons, we affirm.

### A. Standard of Review and Legal Framework

Parental rights may be involuntarily terminated where: (1) the State proves that a parent is unfit pursuant to one of the grounds set forth in section 1(D) of the Adoption Act, and (2) the circuit court finds that termination is in the child's best interests. *In re M.R.*, 393 Ill. App. 3d 609,613 (2009); 705 ILCS 405/1–1 *et seq.* (West 2008). In a proceeding for the involuntary termination of parental rights, the State bears the burden of proving by clear and convincing evidence that a parent is unfit under any one of the grounds contained in section 1(D) of the Adoption Act. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). Any single ground, properly established, is sufficient for a finding of unfitness. *D.F.*, 201 Ill. 2d at 495. "Because the circuit court is in the best position to assess the credibility of witnesses, a reviewing court may reverse a circuit court's finding of unfitness only where

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it is against the manifest weight of the evidence. [Citation.] A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident. [Citation.]” *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). Furthermore, the reviewing court may not substitute its judgment for that of the circuit court regarding the credibility of witnesses, the proper weight to be accorded the evidence, or the inferences to be drawn therefrom. *D.F.*, 201 Ill. 2d at 499.

The circuit court below found Robert to be unfit, in part, based upon section 1(D)(p) of the Adoption Act. 750 ILCS 50/1(D)(p) (West 2008). That section provides that possible grounds for a finding of unfitness include a parent’s:

“[i]nability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or mental retardation as defined in Section 1-1 16 of the Mental Health and Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period.” 750 ILCS 50/1(D)(p) (West 2008).

Thus, in order to prove a parent unfit under section 1(D)(p) of the Adoption Act, the State must present: (1) competent evidence that the parent suffers from a mental impairment, mental illness, mental retardation, or developmental disability sufficient to prevent the discharge of normal parental responsibilities, and (2) sufficient evidence to conclude that the inability will extend beyond a

reasonable time period. *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004).

#### B. Factual Support for Circuit Court's Finding

In finding Robert unfit under section 1(D)(p), the circuit court primarily relied upon the evidence and findings contained in the parenting competency evaluation and the CCJCC clinical evaluation. These two reports therefore deserve further discussion.

Robert's parenting competency evaluation was a 32-page written report completed on December 16, 2009. The report was completed by a four-member team comprised of a licensed psychologist, a board-certified psychiatrist, and two licensed clinical social workers. In completing this evaluation, the team reviewed a host of DFCS records, as well as records related to Robert's personal, criminal, medical, and psychological history. Members of the team participated in multiple interviews with Robert and observed his interactions with Bernice. Finally, the team completed a battery of specific psychological, relational, and developmental tests and questionnaires.

The team diagnosed Robert with intermittent explosive disorder, shared delusional disorder, mild mental retardation, and antisocial personality traits. Furthermore, Robert exhibited 19 static and dynamic risk factors related to the potential for child abuse. These findings were supported by evidence that Robert had dropped out of school at a very young age, had low intelligence test scores, and had a long history of delinquency, arrests, and convictions. He exhibited combativeness and evasiveness with DCFS staff, prior evaluators, and the competency evaluation team. Robert also seemed unable to challenge the actions and opinions of his wife Amber, even when those actions and opinions were unfounded or even delusional.

The team also reviewed documents related to Bernice and interviewed her foster mother,

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Michelle. The report notes that Bernice herself had a number of visual, educational, behavioral, and developmental impairments. Bernice was being provided with a number of specialized services, had an individualized educational plan, and would continue to need specialized assistance for the foreseeable future.

Ultimately, the team found that Robert had “few coping mechanisms and adaptive capacities \*\*\* when pressed beyond his capacities, he becomes surly, resistant, potentially explosive, and falls back on vague physical symptoms and excuses.” In light of his own issues and Bernice’s own specialized needs, the team opined that Robert “will not be able to make the sorts of gains needed to raise his daughter safely and securely.”

The CCJCC evaluation was contained in a 29-page report completed on October 7, 2010. The evaluation was completed by Dr. Anne Devaud, a licensed clinical psychologist. The evaluation was prepared pursuant to a court order, and was an attempt to specifically evaluate Robert’s potential unfitness under section 1(D)(p) of the Adoption Act. Dr. Devaud’s evaluation included a complete review of records related to Robert and Bernice, three clinical interviews with Robert, a parent-child observation, contacts with Robert’s therapist and DCFS caseworker Ms. Gaskins, and a personality assessment inventory.

Dr. Devaud diagnosed Robert with an antisocial personality disorder, mild mental retardation, and alcohol dependence in sustained full remission. In support of the diagnosis of an antisocial personality disorder, Dr. Devaud noted that Robert had left school at an early age, engaged in many years of delinquency, was irresponsible with his personal safety and the safety of others, and was often aggressive and lacked remorse for his actions. The diagnosis of mild mental retardation was

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supported by evidence of an IQ score of 61, within the extremely low range. He also exhibited a lack of adaptive functioning, having often been homeless and currently living in “filthy” conditions, being unable to sustain interpersonal relationships, and repeatedly engaging in activities which placed him at risk, including engaging in conflicts and sleeping in his car or in a park. Regarding the diagnosis of alcohol dependence in sustained full remission, Robert himself reported that he previously “drank in excess for decades.”

Dr. Devaud concluded that Robert’s diagnoses would have a negative impact on his ability to parent Bernice or any other child. Robert’s antisocial personality disorder impacted his insight into problems, his ability to avoid conflicts, his ability to show patience with a child, his ability to be attentive to a child’s social cues, and his abilities to provide the basic necessities for himself and a child. Robert’s mild mental retardation impacted on his ability to care for himself and would similarly impact his ability to care for a child. This was especially true with respect to Bernice, who herself was a “complex child to parent” due to her ongoing physical and developmental needs requiring consistent treatment and follow-through. The evaluation concluded that Robert’s “mental retardation, as well as his hostile characterological nature, is likely to interfere with his ability to meaningfully and consistency engage in such activities to ensure Bernice’s adequate development.”

