

2012 IL App (2d) 110315-U
No. 2-11-0315
Order filed March 5, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> FANTASIA W., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 09-JA-40
)	
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Wesley W., Respondent-Appellant).)	Honorable Mary Linn Green, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justice Zenoff concurred in the judgment.
Justice Birkett concurred in part and dissented in part.

ORDER

Held: The trial court did not abuse its discretion in finding the respondent an unfit parent and terminating his parental rights.

¶ 1 The respondent, Wesley W., appeals from an order terminating his parental rights of the minor, Fantasia W., and appointing a guardian with the power to consent to the minor's adoption. On appeal, the respondent argues that there was insufficient evidence to support his stipulations to the adjudication of neglect and finding of unfitness. In addition, the respondent argues that the termination of his parental rights was not in Fantasia's best interest. We affirm.

¶ 2

I. BACKGROUND

¶ 3 A Department of Children and Family Services (DCFS) statement of facts reveals the following. Fantasia was born on June 9, 2006. The respondent and Fantasia lived in a house with Fantasia's maternal grandmother. On January 30, 2009, the respondent left Fantasia and her sister in the care of their maternal grandmother because he had to go out. The grandmother put Fantasia and her younger sister in front of the television and left the home to get cigarettes. The only adult at home was a 78-year old man, who was described as incapable of even caring for himself. The grandmother left the home at 9 a.m. At some point, Fantasia pulled the television off its stand, and it landed on her head. Fantasia was found unconscious on the floor. A 911 phone call was made at 10:44 a.m. It was unknown how long Fantasia had been unconscious before 911 was called. Fantasia was taken to the hospital and emergency surgery was done under the Good Samaritan Act because the respondent could not be found. On that same day, DCFS received a phone call concerning these events. DCFS located the respondent on February 2, 2009.

¶ 4 Police and medical personnel described the home where Fantasia was found as "deplorable." There were open containers of food on the floor, including chicken salad that was green in color. There were two large pools of congealed blood on the floor, one next to a bed and one in the kitchen. The bathroom was so dirty that the police refused to enter it. There was a screwdriver on the floor within easy reach of the children. Fantasia's sister was found very dirty and very hungry.

¶ 5 On February 3, 2009, the State filed a neglect petition and a temporary shelter care hearing was held that same day. At the hearing, the respondent was appointed counsel and waived his right to a shelter care hearing. Counsel was also appointed to represent Fantasia's mother, who was

imprisoned. An order was entered placing Fantasia in the temporary guardianship and custody of DCFS. A hearing on the neglect petition was set for April 16, 2009.

¶ 6 On February 6, 2009, the State filed an amended neglect petition alleging that Fantasia was a neglected minor because her environment was injurious to her welfare, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(b) (West 2008)), in that (1) the home was very dirty with spoiled food and a screwdriver on the floor (count I), and (2) her parents engaged in domestic violence in her presence (count III). The petition also alleged that she was neglected, pursuant to section 2-3(1)(d) of the Act (705 ILCS 405/2-3(1)(d) (West 2008)), in that she was left home without proper supervision and was seriously injured (count II). The record indicates that Fantasia suffered a severe traumatic brain injury and would likely always require placement in a residential home for handicapped children.

¶ 7 On April 16, 2009, a hearing commenced on the amended neglect petition. The parents stipulated to count III of the amended petition, alleging an injurious environment based on domestic violence. The State dismissed counts I and II. The State offered a “group exhibit,” comprised of numerous police reports between March and December 2008, as the factual basis for the stipulation. The trial court found that there was a factual basis for the stipulation and entered an order adjudicating Fantasia a neglected minor pursuant to section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2008)). The parents also agreed, as to disposition, that the custody and guardianship of Fantasia would be granted to DCFS, with discretion to place Fantasia with a responsible relative or in traditional foster care, and that visitation would be at the discretion of DCFS. Accordingly, that same day, the trial court entered an order that made Fantasia a ward of the

court and appointed DCFS as her legal guardian and custodian. A permanency review hearing was set for October 19, 2009.

