

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0927

Order Filed 4/21/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: J.D., T.D., and T.H., Minors,	) Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	) Circuit Court of
Petitioner-Appellee,	) Champaign County
v.	) No. 09JA5
SHELLIE HARDIN,	)
Respondent-Appellant.	) Honorable
	) Richard P. Klaus,
	) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and Pope concurred in the judgment.

**ORDER**

*Held:* The trial court's finding it was in the children's best interest to terminate respondent mother's parental rights was not against the manifest weight of the evidence.

Respondent mother, Shellie Hardin, appeals from the trial court's finding it was in the best interest of her three minor children to terminate her parental rights, contending the finding is against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

On January 15, 2009, the State filed a petition for adjudication of neglect concerning T.H. (born January 26, 1995), the minor child of Stephen Petty and respondent, and J.D. (born December 28, 1999) and T.D. (born March 31, 2008), the minor children of Tad Donahue and respondent. The State alleged in

three counts the minors were neglected because their environment was injurious to their welfare when they reside with respondent and/or Tad because (1) the environment exposes them to domestic violence and (2) respondent and Tad fail to protect the minors from exposure to domestic violence both pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2008)).

Tad and respondent lived together for over 14 years and, prior to January 15, 2009, all three minors lived with them. They engaged in frequent arguments and altercations requiring police involvement. Tad had a long history of inflicting domestic violence on respondent when the children were present. On January 16, 2009, after a shelter-care hearing, the trial court found it was a matter of immediate and urgent necessity a temporary guardian be appointed for the minors. The minors were placed in foster care with their maternal grandparents.

On March 5, 2009, respondent admitted the allegations of neglect in count I of the petition and, thus, the trial court found the minors to be neglected. On April 8, 2009, at a dispositional hearing, respondent was found to be unfit and unable to care for the minors. During that hearing, a home and background report from the Illinois Department of Children and Family Services (DCFS) was considered by the court. At that time respondent was reported to be living in a hotel in Rantoul but

seeking other housing. Respondent's relationship with Tad began when she was 17 years old. He gradually began to abuse her physically about the time J.D. was born. Respondent admitted she minimized and attempted to rationalize Tad's violent behavior.

The report also indicated respondent had been diagnosed with bipolar disorder and took prescribed medication for the disorder after two mental-health hospitalizations. She received outpatient care and counseling with a psychiatrist for her bipolar disorder. At the time of the dispositional hearing, respondent was reported to be participating in group therapy and counseling focused on domestic violence. She regularly attended supervised visits with her children in the home of their foster parents. She had been referred for family counseling with her older two children and to Prairie Center for drug and alcohol assessments. During at least one drug drop, she tested positive for amphetamines, presumably due to one of her prescribed bipolar medications.

On January 25, 2010, the State filed a motion seeking a finding of unfitness and termination of parental rights. Count I of the petition to terminate respondent's parental rights alleged she failed to make reasonable progress toward the return of the minors within the initial nine months of the adjudication of neglect while count II alleged she failed to maintain a reasonable degree of interest, concern, or responsibility as to the

welfare of the minors both pursuant to section 1(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2008)). On April 15, 2010, Tad voluntarily surrendered his parental rights to J.D. and T.D.

On May 6, 2010, the hearing on unfitness began. The trial court initially took judicial notice of prior orders in the case and three court files representing orders of protection granted involving respondent and Tad, case Nos. 08-OP-621, 09-OP-434, and 09-OP-613.

Testimony focusing on the initial nine-month period after adjudication of neglect indicated respondent received services from a number of sources but did not appear to make much progress. Catholic Charities' therapist Nancy White-Gibson counseled respondent individually to deal with the reason her children were in care and help her with her ongoing mental-health issues. She had been meeting with respondent weekly for nine months beginning August 17, 2009. Her progress report dated December 15, 2009, indicated respondent's wish was everything would work out so she, Tad, and the minors could be reunited as a family. White-Gibson's understanding was respondent's relationship with Tad continued. Respondent had been told to keep her children she had to give up Tad, but she was not convinced she could take care of the children without him.

Shellie Roderick, former foster-care caseworker for

respondent and her family, testified the issues in the case were domestic violence, drug use, and possible drug selling by Tad. Prior to January 2009, respondent lived with Tad at his residence. Then, until May 2009, she lived at the Quarter Inn in Rantoul. After that, she lived at a women's shelter or occasionally stayed with friends. Roderick was told by respondent from January 2009 to mid-July 2009 she did not live with Tad. Roderick did not believe this as Tad told Roderick he was not going to make any decisions about his relationship with respondent until after the July 24, 2009, permanency review hearing.

On July 15, 2009, at an administrative case review, respondent asked Roderick if she and Tad could participate in joint counseling because she wanted to continue a relationship with him. After Tad left the meeting, respondent stated she did not want to be in a relationship with Tad. He intimidated her when he was present, and respondent continued to vacillate about being in a relationship with Tad. Roderick told respondent if she continued in a relationship and domestic violence occurred, she would not be able to regain custody of her children as she would not be able to keep the children or herself safe.

