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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re ADOPTION OF V.L., a minor,)	Appeal from the Circuit Court
)	of Lake County.
)	
)	No. 10—AD—1
)	
(Christopher H. and Angelica H.,)	Honorable
Petitioners-Appellees, v. Vernon L.,)	Charles D. Johnson,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: (1) The trial court's determination that respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility for the minor child was not against the manifest weight of the evidence where, from 2002 to 2009, respondent effectively did nothing to demonstrate concern with or exercise parental rights with the minor child;
(2) The trial court's determination that the termination of respondent's parental rights was in the minor child's best interests was not against the manifest weight of the evidence;
(3) The record shows that the trial court properly conducted a fitness hearing at which clear and convincing evidence demonstrated respondent's unfitness, followed by a termination hearing at which the preponderance of the evidence showed that it was in the minor child's best interests to terminate respondent's parental rights.

Respondent, Vernon L., appeals the judgment of the circuit court of Lake County finding him to be an unfit parent, terminating his parental rights, and granting the related adoption of his child, V.L., to petitioners, Christopher H. and Angelica H. (V.L.'s mother). Respondent argues on appeal that the trial court erred in holding (1) that he failed to maintain a reasonable degree of interest, concern, or responsibility, and (2) that it was in V.L.'s best interests to terminate respondent's parental rights and allow the adoption. Respondent also argues that the trial court followed improper procedure, terminating his parental rights during the fitness stage of the proceedings rather than during the best interests phase. We affirm.

We first summarize the facts appearing in the record. On December 13, 1998, Angelica married respondent. In August 1999, their only child, V.L. was born. Respondent was not present at V.L.'s birth because he was in jail for a bond violation. When respondent was released, he visited Angelina and V.L. in the hospital for about a half-hour, just before the end of visiting hours.

In May 2000, a divorce decree was entered terminating the parties' marriage. Angelica had proceeded *pro se* in the divorce, assisted in preparing the necessary paperwork by Ford Motor Company Legal Services. The divorce decree and child support order were served upon respondent by a personal process server at his mother's house. Respondent did not appear for any of the proceedings, including the date that the decree was entered. Under the divorce decree, both parties received various obligations, including a continuing obligation to notify the other of his or her "current residence, address, mailing address, home telephone number, name of employer, driver's license number, and work telephone number." Additionally, Angelica was awarded sole custody of V.L.

During June 2000, respondent went to Angelica's place of employment, at around 2 a.m., and took her car from the employee parking lot. Respondent testified that the car was still titled in his name when he took it. Respondent explained that he had been trying to discover Angelica's whereabouts so that he could visit with V.L. Respondent was arrested for taking the car and, on direct examination, admitted that he pleaded guilty to the theft of Angelica's car.

Respondent also admitted that, on September 5, 2000, he committed an armed robbery of a jewelry store. On October 23, 2000, respondent committed another armed robbery.

Respondent last saw V.L. on the date of the jewelry store robbery. Respondent denied that he took V.L. with him or that he spoke of the robbery with Angelica. Angelica testified that, when she learned of the robbery, she confronted respondent because he had V.L. with him at the time of the robbery. According to Angelica, respondent denied that he took V.L. along for the robbery and assured her that V.L. was not in danger because he was just casing the jewelry store. On November 22, 2000, respondent was arrested and has remained incarcerated since that date.

In February 2002, petitioners married. In January 2010, petitioners filed a petition to adopt V.L.

This matter proceeded to a hearing. Respondent participated in the hearing via telephone. Respondent asserted that his release date, even if he were not granted parole, would be in 2012.

Respondent testified that he and Angelica had been married, and they had one child together, V.L. Respondent testified that, when V.L. was born, he still lived with Angelica in an apartment. They built a nursery together for the child. When V.L. was about six or seven months old, Angelica kicked him out of the apartment. Even after he was kicked out, respondent maintained regular visitation with V.L., either picking up the child from Angelica's mother's

house, or having the child dropped off to him. (He did not relate who dropped off the child.) Respondent testified that his visitation was sometimes dependent on how Angelica was feeling; sometimes Angelica would disappear and he would not know where they were. Respondent testified that he normally had visitation with V.L. Thursday through Monday. He would drop off V.L. on Monday because of Angelica's work schedule at the Ford Motor plant.