¶ 8 Permanency hearings were held on October 19, 2009, April 19, 2010, and October 18, 2010. The respondent was present for the first and last permanency hearings. At the October 2009 hearing, Fantasia's caseworker, Shea Osborne, testified that the respondent was not making reasonable efforts toward the return of Fantasia. The respondent had been asked to participate in counseling, substance abuse screening, and a parenting class. He was unsuccessfully discharged from counseling and parenting classes for lack of attendance. The respondent did not complete the substance abuse screening but his drug drops had all been negative. The respondent visited Fantasia, but his visits were not consistent. The permanency hearing report, completed by the caseworker and submitted to the court, indicated that the respondent was initially offered three visits a week with Fantasia, but requested a reduction to two visits per week. He later requested a reduction to one visit per week. The respondent still did not visit consistently, as scheduled. At the conclusion of the hearing, the permanency goal remained at return home within 12 months.

¶ 9 At the April 2010 hearing, Osborne testified that the respondent visited Fantasia weekly but did not participate in services, such as counseling and parenting classes, despite being asked. She had smelled alcohol on the respondent's breath at various times. She had not smelled any alcohol on his breath in the last five months. His substance abuse assessment did not recommend any services. All the drug drops he had been asked to do were negative. The trial court found that the respondent had not made reasonable efforts. The trial court further found that it was in Fantasia's best interest to leave the permanency goal at return home within 12 months.

¶ 10 At the October 2010 hearing, Osborne testified that the respondent had never completed a parenting class. Further, she was concerned about his ability to understand the material and complete the homework assignments. The respondent's drug tests were clean, but he had missed one. The respondent did not visit Fantasia. She recommended substitute care pending adoption for Fantasia due to the respondent's lack of progress. On cross-examination, Osborne acknowledged that the respondent originally told her that he could not visit due to transportation issues. However, on further discussion, he indicated that he was just too busy to visit. He had been given bus passes several times. The permanency hearing report filed with the court indicated that the respondent had "not visited with Fantasia for nearly four months." The State recommended substitute care because the respondent was not visiting Fantasia. The trial court found that the respondent had not made reasonable efforts and that it was in Fantasia's best interest that the permanency goal be set at substitute care pending court determination of parental rights.

¶ 11 On November 8, 2010, the State filed a motion for termination of parental rights and power to consent to adoption. The motion contained five counts of unfitness with respect to the respondent, including an allegation that he failed to maintain a reasonable degree of interest, concern, or responsibility as to Fantasia's welfare (count I). On November 30, 2010, the respondent was arraigned and provided a copy of the motion for termination of parental rights.

¶ 12 On January 12, 2011, the fitness hearing was held. Fantasia's mother signed an irrevocable consent for adoption to DCFS. As a result of DNA testing, which was accepted by the parties without objection, the trial court adjudged the respondent to be the biological father of Fantasia. The State then indicated that the respondent was stipulating to count I of the motion for termination of parental rights, that he failed to maintain a reasonable degree of interest, concern, or responsibility

as to Fantasia's welfare. The factual basis for that stipulation as to unfitness was that "Fantasia [was] in a long-term care facility because of injuries she suffered; that DCFS provided bus passes, and there was a period of six months, if Shea Osborne was called to testify, where [the respondent] did not have any visitation with his child, although provided bus passes to do so." Based on the stipulation, the State dismissed the remaining four counts of alleged unfitness. Thereafter the trial court stated:

"So the Court finds that the [respondent] is factually stipulating to Count 1 of the petition. The basis for that is as outlined by the State, and the original statement of facts, as well as the reports by the case worker that have been filed with the Court. Counts 2, 3, 4, and 5 of the petition are dismissed on motion of the State."

In response to questions posed by the trial court, the respondent indicated that he agreed to the stipulation, that he had an opportunity to consult with his attorney, and that he entered the stipulation freely and voluntarily.

¶ 13 On March 25, 2011, a best interests hearing was held. The State submitted a best interests report into evidence. Fantasia's caseworker, Osborne, testified that Fantasia resided at the Walter Lawson Children's Home in Loves Park. Fantasia had suffered a traumatic brain injury in January 2009, and she had not regained full consciousness since that event. Fantasia was on a feeding tube and required 24-hour care. Osborne identified a Mr. and Mrs. Bowman as prospective adoptive parents for Fantasia. The Bowmans, and some of the Bowman's extended family members, had regularly visited Fantasia. The respondent also occasionally visited Fantasia, less than once a month.