Finally, Dr. Devaud opined that Robert’s antisocial personality disorder was generally not as amenable to successful treatment as other mental illnesses and that Robert showed no motivation to change. Furthermore, his mild mental retardation was an “unchanging and lifelong condition.” As such, Dr. Devaud concluded that “[g]iven all these factors, the likely duration of [Robert’s] inability to discharge parental responsibilities is life-long.”

C. Robert's Arguments

Robert challenges the sufficiency and credibility of these two evaluations on appeal. Specifically, Robert asserts that: (1) the two evaluations are not credible because they only share a single common diagnosis for mild mental retardation, and (2) the evaluations did not establish that any mental disability that was established rendered Robert unfit or unable to parent Bernice. We disagree.

As an initial matter, we note that Robert has waived these arguments by not raising them below. Robert did not raise any such challenges to the parenting competency assessment or the CCJCC evaluation at the unfitness hearing, and such arguments are therefore waived. *In re Madison H.*, 215 Ill. 2d 364, 378-79 (2005); *In re April C.*, 326 Ill. App. 3d 225, 241-42 (2001). Waiver aside, we find these arguments unpersuasive.

Robert is correct that the only specific diagnosis that appears in both evaluations is mild mental retardation. The record does not reflect, as Robert seems to suggest, that the evaluations are otherwise totally inconsistent. We note that the parenting competency assessment diagnosed intermittent explosive disorder while the CCJCC evaluation concluded Robert suffered from an antisocial personality disorder. Dr. Devaud did not totally disagree with the facts or analysis that led to the parenting competency assessment's diagnosis, but rather simply found that a diagnosis of antisocial personality disorder provided a "better accounting for [Robert's] characterological traits and subsequent behaviors." We also note that the parenting competency assessment itself diagnosed Robert with antisocial personality *traits*.

Furthermore, while Dr. Devaud did not diagnose Robert with a shared delusional disorder,

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this was not due to any disagreement with the prior evaluation. Rather, Dr. Devaud stated that this difference was simply “due to this psychologist not engaging in clinical interviews with [Amber], nor reviewing any of her records \*\*\*.” Thus, we do not find the two evaluations to be significantly inconsistent. Even if there were discrepancies, it was the province of the circuit court to assess the credibility of the evaluations and to determine the proper weight to be accorded to each, and we will not second-guess that determination on appeal. *D.F.*, 201 Ill. 2d at 499.

We also reject Robert’s contention that the State failed to establish that his mental deficiencies rendered him unable to parent Bernice. In support of this argument, Robert notes the general proposition that “not every parent with a psychiatric illness or condition is *per se* unfit to be a parent and to maintain custody of her children. The statutory scheme does not envision that all parents with a designated mental disability will have their parental rights terminated.” *In re A.J.*, 269 Ill. App. 3d 824, 827-28 (1994). More specifically, Robert cites to the decision in *Cornica J.*, 351 Ill. App. 3d 557. In that case, the court reversed a finding of unfitness and noted that “a low IQ does not automatically translate into an inability to discharge parental responsibilities.” *Id.* at 569. Robert contends that this case is analogous to the *Cornica J.* decision, and this court should similarly reverse the circuit court’s finding of unfitness.

We do not agree. It must be noted that cases concerning parental unfitness are *sui generis*, require a close analysis of individual facts, and factual comparisons to other cases by reviewing courts are therefore of little value. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Even so, the *Cornica J.* decision is easily distinguishable. In that case, the State’s evidence primarily rested on the testimony of a single psychologist. *Cornica J.*, 351 Ill. App. 3d at 558. While the psychologist diagnosed the

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respondent-father with an IQ score of 69 and depression, there was no diagnosis of a personality disorder. *Id.* at 562. Moreover, some of the psychiatrist's findings were contradicted by the four witnesses who testified on behalf of the respondent father. *Id.* at 570. The appellate court noted the lack of a personality disorder diagnosis and the contradictory testimony as factors necessitating a reversal of the finding of unfitness. *Id.* at 558.

Clearly, the situation in this case is much different. The State presented the circuit court with two evaluations produced by the combined effort of two licensed clinical social workers, two psychologists, and a psychiatrist. Both evaluations diagnosed Robert with a significant personality disorder in addition to mild mental retardation. Both evaluations found Robert, in light of his own issues and Bernice's own specialized needs, to be unlikely to provide for Bernice's long-term safety and security. Finally, the State's evidence on these issues went essentially unchallenged at the unfitness hearing. In light of these facts, we must find that there was sufficient support for the circuit court's finding that Robert was unfit under section 1(D)(p) of the Adoption Act. We certainly cannot say that an opposite conclusion is clearly apparent. *Deandre D.*, 405 Ill. App. 3d at 952.

Moreover, because Robert was properly found unfit under section 1(D)(p), we need not further consider his challenge to the circuit court's finding of unfitness under section 1(D)(m) of the Adoption Act. *In re M.S.*, 351 Ill. App. 3d 779, 788 (2004), citing *In re D.D.*, 196 Ill. 2d 405, 422 (2001) ("When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider whether the respondent was also unfit based upon additional grounds cited by the circuit court.") Furthermore, we note that Robert's challenge to the circuit court's best-interest determination is limited to a contention that the "finding

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of unfitness was error; as such, no best interest hearing should have been held and the finding thereof are *void ab initio*.” Because we have affirmed the circuit court’s finding of unfitness, we must reject this contention.

### III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.