Respondent testified that, in May 2000, he and Angelica divorced. He did not discover that he was divorced until a month or so after it had been completed. Respondent testified that, despite the divorce, he and Angelica remained involved with each other. Respondent testified that, after the divorce, he would visit V.L. on the weekends. He was ordered to pay child support in the divorce judgment, and he would provide Angelica with cash, food, and whatever the child needed.

Respondent testified that, in June 2000, he was unable to find Angelica or V.L. He tried to locate her by calling her mother, her aunt, her father, her step-mother, and her job. No one would give him any information as to Angelica's whereabouts. Respondent testified that, in order to find her, he went to the Ford plant where she worked and took the car she had been using that day. Respondent stated that the car was still titled in his name at that time. In the car, he found a document which gave Angelica's new address. Respondent was charged criminally with taking the car. When he appeared in court and saw Angelica, he asked her if they could have lunch together and discuss his visitation with V.L. Angelica refused. Respondent admitted that, on one occasion, he went to Angelica's house and the police were summoned. Respondent did not testify who contacted the police, but he noted that her mother was present at Angelica's house. Respondent testified that, on that occasion, the police arrested him for unpaid parking tickets.

Respondent also testified about the crimes for which he was imprisoned. Respondent denied that he took V.L. with him when he robbed the jewelry store, and he denied that he discussed the incident with Angelica. By contrast, Angelica testified that she presumed that respondent was involved in criminal activity when he would give her money for V.L.'s support, because she believed him to be unemployed.

Angelica testified that, when she was 16 years old, she met respondent, and they married when she was 22. When she was pregnant with V.L., Angelica lived with her mother. Respondent would come to her home every other day, spending the night once or twice a week. When Angelica gave birth to V.L., respondent was not with her because he was in jail. When respondent was released from jail, he visited her and the baby at the hospital, staying for about a half-hour just before visiting hours ended. Angelica remained at her mother's house after V.L.'s birth, explaining that it was her first child, and she needed to heal following a difficult pregnancy.

Angelica testified that, after V.L. was born, respondent would come and see the child at her mother's home, but they did not live together. Respondent provided some financial assistance, giving Angelica \$100 from time to time, averaging about once a month. Eventually, Angelica moved back to her apartment. She believed that somebody else had been living there with respondent while she was at her mother's. Angelica kicked respondent out of the apartment, putting his belongings out on the patio.

Angelica divorced respondent, and the divorce was finalized in May 2000. Angelica did not personally give respondent a copy of the final judgment for the divorce, but believed it had been mailed to him. After the divorce, Angelica moved back into her mother's home for a while, and, in June 2000, she moved to her new home. She did not tell respondent that she was

moving because she did not want him to know that she had moved on, and she did not want him to ask her out. In fact, she wanted nothing further to do with respondent.

Respondent learned that Angelica had moved when he took her car from her place of work. Angelica testified that, even though the car was still titled in both of their names, it was her car because it had been awarded to her in the divorce. Angelica conceded that respondent did return the car to her, but when he did so, he “attacked” her house, beating on the doors and windows, leading her to call the police. Angelica also conceded that the divorce decree required her to notify respondent when she moved, but she did not comply with it. Angelica explained that she did not tell respondent that she had moved to a new residence because she thought he could come there, and she did not want him to do that.

Angelica testified that, when she was contemplating marrying Christopher, she wrote respondent a letter. When she decided to marry Christopher, she informed respondent and told him she would be moving, but could not give him an address, because she had no address to give at that time. She moved to Italy with her Christopher, a member of the armed forces who was stationed in Italy. Angelica notified respondent of this move, but he was already incarcerated at that time. Angelica testified that her mother kept in touch with respondent, but that she did not notify the State or respondent of any of the places she lived. Angelica explained that she was afraid of respondent and did not want him “stalking” her or want “the violence” to be around V.L. Angelica further testified that the police had been “involved” a number of times while she was married to respondent, but did not offer any further explanation.

Angelica testified that, in October 1999, she would drop off V.L. at her mother’s house to allow respondent’s brother or mother to take the child for visitation with respondent. Angelica related that V.L. would stay at respondent’s mother’s house for the day, usually Saturday, and,

occasionally, spend the night. Angelica did not want V.L. to stay with respondent's family for longer periods because they all "would smoke weed" every day. Angelica testified that she invited respondent to V.L.'s first birthday party, but he did not come. Respondent notes that she did not explain how the invitation was extended to him.

Angelica testified that, from the time of V.L.'s birth in August 1999, until the time at which respondent was incarcerated in September 2000, he visited once a month with V.L. Angelica testified that she allowed the child to stay overnight once or twice with respondent's mother, and if respondent saw the child overnight, it was at his mother's house, because Angelica did not consent to allowing the child to spend the night anywhere else.