¶ 14 Osborne further testified that even though Fantasia was in a children's home, it was still important for her to have a permanent family. She had ongoing medical needs and treatment and it

was important to have someone who was accessible to review and consent to her treatment. The children's home had taken Fantasia on outings, when she was well, to places such as the zoo, the park, or to baseball games. The Bowmans had the resources to take Fantasia on occasional outings. The Bowmans were aware of what was involved in Fantasia's daily care and the Bowmans were almost "officially licensed" to be able to take Fantasia on day trips. Osborne opined that Fantasia should be freed up for adoption. Her opinion was based on Fantasia's need for a permanent invested family given the magnitude of medical issues and the treatment she would need for the rest of her life. The Bowmans had demonstrated a commitment to care for Fantasia.

¶ 15 Osborne did not believe that the respondent was an appropriate permanent resource for Fantasia. He was not always accessible and there were times when Fantasia needed immediate consent for treatment. The respondent did not have a permanent address and did not always have a phone. The respondent also had minimal resources, difficulty getting to the children's home, and had never participated in any of the medical reviews or treatment meetings concerning Fantasia. The respondent had not learned how to care for Fantasia in terms of going on outings or making medical decisions. The Bowmans had expressed a desire to take Fantasia on outings and to their home. The Bowmans had indicated that, if they adopted Fantasia, they would allow the respondent to visit Fantasia and would maintain sibling contact. Osborne testified that it was in Fantasia's best interest to free her for adoption. The Bowmans were a permanent resource that could provide some sense of normalcy to Fantasia's life.

¶ 16 On cross-examination, Osborne acknowledged that she had observed visits with the respondent and Fantasia. The respondent was nurturing and would hold Fantasia or sit with her. The respondent's visits would last one to two hours. She acknowledged that he had difficulty visiting

Fantasia due to transportation issues. Consequently, the respondent was provided bus passes to visit. Nonetheless, his visits still did not increase in frequency. Osborne acknowledged that the Bowmans were only an adoptive resource, there was not paperwork for them to adopt. DCFS could continue to look toward placing Fantasia even if the respondent's parental rights were intact. If things fell through with the Bowmans, there were other families that had expressed interest in Fantasia. Osborne testified that it would be possible for the respondent to be trained on how to care for Fantasia but she was not sure he had the ability to absorb the material and fully understand how to care for her.

¶ 17 On redirect examination, Osborne testified that Mrs. Bowman had been visiting Fantasia since Fantasia first entered the Walter Lawson children's home. Mrs. Bowman was there "more than weekly" and "consistently." Fantasia recognized voices and became upset when people left the room. Fantasia was very happy when Mrs. Bowman was around. Mrs. Bowman was very interactive. On one occasion when Fantasia's younger sister was visiting Fantasia, Mrs. Bowman started playing ball with them and Fantasia was laughing. Osborne did not believe the respondent had the same skill set to be able to provide for Fantasia in the same way. Osborne acknowledged that Fantasia was African American and that the Bowmans were white. However, she did not have any concerns over the Bowmans' ability to foster Fantasia's cultural identity.

¶ 18 Jennifer Bowman testified that she was 32 years old. Her mother had worked and volunteered at the Walter Lawson Children's Home since Bowman was two years old. She grew up volunteering at the home and assisting with outings. Bowman had been visiting Fantasia since 2009 but started to really connect with her around June 2010. She was committed to being a permanent resource for Fantasia and would like to adopt her. She believed it was important for Fantasia to have

regular contact with people who show her love and make her feel normal and well supported. She was familiar with Fantasia's medical needs. She had fed Fantasia a couple times, via the feeding tube.

¶ 19 Bowman further testified that if she adopted Fantasia she would allow the respondent to visit. She had two adopted children, who were African American, and they had also visited with Fantasia. Her daughter was dancing with Fantasia at a recent visit. Her adopted children had four siblings with whom they also visit. She had contacted the pre-adoptive family of Fantasia's younger sister and hoped to continue visitation between Fantasia and her sister. Bowman testified that she could provide Fantasia a large extension of a family. She would like to be able to bring Fantasia home for visits and make her life as normal as possible. Bowman's sister had an adopted son who also lived at the same children's home. Bowman was familiar and felt comfortable with this situation. She believed it was important for Fantasia to have a family even though Fantasia would likely never live outside the children's home.

¶ 20 In closing, the State argued that it was in Fantasia's best interest to terminate the respondent's parental rights. The State argued that although Fantasia would likely always reside in a residential facility, it was still important to have a parent that could make appropriate medical decisions, take her on outings, foster relationships with siblings, and provide her with a somewhat normal life. The State argued that the Bowmans could provide for those needs. The State argued that the respondent did not have the same skills and ability to provide for Fantasia outside of the home and that he would still be able to visit if Fantasia was adopted.

