

NOTICE
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2011 IL App (4th) 110622-U

Filed 11/30/11

NO. 4-11-0622

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.M., M.C., J.C., and K.C., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	Nos. 09JA139
SONJA CRAIG,	)	09JA140
Respondent-Appellant.	)	09JA141
	)	09JA142
)	
	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.
)	

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, rejecting the respondent's procedurally defaulted claim that the trial court erred by finding her admission of unfitness to be voluntary and knowing because (1) no factual basis was given for her admission and (2) the record does not show whether respondent was aware of the consequences of her admission.

¶ 2 In November 2009, the State filed a petition for adjudication of wardship, alleging, in pertinent part, that J.M. (born April 24, 2009), M.C. (born April 14, 2008), J.C. (born June 30, 2005), and K.C. (born March 19, 2004), the minor children of respondent, Sonja Craig, were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2008)). Following a January 2010 hearing at which

respondent stipulated that the children were neglected, the trial court adjudicated J.M., M.C., J.C., and K.C. neglected minors.

¶ 3 In March 2010, the trial court entered a dispositional order, adjudicating J.M., M.C., J.C., and K.C. wards of the court and appointing the Department of Children and Family Services (DCFS) as the children's guardian. As part of its order, the court set a permanency goal of "return home in 12 months."

¶ 4 In December 2010, the State filed a petition to terminate respondent's parental rights. Following an April 2011 hearing on that petition, at which respondent admitted that she failed to make reasonable progress toward the return of the children within nine months after an adjudication of neglect (January 28, 2010, through October 28, 2010) under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)), the court terminated respondent's parental rights.

¶ 5 Respondent appeals, arguing that the trial court erred by finding her admission of unfitness to be voluntary and knowing because (1) no factual basis was given for the admission and (2) the record does not show whether respondent was aware of the consequences of her admission. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 In November 2009, the State filed a petition for adjudication of wardship, alleging, in pertinent part, that J.M., M.C., J.C., and K.C., respondent's minor children, were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2008)). Specifically, the State alleged, in pertinent part, that the children were in an environment injurious to their welfare in that respondent had "unresolved issues with domestic

violence and/or anger management." Following a January 2010 hearing at which respondent stipulated that the children were so neglected, the trial court adjudicated J.M., M.C., J.C., and K.C. neglected minors. The court found that respondent and her paramour, Jarvis McGill, had unresolved issues of domestic violence and anger management. (Neither McGill nor the other putative fathers involved in this case are parties to this appeal.)

¶ 8 In March 2010, the trial court entered a dispositional order, adjudicating J.M., M.C., J.C., and K.C. wards of the court and appointing DCFS as the children's guardian. As part of its order, the court set a permanency goal of "return home in 12 months."

¶ 9 In August 2010, the trial court entered a permanency order, continuing the permanency goal as return home within 12 months. That order also noted that respondent remained unfit.

¶ 10 In November 2010, the trial court entered another permanency order, this time setting forth a goal of substitute care pending determination on termination of parental rights.

¶ 11 (The record shows that respondent was present at each of the hearings leading to the trial court's permanency orders.)

¶ 12 In December 2010, the State filed a petition to terminate respondent's parental rights. At an April 2011 hearing on that petition, respondent admitted that she failed to make reasonable progress toward the return of the children within 9 months after an adjudication of neglect (January 28, 2010, through October 28, 2010) under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2010)) (paragraph 16(B) of the State's petition), as follows:

"THE COURT: We're scheduled today for a hearing on the
Petition to Terminate Parental Rights?"

[PROSECUTOR]: Yes, Your Honor.

THE COURT: And where are we with respect to that?

[PROSECUTOR]: Your Honor, mom is going to be making an admission to paragraph 16(B) of the petition that was filed on December 1[,] 2010.

* * *

THE COURT: [Respondent], paragraph 16(B) of the petition to terminate parental rights alleges that you're the mother of all of these minors, *** and you are an unfit person as that term is defined in the Juvenile Court Act and that your parental rights should be terminated for the reason that you have failed to make reasonable progress toward the return of the minors to the parent within nine months after an adjudication of neglect or abuse ***, specifically the time frame running from the adjudicatory order dated January 28, 2010[,] through October 28, 2010; the latter date marking the end of the first nine-month period. You understand the allegations of that paragraph, ma'am?

[RESPONDENT]: Yes.

THE COURT: Has anything been promised to you to get you to admit that paragraph other than the agreement to continue the matter out for a period of time on the hearing of best interest?

[RESPONDENT]: No.