Angelica testified that, on one occasion, she brought the child to a shopping mall for a visitation exchange, which was unusual. The next day, she saw an article in the newspaper about the robbery of a jewelry store that occurred on the date and at the place of the visitation exchange. Angelica asked respondent about the robbery. She testified that respondent replied, "[V.L.] wasn't in any danger, I was just staking out the place." Angelica testified that she did not permit any further visitation between respondent and V.L. after that occurrence.

Angelica testified that, once respondent was imprisoned, he would call once a week, collect, to check on V.L. She did not allow the calls to go on for very long, because she did not want to accept collect calls. Respondent also called Angelica's mother, but Angelica instructed her mother not to give respondent her address or her phone number. Angelica did not take V.L. to see respondent while he was incarcerated; the last in-person visitation between respondent and V.L. occurred in September 2000.

In 2006 or 2007, when V.L. was seven or eight years old, Angelica told him about his family on his biological father's side. At Thanksgiving that year, Angelica took V.L. to meet

respondent's family at respondent's mother's house. They stayed for about two hours, and V.L.'s picture was taken with his half-sisters. Angelica did not give respondent's mother her phone number during that visit. In March 2008, V.L. saw respondent's mother again, but not during a visit; rather, it was the funeral of Angelica's father. They saw each other at the church where the service was held, not on an overnight visit.

Respondent also testified on his own behalf. Respondent testified that, after he and Angelica had separated, he had visitation with V.L. every weekend. He would take V.L. and V.L.'s sister, who is three months younger than V.L., and they would go to the zoo or the aquarium. Respondent testified that, after he was imprisoned, he would call V.L. all the time, but whether he was able to speak to his child depended on Angelica's mood. Sometimes, she would change her phone number, and he was unable to call. Respondent testified that contact with V.L. stopped during 2002, while Angelica was deciding whether to marry Christopher. Respondent attempted to learn Angelica's phone number or address by contacting members of her family, like her father, her step-mother, and her aunt, but was unsuccessful. Respondent testified that, in 2010, he was able to ascertain Angelica's phone number and address from papers filed in the adoption case, and he began to call and write letters to V.L. Respondent also tried to send cards and letters to V.L., by first sending them to his mother so she could pass them on to Angelica's mother, because Angelica and V.L. were in Italy.

Respondent testified that, with his other children, he has been able to maintain contact and remain a part of their lives. He calls them every couple of days, and they visit him in prison twice a month.

Respondent related that, while he has been incarcerated, he has obtained a degree in business computer information systems and certifications for various Microsoft products, like

Word, Power Point, and Access. While in prison, respondent has also taken a parenting class and a class on interventions in order to help him change his thinking and to help him reintegrate back into civilian society once he is released. Respondent also finished his GED in prison and was named valedictorian.

Respondent notes that no one was physically injured in any of the offenses for which he was incarcerated. He has been denied parole twice during his incarceration, the most recent being in April 2010.

Respondent testified that he did not initiate any proceedings in the divorce court regarding visitation with V.L. or obtaining Angelica's address. He explained that he did not know how to accomplish this. Respondent testified that he loved V.L. and wished he could have the same sort of relationship with V.L. that he has with his daughters.

Following the presentation of evidence, the trial court orally ruled that petitioners had not proven the ground of depravity. The court reserved the remaining ground and promised to issue a written order within a week-and-a-half.

On October 22, 2009, the trial court issued its written ruling. We note that, in the ruling, the trial court referred to petitioner's second amended petition, even though, at the time of the hearing, the petitioners were proceeding on their third amended petition for adoption. Both the second and third amended petitions alleged that respondent had failed to maintain a reasonable degree of interest, concern, or responsibility for V.L. The trial court first observed that "[t]here is contradictory evidence as to the amount of contact [respondent] had with [V.L.] from the child's birth until [respondent's] incarceration." The trial court concluded from the parties' testimony that "it does not appear that the parties lived together on a day-to-day, marital basis at any point after the child's birth." The court noted the parties' conflicting testimony regarding

how often respondent conducted visitation with V.L., with respondent contending it was “regularly” until he was incarcerated, and Angelica stating that it was about once a month during V.L.’s first year of life. The court recounted that, further, after respondent was incarcerated, he averred that he called “as often as possible,” while Angelica stated that it was once a week for the first month, after which she stopped accepting collect calls. The trial court found that “[t]here is no evidence that [respondent] has seen [V.L.] at all in the ten years that he has been incarcerated.” The court also noted that Angelica had taken the child to visit with his biological father’s family twice in the previous five years, allowing the child to visit with respondent’s mother and several half-siblings for several hours during each of the visits.