¶ 21 The respondent argued that termination of parental rights was not in Fantasia's best interest. He still visited her when he could and was nurturing. He had no guarantee that if she was adopted,

he would still be able to visit. Because she lived in a children's home, there was no reason for her to be adopted.

¶ 22 The GAL acknowledged that Fantasia's life was a complicated and unusual situation. However, based on the best interest factors, he agreed with the State that it was in Fantasia's best interest to be freed up for adoption. He believed the testimony showed that the respondent would never be able to provide the medical support Fantasia would need to be removed from the hospital. He noted that Mr. Bowman was present in court and that the Bowmans could provide Fantasia with something more than just visitation. The Bowmans could provide a "loving, caring, and responsible family that is able to really maximize her potential for happiness, her being cared for, but also to make and execute the medical decisions." The GAL stated that it was in Fantasia's best interest to terminate the respondent's parental rights.

¶ 23 Following closing statements, the trial court rendered its ruling. The trial court noted that it read the reports, heard the testimony, and considered all the evidence. The trial court noted that the respondent loved Fantasia very much, but Fantasia needed more than that. Fantasia needed more stability and someone who could offer more accessibility for medical decision making. Given all the factors that it had heard, the trial court found that it was in Fantasia's best interest to terminate the respondent's parental rights. The trial court changed the permanency goal to adoption. At the close of the proceedings, the respondent indicated a desire to appeal. He was sworn in and testified to his indigent status. The trial court deemed him indigent for the purpose of appointing an attorney on appeal. The respondent then filed a timely notice of appeal.

¶ 24

II. ANALYSIS

¶ 25 On appeal, the respondent first argues that there was no factual basis for his stipulation to neglect and, therefore, the adjudication of neglect must be vacated. In response, the State argues that this court lacks jurisdiction to consider this argument because the respondent failed to perfect an appeal after the original dispositional order that was entered. We agree with the State.

¶ 26 An adjudicatory order is not a final and appealable order; however, a dispositional order is final and appealable. *In re Alexander*, 377 Ill. App. 3d 553, 555 (2007). In *In re Leona W.*, 228 Ill. 2d 439 (2008), cited by the State, the respondent appealed following the termination of his parental rights. He sought to challenge the adjudicatory order of abuse, but the court held that the time for appeal from that order had passed. The court noted two possible opportunities for appeal of the adjudicatory order:

“First, he could have filed a petition for leave to appeal from that order pursuant to Supreme Court Rule 306(a)(5) [eff. Sept. 1, 2006], governing appeals from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules. Second, he could have challenged the finding of abuse by taking an appeal from the April 29, 1997, order adjudging L.W. a ward of the court, finding both parents ‘unable for some reason other than financial circumstances alone to care for, protect, train or discipline the minor,’ and determining that it was in L.W.’s best interests to remove her from her parents’ custody and care and placing her in DCFS custody. Dispositional orders of this kind are regarded as final and appealable as of right. [Citation.] Appealing a dispositional order is the proper vehicle for challenging a finding of abuse or neglect. [Citation.]” *Id.* at 456.

¶ 27 In the present case, Fantasia’s adjudication of neglect and the related dispositional order, making Fantasia a ward of the court and appointing DCFS as her legal custodian, were both entered on April 16, 2009. Under Illinois Supreme Court Rule 303(a) (eff. May 30, 2008), the respondent’s notice of appeal had to be filed with the clerk of the circuit court within 30 days of the April 16, 2009, final order. The respondent failed to file a timely appeal within that time. Moreover, the March 28, 2011, notice of appeal that respondent has now filed does not even mention the dispositional order or any of the neglect proceedings. Accordingly, we lack jurisdiction to address the propriety of the stipulation as to neglect. *Id.*; see also *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (reviewing court lacks jurisdiction to consider appeals from orders not included in the notice of appeal).

¶ 28 The respondent’s second contention on appeal is that the State failed to provide a sufficient factual basis for his stipulation as to unfitness. The respondent argues that the summary statement given by the State was insufficient and that it was “without foundation or sworn testimony.” The respondent also argues that it was error for the trial court to consider the statement of facts and caseworker reports. Consequently, he argues that we must vacate his stipulation as to unfitness, reverse the order terminating his parental rights, and remand for a new fitness hearing.