On July 24, 2009, respondent moved back in with Tad. Roderick explained the consequences for the case to both respondent and Tad. On August 21, 2009, respondent contacted Roderick and told her about continuing domestic violence perpetrated on

her by Tad. She then admitted to Roderick she had been living on and off with Tad since May. Roderick helped respondent move back to the women's shelter. On December 4, 2009, Roderick learned respondent and Tad were again having contact. Respondent stated Tad manipulated her and she was afraid of him but wanted to be with him.

Belinda Meyn, facilitator of group domestic-violence classes, testified in December 2009, respondent reported during a group domestic-violence session, Tad had made graphic threats, saying he would rape Roderick in front of her children and then shoot respondent's father. Respondent was persuaded, although reluctantly, to testify to these threats at a court hearing on December 18, 2009, to obtain an order of protection against Tad. When she was advised she could no longer have third-party supervised visits with her children due to her contact with Tad, respondent stated if she had known that, she would not have testified against him as she still loved him.

On June 28, 2010, after the conclusion of the unfitness hearing, the trial court found respondent to be unfit, noting the relationship between respondent and Tad "was and remains toxic." During the nine-month period at issue, it was uncontroverted respondent maintained her relationship with Tad and the violence continued. Respondent's relationship with Tad and her chances of providing a safe and healthy environment for her children were

mutually exclusive.

A best-interest hearing to determine if respondent's parental rights should be terminated began on August 11, 2010. The State submitted a written best-interest report from DCFS recommending termination of respondent's parental rights. The State requested the trial court consider the report and each of the permanency hearing reports previously filed. The guardian *ad litem* (GAL) then moved the trial court to find the State failed to meet its burden of proving by a preponderance of the evidence it would be in the best interest of the minors to terminate respondent's parental rights. He argued the counseling reports prepared for the DCFS best-interest report indicated only if it was absolutely essential for the safety of the children should respondent's parental rights be terminated because it was not in their best interest to do so and could cause extreme emotional damage. J.D., especially, was still mourning the loss of her father after he surrendered his parental rights. The reports indicated both T.H., currently 15 years old, and J.D., currently 10 years old, wanted to live with their mother.

The GAL made clear he was not advocating the trial court was not correct in finding respondent failed to make reasonable progress within the initial nine months of adjudication of neglect to correct the conditions bringing this case to the attention of the State, her abusive relationship with Tad.

But he noted the reports indicated after that nine-month period and the instance when respondent testified against Tad in December 2009, she faced up to the issues before her. The reports indicated she left the relationship for good and was progressing well in counseling. Thus, the evidence supplied by the State had not met its burden of proof to find it was in the children's best interest to terminate respondent's parental rights.

The trial court denied the motion by the GAL and proceeded to question T.H. and J.D. *in camera*. They indicated they wanted to live with respondent. T.H., however, specifically stated he would leave his mother if she restarted a relationship with Tad. Thereafter, the hearing was continued to November 3, 2010.

Testimony at the continued hearing included that of Janet Gray, a friend of respondent's family, who stated she was at the house next door and saw respondent step out on the back patio of Tad's house in late July 2010. Gray waved to respondent, but respondent did not acknowledge her and went back into the house. Gray reported the incident to respondent's mother and Catholic Charities. On cross-examination, it was brought out the woman seen by Gray had a different hair color than that of respondent.

Laurie Owen, a foster-care manager at Catholic Charities, was never assigned to this case although she supervised one

visit between Tad and the children in the fall of 2009. Owen stated she and Tad went to high school together and she had seen respondent around Catholic Charities once in a while. In mid-June 2010, Owen testified she saw Tad talking to J.D. in the front yard of the house across the street from hers. Several weeks later, Owens stated she saw respondent and J.D. walking toward the same house. She saw them only in profile. Finally, in mid-July, Owen stated she saw and heard Tad and respondent across the street talking about a vehicle they just bought. While Owens did not know who lived across the street from her, apparently Tad's sister and four children lived there. On cross-examination, Owen stated she recognized J.D. from the visit she supervised and from photos shown to her at Catholic Charities. She did not know J.D.'s age and did not know one of the children living across the street, J.D.'s cousin, was a girl the same age as J.D. Owen also admitted she saw a woman with the children at Catholic Charities and assumed it was respondent.

Roderick testified again at the continued hearing. She was the case manager for the family from January 2009 to the middle of December 2009. Roderick testified on July 16, 2010, she saw respondent in the parking lot at Catholic Charities in a newer black Jeep. On September 22, 2010, she saw Tad driving the same Jeep.

Karie Kaufman, foster-care case manager for Catholic

Charities, testified she began working on this case September 1, 2010. She asked respondent to provide loan documentation regarding her new vehicle, but respondent refused. Kaufman also prepared the addendum to the best-interest report, which added back the reported sightings of respondent by Gray and Owen which had been deleted from the original best-interest report prepared for the original August 11, 2010, hearing. As she had just begun working for Catholic Charities, she did not know why they had been deleted.