Turning from the parties’ testimony, the trial court first held that petitioners had failed to prove that respondent was unfit on the ground of “depravity” (see 750 ILCS 50/1(D)(i) (West 2010)). The court next took up whether respondent had maintained a reasonable degree of interest, concern, or responsibility about V.L.’s welfare. The court held:

“It goes without saying that, for [respondent], personal visits with [V.L.] were ‘impractical’ at best, given his incarceration for the last ten years. Additionally, Angelica has erected significant roadblocks to [respondent’s] contact with [V.L.] over the years, including refusing collect calls, moving out of state and out of the country and failing to disclose to [respondent] the child’s whereabouts. However, even in the context of all of these circumstances, there is almost nothing in the record to show any efforts by [respondent] to contact [V.L.] since at least early 2001, a span of over 9 years. There was testimony that Angelica contacted [respondent] in about 2002 to tell him that she was thinking about marrying another man, and also some testimony from each witness that occasionally [respondent’s] mother would take gifts for [V.L.] to Angelica’s

mother's house. There was also testimony that [respondent] gave his mother a letter to give to [V.L.] at Angelica's father's funeral, although the date of this occurrence and whether the letter was ever actually delivered is uncertain from the testimony. In short, other than these few instances, there is a distinct absence in the record of any attempts by [respondent], successful or otherwise, to have parental contact with [V.L.] Again, while these attempts have to be considered against the backdrop of [respondent's] incarceration and Angelica's attempts to move on without him, this cannot be considered a reasonable degree of interest, concern or responsibility as contemplated by the statute. The record therefore establishes by clear and convincing evidence that [respondent] is an unfit parent as defined in the statute."

The trial court also held that "[respondent's] Parental Rights are hereby terminated with regard to the minor child [V.L.], based on the Court's finding of unfitness."

The proceedings turned to the best interests phase. On November 10, 2010, a hearing was held regarding V.L.'s best interests. Angelica was not present at the hearing owing to her pregnancy. Christopher, however, was present and he testified that he was a captain in the Army and was stationed in Italy. In December 2001, he and Angelica met, and in February 2002, they married, moving to Italy where Christopher was then stationed. Christopher and Angelica had three daughters, a baby on the way, and he wanted to adopt V.L. Christopher testified that V.L. wanted to be adopted and did not want to meet respondent. On cross-examination, Christopher testified that he was able to provide for V.L., including health insurance, and would continue to treat V.L. as his own child and a member of his family regardless of whether he was able to complete the adoption.

Respondent testified that he and his family wanted V.L. to be a part of their lives. He did not want to interfere in the relationship between V.L. and Angelica and her family; rather, he wanted to be involved in V.L.'s life. Respondent testified that, since he was incarcerated, he had done some growing up, and he believed that he could be a strong and positive force in V.L.'s life. Respondent testified that he had a good relationship with his other children, whom he saw every two weeks. Respondent also testified that, once he learned of V.L.'s whereabouts, he had called and written until petitioners again changed their phone number and moved, causing respondent's letters to be returned to sender.

The trial court allowed respondent to make a narrative statement. Respondent stated that the thought of losing his child was tough for him. He did not enter the marriage with Angelica thinking that it would not last, and he would not disparage Angelica because she was V.L.'s mother. Respondent admitted that he was not the perfect husband, and Angelica had been there for him during rough times. Respondent had been doing all he could so he would not lose V.L., but he understood that he had hurt Angelica and understood why she did not forgive him. He stated that he would never abandon his child, noting that he was a big part in the lives of his four daughters, who he called every couple days. He also stated that he appreciated all that Christopher had done for V.L., and he had previously told this to Christopher, both over the phone and in writing. He closed his statement by expressing his love for V.L. and asking for a second chance to be a father to V.L.

The court ruled, holding that it had been convinced by a preponderance of the evidence that it was in V.L.'s best interests to be placed for adoption and it approved his adoption by Christopher. Respondent timely appeals.