THE COURT: Do you feel that you have been forced or threatened in any way to admit this petition?

[RESPONDENT]: No.

THE COURT: Factual Basis?

[PROSECUTOR]: Yes, Your Honor. The factual basis is going to be relying on the adjudicatory order that was entered on January 28, 2010. We're also going to be relying on the *** dispositional order that was entered on March 5[,] 2010. On that day, that mother was found unfit. We'll also be relying on the permanency order entered on August 3[,] 2010. On that day, the mother was found to have not made reasonable and substantial progress toward returning the minors home. Mother had not made reasonable efforts toward returning the minors home, and mother was found unfit. And we will also be relying on the permanency order that was entered on November 16[,] 2010. And on that date, the [c]ourt found that the mother has not made reasonable and substantial progress toward the return of the minors home, and the mother had not made reasonable efforts toward returning the minors home. Mother, [respondent], *** remained unfit on that, Your Honor.

* * *

THE COURT: [Respondent's counsel], do you stipulate to

the factual basis for the admission?

[RESPONDENT'S COUNSEL]: Yes, sir.

THE COURT: Court will find a factual basis. [Prosecutor]?

[PROSECUTOR]: Judge, in terms of factual basis, I'd indicate that the State has caseworkers present to testify with respect to the nine-month period as well as [a caseworker] who would be available to testify with respect to mom's lack of progress with respect to domestic violence treatment. I think those are contained within the context of the Permanency Report as well that would assist in terms of factual basis.

THE COURT: All right. Thank you. Court will find a factual basis, a free, voluntary, knowing admission; will find [respondent] unfit pursuant to 16(B) of the Petition to Terminate Parental Rights."

¶ 13 In June 2011, the trial court conducted a best-interest hearing, at which several witnesses testified. Following that hearing, the court found that it would be in the children's best interest to terminate respondent's parental rights as to J.M., M.C., J.C., and K.C.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Respondent argues that the trial court erred by finding her admission of unfitness to be voluntary and knowing because (1) no factual basis was given for the admission and (2) the record does not show whether respondent was aware of the consequences of her admission.

¶ 17 A. The State's Claim That Respondent Has Forfeited Her Arguments

¶ 18 The State responds that because respondent failed to (1) object at the adjudicatory hearing to the issues she now complains about or (2) file an appropriate posttrial motion to afford the trial court the opportunity to address her claims, she has forfeited review of her arguments. We agree with the State that by failing to properly preserve the issues she now raises, respondent has forfeited review of those issues. See *In re William H.*, 407 Ill. App. 3d 858, 869-70, 945 N.E.2d 81, 91 (2011) (to preserve an alleged error for appellate review, a party must object at trial and file a written posttrial motion addressing it). We note, however, that the forfeiture rule is a limitation on the parties, rather than on this court's jurisdiction. *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 948, 937 N.E.2d 237, 244 (2010). Given that we consider respondent's arguments sufficiently significant to warrant review, we elect to address her arguments. See *People v. Barnett*, 2011 Ill App (3d) 090721, ¶28, 952 N.E.2d 669, 674 (2011) (despite the defendant's forfeiture, electing to review the defendant's arguments in light of the significance of the issue and in the interest of judicial economy).

¶ 19 B. Respondent's Claim That the Trial Court Erred by Finding Her Admission of Unfitness to be Voluntary and Knowing

¶ 20 1. *Respondent's Contention That No Factual Basis Was Given*

¶ 21 Respondent contends that the trial court erred by finding her admission of unfitness to be voluntary and knowing because no factual basis was given for the admission. We disagree.

¶ 22 In *In re C.J.*, 2011 Ill App (4th) 110476, ¶ 2, 2011 WL 5244420, this court affirmed the trial court's acceptance of the respondent's admission that her child was abused at an

adjudicatory hearing. In that case, this court held that the trial court appropriately considered the shelter-care report to find that a factual basis existed for the respondent's admission, concluding that the State provided "substantially more than the minimum amount of evidence required to support [the] respondent's admission". *C.J.*, 2011 Ill App (4th) 110476, ¶ 56, 2011 WL 5244420. Indeed, we noted that a trial court may *sua sponte* indicate that it has already heard evidence at a shelter care hearing that constituted the factual basis for the respondent's admission. *C.J.*, 2011 Ill App (4th) 110476, ¶ 55, 2011 WL 5244420.