Kim Seward testified as a witness called by the GAL. She was a site supervisor for Catholic Charities' foster-care program and was Kaufman's supervisor. Seward learned of the alleged sightings of the children with respondent and/or Tad during the summer of 2010 and stated they were reported in the original best-interest report but were deleted when the report came back from editing by DCFS. Seward testified Tad was a very dangerous man who had made vicious threats. When Seward asked respondent to explain the alleged sightings, respondent denied them. She told Seward Tad's sister had a child the same age as J.D., she lived across the street from Owen and closely resembled J.D. Catholic Charities did not investigate the house.

Nancy White-Gibson, respondent's therapist from Catholic Charities, testified respondent had not consistently attended therapy since the last court hearing in August. She did state it

was not uncommon for domestic-violence victims to free themselves from their abuser and then return. Domestic violence affected respondent's ability to understand reality, including her own and her ability to think for herself and to control her life. She lived in fear and tried to protect her children. Respondent had made progress through counseling, albeit slowly.

Jane Hardin, respondent's mother and foster mother to the minors, testified she worked for a church and, during June and July 2010, J.D. accompanied her to work when not attending volleyball camp or vacation Bible school. She also stated Tad's sister lived in the house across from Owen, is J.D.'s age, and looks very much like J.D. Hardin no longer had T.D. in her care as he was now officially living with another foster family who had been caring for him six nights a week as "respite" care givers.

Respondent testified and denied any contact with Tad since he surrendered his parental rights in April 2010. She explained why she and Tad jointly own the Jeep she drives. The promissory note on the car respondent had been driving and for which she had been making all the payments since she moved out of Tad's house in August 2009 was actually in Tad's name. She was in a motor vehicle accident on July 6, 2010, and the car was totaled. The insurance proceeds were then payable to Tad. Respondent did not have the money to buy a new vehicle. The

insurance agent agreed to serve as a go-between as she and Tad were not to have contact. Following the agent's advice, respondent applied for a car loan but the bank told her she needed a cosigner and a six-month history of documented payments on the loan before it could be changed to her name alone. Respondent claimed Tad was the only person she knew who was willing to co-sign with her.

The trial court then found respondent and Tad had been involved in a "horrendous domestic violence relationship" lasting many years and continuing throughout this case. The court noted, as found at previous hearings, although respondent had been repeatedly physically and psychologically abused by Tad, she continued to return to him and lied about it to caseworkers. Tad is a real threat to both respondent and her children. Despite the best efforts of others, respondent continued to seek contact with Tad, and the court found she attempted to mislead the court, Catholic Charities, and DCFS into believing otherwise.

The trial court stated it had more questions than answers about what contact occurred between respondent and Tad during the previous several months, but in its finding there had been such contact, the court specifically singled out respondent's testimony in regard to the title of her vehicle, finding it not believable. The court then found it to be in the best interests of the minors to terminate respondents' parental

rights. Petty's rights were also terminated as to T.H. He is not part of this appeal.

## II. ANALYSIS

Following a finding of parental unfitness, the trial court must determine whether termination of parental rights is in the best interest of the children. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). The State must prove by a preponderance of the evidence termination is in the best interest of the children. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). The court's best-interest determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A court's finding is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

The evidence in this case demonstrated respondent repeatedly sought out Tad, who was a violent, threatening, and manipulative abuser. She continued to return to Tad's environment, exposing the children to the dangerous environment. The trial court did not mention, or apparently rely on, the problematic testimony of Gray and Owen as to their sightings of respondent with or in Tad's environment. Instead, it relied on respondent's unbelievable testimony explaining why she was again

"enmeshed" (a term used throughout the case by those wishing to help her to describe respondent's relationship with Tad) with her abuser in the purchase of her vehicle. This involvement with Tad coincided with the time period in which respondent stopped regularly attending domestic-violence counseling sessions. It was bolstered by Roderick's testimony she saw Tad driving a vehicle identical to the one she knew belonged to respondent. Roderick also testified she knew what Tad's own vehicles looked like and this was not one of them.

Although previous counseling reports during the early months of 2010 indicated respondent appeared to be making significant progress in regard to ending her relationship with Tad, she was either misleading the counselors or she regressed in the summer of 2010 because there was definitely contact between respondent and Tad due to the vehicle transaction.

The children were doing well in the foster homes in which they were placed. While it is clear from the testimony and counseling reports concerning them, T.H. and J.D. wanted very much to return to respondent, she could not keep them safe from Tad or his influence. There was evidence their maternal grandparents/foster parents were willing to adopt T.H. and J.D. There was no evidence concerning T.D.'s new foster parents and their willingness to adopt him, but he had only been with them officially and full-time for a short time. T.D. continued to thrive

in his placement.

It was not against the manifest weight of the evidence for the trial court to find it was in the best interest of the children to terminate respondent's parental rights.

### III. CONCLUSION

The judgment of the trial court is not against the manifest weight of the evidence. We affirm the trial court's judgment.

Affirmed.