Respondent first argues on appeal that the trial court erred when it held that respondent failed to maintain a reasonable degree of interest, concern, or responsibility for V.L. According to respondent, the single fact of his incarceration does not support the trial court's finding. Further, respondent contends that his efforts at keeping in touch with V.L. were blocked by Angelica's refusal to divulge her address or phone number and to otherwise preclude him from contacting V.L. Respondent also notes that he has a self-described good relationship with his other children, a fact that the trial court did not take into consideration. In addition, respondent argues that the trial court improperly considered whether his efforts at maintaining a relationship were successful instead of considering only the reasonableness of those efforts. Respondent concludes that the trial court's determination was against the manifest weight of the evidence and should be reversed.

We begin our consideration of respondent's contentions by first reviewing the applicable legal principles. The Adoption Act provides that a person may be found to be unfit to have a child based on that person's "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2010). The trial court expressly found respondent unfit for this reason. In order to make a finding of unfitness under section 1(D)(b) of the Adoption Act, the trial court must find the parent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare by clear and convincing evidence. *In re Adoption of Syck*, 138 Ill. 2d 255, 273-74 (1990). The burden of persuasion rests upon those petitioning to adopt the child (*Syck*, 138 Ill. 2d at 274)—in this case, petitioners. We will not disturb the trial court's determination of unfitness unless it was against the manifest weight of the evidence. *Syck*, 138 Ill. 2d at 274.

Respondent primarily points to the trial court's determination that "Angelica ha[d] erected significant roadblocks to [respondent's] contact with [V.L.] over the years." Respondent argues that it was the roadblocks imposed by Angelica and not his own efforts (or lack) that prevented him from maintaining his interest in, concern for, or responsibility for V.L. We disagree.

The record evidence demonstrates that, for about the year following V.L.'s birth, respondent regularly took advantage of visitation opportunities. There is conflicting evidence as to the frequency of these visits, with respondent averring that they were more frequent and Angelica maintaining that they were less frequent. Further, when Angelica moved unilaterally to limit or preclude respondent's visitation with V.L., respondent attempted to find the information which would allow him to continue to contact Angelica and V.L. Indeed, respondent went so far as to take Angelica's car from her place of employment, discovering her address from items contained in the car. Shortly after he took Angelica's car, respondent was incarcerated, and this incarceration made any more personal visits with V.L. impractical. The evidence of record shows that respondent made attempts to contact V.L. in the initial period of his incarceration. The evidence of record also shows, however, that after this initial period, respondent ceased making any attempts to contact V.L. after about 2001. Based on the lengthy period during which respondent did not attempt to contact V.L., the trial court held that the clear and convincing evidence showed that respondent had failed to maintain a reasonable interest, concern, or responsibility as to the child. We have carefully reviewed the record and we conclude that this holding was not against the manifest weight of the evidence. We note that respondent points to the resumption of his attempts to contact V.L. in 2010, when he was able to discern an address at which to try and contact V.L. While respondent so testified, the resumption of efforts does not

explain or cancel out respondent's failure to try to contact V.L. from 2001 to 2009. See *In re Adoption of D.A.*, 222 Ill. App. 3d 73, 79-80 (1991) (the respondent's efforts at contacting the minor child during the pendency of the adoption proceedings does not eliminate the lengthy period in which the respondent made no efforts to contact the minor child). Accordingly, we hold that the trial court's determination of unfitness due to respondent's failure to maintain a reasonable degree of interest, concern, or responsibility as to V.L. was not against the manifest weight of the evidence.

Respondent argues, with some force, that, rather than his lack of effort or failure to try and communicate with V.L., Angelica's actions of moving, withholding information, and changing phone numbers precluded his contact with V.L. despite his reasonable efforts. Respondent's argument is not without some support in the record. The record does indeed show that Angelica actively worked to prevent respondent from having any contact with V.L. by refusing to inform the divorce court of her whereabouts when she moved, and by instructing her family not to tell respondent where she was living or how to contact her. We also note that this evidence was squarely before the trial court and that, in its ruling, the trial court acknowledged Angelica's efforts to prevent contact between respondent and V.L. Despite this evidence, the trial court rightly focused on respondent's efforts, noting the complete lack of any evidence suggesting that, between 2001 and 2009, respondent made any effort at all to contact V.L. Accordingly, while it is manifest that Angelica worked to deprive respondent with contact with V.L., it is equally manifest that respondent's efforts to contact V.L. were virtually nonexistent during the period between 2001 to 2009. This lack of effort amply supports the trial court's determination that respondent failed to maintain a reasonable level of interest, concern, or responsibility regarding V.L. *D.A.*, 222 Ill. App 3d at 79-80. Thus, even accepting that Angelica

actively worked to sabotage any possibility of a relationship between respondent and V.L., the evidence is clear that, during the period from 2001 to 2009, respondent simply failed to make reasonable efforts to maintain or reestablish a relationship with V.L.