¶ 29 Proceeding on a petition for termination of parental rights involves a two-step, bifurcated approach where the court first holds a hearing to determine whether a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)). 705 ILCS 405/2-29(2) (West 2008); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If the parent is found unfit, the trial court conducts a subsequent hearing to determine whether the termination of parental rights is in the child’s best interest. 705 ILCS 405/2-29(2) (West 2008); *Id.*

¶ 30 A parent may make an admission that he or she is unfit. However, due process requires a trial court to determine whether a factual basis exists for such an admission before it accepts the admission. *In re M.H.*, 196 Ill. 2d 356, 368 (2001). An admission of unfitness must be knowing and voluntary. *Id.* at 366. The State should recite the facts supporting the underlying claim of unfitness and the stipulation thereto. *Id.* at 367. “The [recitation of the] factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed.” *Id.* at 366. The factual basis ensures that the parent knows the specific conduct resulting in the finding of unfitness, thereby decreasing the risk that his or her parental rights will be erroneously terminated. *Id.* at 367.

¶ 31 There is no Illinois case setting forth the standard of review for the sufficiency of a factual basis relative to an admission of parental unfitness. However, when there is a challenge to the sufficiency of a factual basis for an admission of abuse in a wardship proceeding, an admission in a juvenile delinquency case, or a guilty plea in a criminal case, the standard of review in each of these cases is whether the trial court abused its discretion by determining that a factual basis existed for the admission. *In re C.J.*, 2011 IL App (4th) 110476, ¶ 49 (2011) (wardship proceeding); *In re C.K.G.*, 292 Ill. App. 3d 370, 376-77 (1997) (juvenile case); *People v. Calva*, 256 Ill. App. 3d 865, 871 (1993) (criminal case). Therefore, it is proper to review the sufficiency of the factual basis in the present case for an abuse of discretion. An abuse of discretion occurs when a trial court’s ruling is arbitrary, fanciful, or unreasonable, *i.e.*, when no reasonable person could take the court’s view. *People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006).

¶ 32 The respondent first argues that the factual basis was insufficient because of the summary nature of the statement. The factual basis provided by the State indicated that Fantasia was in a long-

term care facility because of injuries she suffered and that, if called, the caseworker would testify that despite being provided bus passes, the respondent did not visit Fantasia for a period of six months.

Our supreme court has stated that:

“In determining whether a parent showed reasonable concern, interest or responsibility as to a child’s welfare, we have to examine the parent’s conduct concerning the child in the context of the circumstances in which that conduct occurred. Circumstances that warrant consideration when deciding whether a parent’s failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child’s welfare include a parent’s difficulty in obtaining transportation to the child’s residence, the parent’s poverty, the actions and statements of others that hinder or discourage visitation and whether the parent’s failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. * * * [A] court is to examine the parent’s efforts to communicate with and show interest in the child, not the success of those efforts.” *In re Adoption of Syck*, 138 Ill. 2d 255, 278-279 (1990).

Generally, unfitness must be established by clear and convincing evidence. 705 ILCS 405/2-29(4) (West 2008).

¶ 33 We acknowledge that, unlike in *Syck*, the factual basis in the present case did not include details as to why the respondent failed to visit, if that failure was motivated by a need to cope with other aspects of his life, or whether he provided letters, phone calls, or gifts. However, in *In re M.H.*,

313 Ill. App. 3d 205, 215 (2000), this court, analogizing unfitness stipulations to guilty pleas, held that “the factual basis that is required before the court may accept an admission of unfitness need not rise to the level of the State’s burden of proof, which is clear and convincing evidence.” See also *People v. Arnold*, 18 Ill. App. 3d 95, 98 (1974) (holding that “the quantum of proof necessary to determine if there is a factual basis for [a] plea is less than that necessary to sustain a conviction after a full trial). Accordingly, the factual basis contained in a stipulation need not necessarily include the same amount of detail that would need to be established at a hearing where a parent is contesting the issue of fitness. See, e.g., *In re C.K.G.*, 292 Ill. App. 3d at 376 (where respondent admitted to a criminal charge in a juvenile delinquency petition, the State, in the factual basis, did not need to present all, “or even most,” of the evidence it possessed in support of respondent’s guilt of the charge to which he was offering to admit).