¶ 23 Although *C.J.* involved a factual basis at an adjudicatory hearing in an abuse proceeding, while the trial court in this case accepted the factual basis for respondent's admission at the parental termination hearing, the same standard applies. When accepting such an admission, due process requires that the trial court ensure that (1) the State's allegations are based in fact and (2) the respondent is present at the proceedings at which the evidence of the factual basis was presented. See, *e.g.*, *C.J.*, 2011 Ill App (4th) 110476, ¶ 54, 2011 WL 5244420. Our review of the record reveals that both requirements were met in this case.

¶ 24 Here, the State provided substantially more than the minimum amount of evidence required to support respondent's admission that (1) J.M., M.C., J.C., and K.C. were neglected minors and (2) she had not remedied her unfitness. As part of its factual basis, the State directed the trial court to its (1) January 2010 adjudicatory order, which the court entered after (a) the court reviewed the shelter-care report and (b) the prosecutor explained that the report listed the domestic-violence history of the family and included accompanying police reports; (2) March 2010 dispositional order, which the court entered after respondent testified about her history of domestic violence; and (3) August 2010 and November 2010 permanency orders, which the court

entered after the prosecutor explained that respondent had not completed any of requirements of her client-service plan.

¶ 25 Respondent relies on the supreme court's decision in *In re M.H.*, 196 Ill. 2d 356, 751 N.E.2d 1134 (2001), for the proposition that the trial court is required to elicit evidence at the time it accepts a factual basis at a termination hearing. Respondent's reliance is misplaced. In *M.H.*, the supreme court merely held that the trial court was required to elicit a factual basis prior to accepting respondent's admission. *M.H.*, 196 Ill. 2d at 368, 751 N.E.2d at 1143. As we have previously explained, the court accepted a factual basis in this case based upon the evidence presented at hearings at which respondent was personally present.

¶ 26 Accordingly, we reject respondent's contention that the State failed to produce a factual basis.

¶ 27 We note that as part of her contention, respondent also asserts that the trial court relied on an improper standard of review. Specifically, respondent claims that the court erroneously used the preponderance-of-the-evidence standard rather than the clear-and-convincing standard when evaluating the State's factual basis. Despite respondent's assertion, however, the State's factual basis need not meet the clear-and-convincing standard of proof. See *C.J.*, 2011 Ill App (4th) 110476, ¶¶ 52-54. (explaining that a respondent's admission obviates the State's clear-and-convincing burden of proof). Instead, the State need prove that a respondent is unfit when she contests the State's allegation of unfitness. See *In re Gwynne P.*, 215 Ill.2d 340, 349, 830 N.E.2d 508, 514 (2005) (explaining that the clear-and-convincing standard applies when the State seeks to prove a respondent's unfitness at a termination proceeding). Therefore, we reject respondent's claim that the court erred by utilizing an improper standard of review.

¶ 28 *2. Respondent's Contention That She Was Not
Aware of the Consequences of Her Admission*

¶ 29 Respondent next contends that the record does not show whether she was aware of the consequences of her admission. We disagree.

¶ 30 Despite respondent's contention, the record shows that respondent was aware of the consequences of her actions. Indeed, the court specifically explained to respondent (1) what the State alleged and (2) that the consequences of her admission would be—as the State's petition outlined—termination of her parental rights, as follows:

"THE COURT: [Respondent], paragraph 16(B) of the petition to terminate parental rights alleges that you're the mother of all of these minors, *** and you are an unfit person as that term is defined in the Juvenile Court Act and that your parental rights should be terminated for the reason that you have failed to make reasonable progress toward the return of the minors to the parent within nine months after an adjudication of neglect or abuse ***, specifically the time frame running from the adjudicatory order dated January 28, 2010[,] through October 28, 2010; the latter date marking the end of the first nine-month period. You understand the allegations of that paragraph, ma'am?

[RESPONDENT]: Yes."

¶ 31 Accordingly, we conclude that respondent was aware of the consequences of her admission.

¶ 32 We note that although the trial court's explanation of the consequences of respondent's admission were sufficient to inform respondent of the consequences of her admission in this case—namely, that her parental rights would be terminated—a better course of inquiry would be to explicitly ask a respondent facing parental termination the following question:

"Respondent, do you understand that as a consequence of your admission of unfitness, your parental rights may be terminated, which means that you will no longer be the child's parent in the eyes of the law—that is, you may be deprived of any contact with your child in the future?"

¶ 33

III. CONCLUSION

¶ 34 Although respondent makes no argument with respect to the trial court's best-interest finding, we have reviewed the record and conclude the court's finding is not against the manifest weight of the evidence.

¶ 35 For the reasons stated, we affirm the trial court's judgment.

¶ 36 Affirmed.