Respondent cites *Syck* and *In re Jones*, 34 Ill. App. 3d 603 (1975), in support of his argument that it was not a lack of effort on his part to create or reestablish a relationship with V.L., but it was the active and improper intervention of Angelica that prevented the success of his efforts. Respondent correctly notes that each case concerning parental unfitness is *sui generis*, unique unto itself (*Syck*, 138 Ill. 2d at 279), but more realistically observes that “reason and the principle of *stare decisis* ‘dictate at least a minimal comparison of decisional fact patterns.’ ” *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 428 (2007), quoting *Davis v. Bughdadi*, 120 Ill. App. 3d 236, 243 (1983). Thus, while respondent’s citation to *Syck* and *Jones* to support his position is appropriate, and we may fully consider the fact patterns, we nevertheless find that those case are distinguishable from the present case.

In *Syck*, the mother opposed the termination of her parental rights and subsequent adoption of the child by the father and his new wife. *Syck*, 138 Ill. 2d at 258-59. The evidence showed that once the father and mother divorced, the father undertook to cut off all contact between the child and mother. In spite of the father’s efforts, the mother continually sought to telephone the child, sent cards for the child’s birthday, Christmas, and Easter, sent letters to the child, and sent gifts to be given to the child. (The trial court found that the cards that came with the gifts were not read to the child, and the gifts were not attributed to the child’s biological mother, but only to “a friend.”) *Syck*, 138 Ill. 2d at 261-67. In determining that the trial court’s finding that the mother had failed to maintain a reasonable level of interest, concern or responsibility for the child was against the manifest weight of the evidence, the supreme court

noted that the letters, cards, and gifts alone refuted the father's contention that the mother had failed to maintain a reasonable interest, concern, or responsibility as to the child. The court also considered the efforts of the father and his family to prevent the mother's contact, along with the mother's financial circumstances which made it infeasible to personally visit the child. *Syck*, 138 Ill. 2d at 280-81.

In our view, *Syck* is distinguishable because of the mother's efforts to make some contact with the child. Even when the father and his family attempted to block her contact with the child, she persisted in her efforts, changing them from trying to schedule personal visits and phone calls (which were rebuffed by the father) to sending letters, cards, and gifts. Here, by contrast, respondent did not continue to try to contact the child after 2001. He did not continue his efforts to interact with V.L. when Angelica and her family refused to give out her address or phone number to respondent. Instead, efforts at contacting the child ceased until petitioners made known their desire to adopt V.L. Only then did respondent renew his efforts to contact the child. Thus, the approximately nine-year gap in respondent's efforts to contact and establish some sort of relationship with V.L. serves to distinguish this case from *Syck*.

Jones is similarly distinguishable. In *Jones*, the State itself prevented the incarcerated father from having any contact with his children. The court held that: "State juvenile authorities, acting under a statute that was later declared unconstitutional, took [the father's] two illegitimate children without notice to him and moved them from a home where he thought they were to a foster home about which he was kept ignorant by the State." *Jones*, 34 Ill. App. 3d at 610. Thus, the State's action caused the purported failure to maintain a reasonable level of interest, concern, or responsibility as to the children, and the father's actions of writing to the children several times a year while incarcerated and sending Christmas gifts was deemed to have

manifested sufficient interest, concern, or responsibility to avoid a finding of unfitness. *Jones*, 34 Ill. App. 3d at 610-11. In this case, by contrast, respondent points to nothing in the record that prevented him from making efforts to contact and demonstrate an interest or concern for V.L. during the period from 2001 to 2009. Likewise, there appears to be no evidence in the record of any entity affirmatively preventing respondent from making any efforts to locate, contact, or otherwise demonstrate interest in V.L. While we note that Angelica's actions concealed V.L.'s whereabouts and contact information from respondent, her actions do not appear to be as comprehensive as the State's in *Jones*. In any event, Angelica's actions did not prevent respondent from *trying* to contact V.L.; rather, Angelica's actions only prevented the success of those efforts. Additionally, the father in *Jones* apparently continued to try to communicate with his children, notwithstanding the State's interference; here, the record shows that respondent gave up his efforts at communication between 2001 and 2009. Accordingly, we find that *Jones*, too, is distinguishable.