¶ 34 Under the circumstances in the present case, the factual basis was sufficient to support the respondent’s admission. First, the trial court questioned the respondent and the respondent specifically indicated that (1) he agreed to the stipulation of unfitness, (2) he consulted with his attorney, and (3) the stipulation was freely and voluntarily given. Moreover, the respondent did not object to the factual basis set forth by the State or offer any reasonable explanation for his failure to visit Fantasia. See *M.H.*, 196 Ill. 2d at 366 (parent can challenge factual basis and correct any disputed facts). Furthermore, he does not argue on appeal that there were any extenuating circumstances that prevented him from visiting Fantasia or that he demonstrated interest, concern, or responsibility in some other manner. Accordingly, we cannot say that the trial court abused its discretion in finding that the factual basis was sufficient to show that the respondent was unfit based on his failure to maintain a reasonable concern, interest or responsibility as to Fantasia’s welfare.

See *In re A.M.*, 294 Ill. App. 3d 616, 625 (1998) (finding of unfitness affirmed where efforts to show interest or concern “were minimal, at best”).

¶ 35 The respondent further argues that the factual basis was inadequate because it was “without foundation and sworn testimony.” However, as our supreme court stated in *M.H.*, a factual basis “does not require witnesses to testify.” *M.H.*, 196 Ill. 2d at 367. In addition, we cannot agree that the factual basis was “without foundation.” The State indicated that Fantasia’s caseworker would testify to the relevant facts. In addition, the caseworker prepared and filed a “termination hearing report” for the January 12, 2011, fitness hearing. We acknowledge that the report indicated that “[f]or nearly six months, [the respondent] only visited [Fantasia] twice,” whereas the factual basis indicated that there were no visits in six months. However, as stated in *M.H.*, reciting the factual basis in court gives the parent an opportunity to challenge or correct any facts that are disputed. *Id.* at 366. The respondent was present at the fitness hearing and did not object to the factual basis. Furthermore, the fact that the respondent may have visited Fantasia twice in six months versus not at all does not render him fit; two visits in six months is still not reasonable. *In re E.O.*, 311 Ill. App. 3d 720, 728 (2000) (parent not fit merely because she demonstrated some interest in child; interest must be reasonable). In light of the respondent’s failure to object and the *de minimus* nature of the variance between the factual basis and the caseworker report, we, again, cannot say that the trial court abused its discretion in finding the factual basis sufficient for an admission of unfitness.

¶ 36 In so ruling, we note that the respondent also argues that it was error for the trial court to state that it was considering the statement of facts and caseworker reports when it accepted the factual basis. In response, the State argues that a trial court may look anywhere in the record to determine whether a factual basis exists. We agree with the respondent that the propriety of considering the

caseworker report and the statement of facts is questionable because, under *M.H.*, the parent must be “fully informed of the factual basis underlying the State’s allegations.” *Id.* at 367. Nonetheless, we need not determine whether the trial court erred in considering the caseworker report or the statement of facts because, even if this was error, the error would be harmless since the factual basis was sufficient in and of itself to support the admission of unfitness. *People v. Olsen*, 388 Ill. App. 3d 704, 712 (2009) (consideration of improper evidence was harmless error where reviewing court relied on proper evidence in holding that the trial court did not abuse its discretion).

¶ 37 The dissent argues that our harmless error analysis is misplaced because the trial court’s statement that it considered these extrinsic documents necessarily means that the respondent was not fully informed of the factual basis. However, we must employ the presumption that the trial court considered only competent evidence (*People v. Gilbert*, 68 Ill. 2d 252, 258 (1977)), regardless of the sources of that evidence, and thus we must conclude that the trial court relied on these documents only to the extent that they supported the factual basis. In contrast to the dissent, we believe the statement of facts referenced by the trial court supported the factual basis to the extent it explained the injuries suffered by Fantasia. The caseworker report supported the factual basis to the extent it discussed the respondent’s visitation with Fantasia. There is no basis in the record for concluding that, even taking the statement of facts and caseworker report into account, the trial court considered evidence outside the factual basis.

¶ 38 The respondent’s final contention on appeal is that the trial court erred in finding that the termination of his parental rights was in Fantasia’s best interest. After a parent is found unfit, the focus shifts to the child, and a parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). At

a best interests hearing, the State must prove by a preponderance of the evidence that it is in the best interest of the minor to terminate the parent's parental rights. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). A trial court's best interest determination will be reviewed under the manifest weight of the evidence standard of review. *Id.* A finding is against the manifest weight of the evidence if the facts clearly demonstrate that the trial court should have reached the opposite result. *Id.* at 960.