Respondent next argues that the "mere fact" of his incarceration does not support a conclusion that he failed to maintain a reasonable degree of interest, concern, or responsibility as to V.L.'s welfare, citing to *Jones*. We do not disagree with respondent's statement of the law and note that *Jones* supports that position. See *Jones*, 34 Ill. App. 3d at 610 (while fact of incarceration should be considered in unfitness proceeding, it is the efforts of the incarcerated parent to carry out his or her parental duties, rather than the success of those efforts, that should be considered). We note that the trial court did not base its determination of unfitness on respondent's incarceration, but instead, looked at his efforts while incarcerated to carry out his parental duties. We reject respondent's argument on this point.

Respondent next argues that the trial court should have considered the fact that he was able to maintain a self-described good relationship with his other children, even though he was incarcerated. Our review of the record shows that the trial court did not appear to consider this information in rendering its decision. We agree with respondent that his interest in his other children suggests that he will also be able to maintain a similar interest in V.L. Nevertheless, the trial court's determination of unfitness for failing to maintain a reasonable degree of interest, concern, or responsibility as to V.L. was not against the manifest weight of the evidence. In other words, the fact that respondent has been able to maintain some sort of favorable relationship with his other children does not tip the balance of the evidence from unfitness to fitness. Accordingly, while we agree that respondent's relationship with his other children is a relevant bit of data for the trial court to consider, the fact that the trial court did not expressly mention it in its ruling does not serve to invalidate its ruling; there was ample evidence in the record, even accounting for respondent's relationship with his other children, that supported the trial court's ultimate determination. As a result, we reject respondent's contention.

Respondent also contends that the trial court appeared to be more concerned with the success of respondent's efforts to discharge his parental responsibilities toward V.L. than his efforts. Respondent argues that, because his efforts were unsuccessful (due to Angelica's interference), the trial court concluded that he had not made sufficient efforts at maintaining a reasonable degree of interest, concern, or responsibility as to V.L. We disagree. The trial court, quoting *Syck*, 138 Ill. 2d at 278-79, expressly recited that it had to examine the parent's conduct in light of his or her circumstances, along with expressly acknowledging that it was the effort to communicate with and show interest in the child that is to be considered, not the success of those efforts. Thus, it is clear that the trial court correctly understood and applied the appropriate legal

principles to the facts as it found them. This affirmatively rebuts respondent's contention. Further, our review of the record reveals that the trial court's determination was neither against the manifest weight of the evidence nor based on a misapprehension of the law. Accordingly, we reject respondent's argument on that point.

Next, respondent argues that the trial court erred in finding that it was in V.L.'s best interests to terminate respondent's parental rights. The termination of a parent's parental rights proceeds in a two-step process: first, it must be shown that the parent is unfit. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). If the parent's unfitness is proved, the court will then consider whether it is in the best interests of the child to terminate the parent's rights. *D.F.*, 201 Ill. 2d at 495. The focus of the termination hearing is on the child's welfare and whether the termination of the parent's parental rights would improve the child's future financial, social, and emotional atmosphere. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1071 (2006). When making the best interests decision, the trial court must consider the following factors in light of the child's age and developmental needs: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child. *Daphnie E.*, 368 Ill. App. 3d at 1071-72. The party seeking to terminate the parent's parental rights must prove by a preponderance of the evidence that termination is in the child's best interests, and this decision is reviewed under the manifest weight standard.

Daphnie E., 368 Ill. App. 3d at 1072. In other words, the question on review is whether the trial court's decision was against the manifest weight of the evidence, and a decision is against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072.

Respondent contends that the trial court's decision to terminate his parental rights was against the manifest weight of the evidence. Respondent reasons that, whether his parental rights are terminated or left intact, the reality of V.L.'s life with petitioners will continue undisturbed: he will continue to live with his stepfather and mother and nothing will change. Respondent further argues that the policies advanced by the various factors will not be served by terminating his parental rights. Respondent last contends that little evidence adduced at any of the hearings had any bearing on the factors to be considered by the trial court.

We have carefully considered the record and respondent's argument, and we conclude that the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. Christopher testified that, since 2002, V.L. had lived with him, and he is the only father V.L. has known. Christopher also testified that it is V.L.'s desire to be adopted by petitioners, and it is important to V.L., emotionally, to share the same last name as the rest of his family. The guardian *ad litem* agreed that it was in V.L.'s interest to be adopted by petitioners. Respondent testified, not about V.L.'s interests, but his own, stating that he wanted V.L. to remain a part of his life, and emphasizing the importance of retaining his parental rights to him.