¶ 39 Section 1-3(4.05) of the Act requires a trial court to consider a number of factors, within "the context of the child's age and developmental needs," when a best interest determination is required.

705 ILCS 405/1-3(4.05) (West 2008). These include:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(I) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3 (4.05)

(West 2008).

The trial court is not required to explicitly mention each factor listed in section 1-3(4.05) when rendering its decision. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262–63 (2004). Furthermore, a trial court is not required to articulate any specific rationale for its best interest determination, and a reviewing court may affirm on any basis appearing in the record regardless of the trial court's reasoning. *Id.*

¶ 40 In the present case, the manifest weight of the evidence supports the trial court's determination. The trial court noted that it considered all the relevant evidence. It considered that the respondent loved Fantasia very much. However, the trial court further found that the respondent could not provide for all Fantasia's needs. The trial court noted that Fantasia needed more than just love. She needed stability, accessibility for medical decision-making, and someone placing her interests first. After considering the relevant factors as set forth in section 1-3(4.05) of the Act, we cannot say that the trial court should have reached the opposite result.

¶ 41 Regarding Fantasia's physical safety and welfare, the evidence showed that she would remain in a residential care facility indefinitely. Osborne testified that Fantasia had ongoing medical needs and that it was important to have someone to review and consent to her treatment. The evidence showed that Mrs. Bowman was consistently available for Fantasia while the respondent was not

always accessible and had never participated in any meetings concerning Fantasia's medical care. Furthermore, Fantasia was able to go on occasional outings. Osborne testified that the Bowmans had the resources and ability to take Fantasia on outings. Mrs. Bowman testified that she had learned how to feed Fantasia, via a feeding tube, and had done so twice. Osborne testified that she did not believe the respondent had the ability or resources to take Fantasia on outings or care for her outside the children's home. The respondent had failed to participate in parenting classes or attend individual counseling.

¶ 42 The development of Fantasia's identity also supports the trial court's best interest finding. The respondent visited Fantasia only sporadically. Mrs. Bowman visited consistently and more than once a week. Mrs. Bowman was very interactive with Fantasia during their visits and her other children also visited with Fantasia. Osborne testified that Fantasia was very happy when Mrs. Bowman was around and that the Bowman family could provide a greater sense of normalcy in Fantasia's life. The evidence indicated, therefore, that Mrs. Bowman was more instrumental in cultivating an identity for Fantasia.

¶ 43 Fantasia's religious, cultural and familial ties also favor the termination of the respondent's parental rights. The evidence showed that the Bowmans could provide Fantasia a more normal family life than the respondent. Although Mrs. Bowman and her husband are white, they have two other adopted children that are African American. Their adopted children also have siblings that they visit regularly. Mrs. Bowman testified that she hoped to be able to bring Fantasia home for birthdays and other holidays so that Fantasia could spend time with the Bowman's extended family. Mrs. Bowman also testified that she was open to allowing continued contact between Fantasia and

her biological family. Osborne testified that she did not have concerns about the Bowmans' ability to foster Fantasia's cultural identity.

¶ 44 Fantasia's need for permanence and her sense of attachment, including her sense of security, sense of familiarity, and continuity of affection, also favors a finding that termination of the respondent's parental rights was in her best interest. The evidence indicated that Mrs. Bowman and her family consistently interacted with Fantasia. They visited her regularly and Mrs. Bowman testified that she was committed to being a permanent resource for Fantasia and would like to adopt her. The respondent, however, has failed to consistently visit Fantasia or otherwise demonstrate an ability to provide Fantasia with permanence or continuity of affection.

¶ 45 Finally, Fantasia's wishes and long-term goals are difficult to assess given her young age and her injuries. However, the evidence indicated that the Bowmans are in a better position to nurture any wishes or goals that Fantasia develops as she grows. Furthermore, given that Fantasia's injuries occurred at such a young age, she had not yet developed strong community ties while living with the respondent prior to the accident. At the time of the best interest hearing, her community ties were clearly to the children's home and the Bowman family. Accordingly, in light of the respondent's failure to attend parenting classes or counseling, failure to demonstrate an interest in learning to provide for Fantasia's needs, and his sporadic visitation, and in light of the Bowmans regular and interactive visitation, and their ability to care for and desire to adopt Fantasia, we cannot say the trial court's best interest finding was against the manifest weight of the evidence.