In addition, respondent does not argue that any of the factors the trial court is to consider should be weighed any differently than the trial court determined. Respondent does not point to any evidence that was overlooked or improperly considered by the trial court. Respondent does

not demonstrate that the trial court's decision was against the manifest weight of the evidence; rather, respondent's argument reduces to little more than asserting because the trial court did not have to terminate his parental rights, it should not have done so. Nothing offered by respondent convinces us that the trial court erred. After reviewing the record we cannot conclude that the trial court's decision to terminate respondent's parental rights as to V.L. was against the manifest weight of the evidence.

In his last issue on appeal, respondent argues that the trial court improperly considered the child's best interests during the hearing on parental fitness. There are two components to respondent's argument. First is the general implication that the trial court combined the fitness and best interest determination. Second, respondent specifically points to the trial court's order following the fitness hearing in which it stated, pertinently:

“The record therefore establishes by clear and convincing evidence that [respondent] is an unfit parent as defined in the statute.

For the reasons set forth above IT IS HEREBY ORDERED: Petitioner's Second [sic] Amended Related Petition for Adoption is granted in part, and [respondent's] *Parental Rights are hereby terminated with regard to the minor child [V.L.], based on the Court's finding of unfitness* as more fully described herein. The court shall set a date certain for hearing on the remaining portion of the Petition, that being whether the proposed adoption is in the best interest of the minor child.” (Emphasis added.)

Respondent argues that it was reversible error for the trial court to terminate his parental rights as a part of the fitness hearing.

It is well settled that, in considering a petition for an adoption, a trial court must proceed in a two-step procedure, with the first step determining the parent's fitness, and the second step

considering the child's best interests if the parent has been shown to be unfit by clear and convincing evidence. *D.A.*, 222 Ill. App. 3d at 75. Further, when determining parental fitness, a court is not to consider the best interests of the child. Rather, the court must consider only evidence bearing on fitness, and it is the parent's past conduct in the then-existing circumstances that is scrutinized. *Syck*, 138 Ill. 2d at 276. It is only after a parent has been found unfit that the court proceeds to consider the best interests of the child and whether those interests would be served by the child's adoption by the petitioner, requiring the termination of the parent's parental rights. *Syck*, 138 Ill. 2d at 277.

Here, the trial court followed the two step process. In the first step, the court considered respondent's conduct and circumstances. Nowhere in the order did the court consider the interests of V.L. Rather, the trial court focused on respondent's fitness and whether he maintained a reasonable level of concern, interest, or responsibility for V.L. under his circumstances. While the trial court did state that it was terminating respondent's parental rights, this sentence does not transform the trial court's order discussing respondent's fitness as a parent to one considering any facet of V.L.'s interests. The trial court then held a hearing to determine what actions would be in V.L.'s best interests. The court heard testimony from Christopher and respondent, and a statement from the guardian *ad litem*. This testimony focused on V.L.'s interests and was completely separated from the fitness hearing. Even though the trial court's order following the fitness proceeding included a statement about severing respondent's parental rights to V.L., the substance of the hearing and the order addressed only whether respondent had been shown to be unfit by clear and convincing evidence. Accordingly, we cannot say that the trial court conflated the fitness and best interest determinations.

Respondent argues that *In re G.W.*, 357 Ill. App. 3d 1058 (2005), requires an appellate finding of reversible error where the trial court severs the parent's parental rights during the fitness phase of the proceedings. We disagree with respondent's interpretation. While *G.W.* reversed the trial court's judgment, it was the lack of factual findings, coupled with repeated invocations of the child's best interests in discussing the fitness hearing that prompted that reversal. *G.W.*, 357 Ill. App. 3d at 1061. The court held that it could not determine whether the trial court misspoke or whether it was confused, and, in light of the weighty parental interest in maintaining his parental rights, the court would not affirm the termination of those rights. *G.W.*, 357 Ill. App. 3d at 1062. Here, by contrast, the trial court clearly separated the fitness hearing from the best interests hearing and did not consider the child's best interests in determining whether petitioners had shown by clear and convincing evidence that respondent was unfit. The statement in the order following the fitness determination, then, is at most a misstatement and does not reflect any confusion over the standards, evidence, or subject matter of the fitness hearing. *G.W.* is distinguishable and does not compel a different result in this case.

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

Affirmed.