¶ 46

III. CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 48 Affirmed.

¶ 49 JUSTICE BIRKETT, concurring in part and dissenting in part.

¶ 50 I agree that this court lacks jurisdiction to address the stipulation to neglect.

¶ 51 I disagree, however, that a factual basis was provided for the stipulation to unfitness. Recognizing “the inherent right which all parents have to the society and custody of their own children,” our legislature has required that a finding of unfitness be made “only for compelling reasons fully supported by clear and convincing evidence.” *In Interest of Grotti*, 86 Ill. App. 3d 522, 532 (1980). A parent may stipulate to unfitness, but, as *M.H.* holds, “due process requires a circuit court to determine whether a factual basis exists for an admission of parental unfitness before it accepts the admission.” *M.H.*, 196 Ill. 2d at 368.

¶ 52 The factual basis offered by the State was that respondent’s caseworker would testify that respondent’s visits to F.W. were infrequent. The trial court *sua sponte* supplemented that basis by remarking that it was also considering “the original statements of facts, as well as the reports by the case worker.” The court, however, did not indicate what content of those documents served as the supplemental ground that the court considered. Therefore, respondent was, quite simply, not “fully informed of the factual basis underlying the State’s allegations.” *M.H.*, 196 Ill. 2d at 367. The majority, while acknowledging that it was “questionable” for the trial court to rely on the statement of facts, decides that any error was harmless because “the factual basis was sufficient in and of itself to support the admission of unfitness.” Slip op. at ¶ 36. By presupposing that the “factual basis” consisted only of the State’s representation, the majority frames the issue in its favor. In reality, the court remarked that the “basis” it was considering also included the documents cited by the court. Respondent was entitled to know the full factual basis for the trial court’s acceptance of the stipulation, not just the portion contributed by the State.

¶ 53 To support its finding of harmless error, the majority cites the proposition that any error in the admission of an item of evidence is harmless where that item is cumulative of evidence that was properly admitted. That standard is inapplicable here. The issue is not whether the stipulation was objectively grounded by the State’s anticipated evidence or by some other indicia in the record (apart from the sources cited by the trial court), but whether respondent was “fully informed of the factual basis underlying the State’s allegations” (*id.* at 367). If the factual-basis requirement were simply a matter of whether a stipulation to unfitness is objectively grounded, then the court in *M.H.* would have been satisfied if there were caseworker reports or other documents in the record whose content corroborated the allegations of unfitness. Instead, the court’s overarching concern was the notice provided to the parent, and the court held that the notice must be “full[,]” otherwise there is a risk that “parental rights will be erroneously terminated because of an ill-advised admission of unfitness.” *Id.* at 367. “The factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed.” *Id.* at 366. Respondent was not told what “facts” the trial court was contemplating when it cited the extrinsic documents, and so had no opportunity to contest their accuracy. I recognize that, arguably, the interest in procedural efficiency might militate against holding that the trial court had a duty to specify on the record what content of the extrinsic documents supported the State’s representation about respondent’s visits to F.W.. I find it beyond question, however, that the trial court was duty-bound to expressly inform respondent if the court was relying on his conduct *apart* from his visits to F.W., the only subject of the State’s proffered factual basis. Here, the court clearly did so expand the factual basis beyond that provided by the State. Unlike the caseworker reports, which presumably addressed, *inter alia*, respondent’s visits to F.W., the “original statement of facts” could

not have had anything to do with the visits. The document was generated at the outset of the case—three days after the neglect petition was filed. The document describes the original report made to DCFS, the discovery of F.W. lying unconscious from a head injury in respondent’s home, and the statement from respondent as to when and how F.W. was injured. This document preceded the service plans created by DCFS and even preceded F.W.’s placement at the “long-term care facility” referenced in the stipulation. The trial court relied on this document without informing respondent that the court was expanding the factual basis, and so denied him an opportunity to contest the content of the statement of facts. That content may have well objectively supported a stipulation to neglect, but *M.H.* requires not only that the factual basis objectively support the stipulation to unfitness but that the parent be provided full notice of the factual basis.

¶ 54 The majority cites the principle that we must assume that the trial court considered only competent evidence. The presumption yields, however, where “the record affirmatively shows” that the trial court did rely on incompetent evidence. *Gilbert*, 68 Ill. 2d at 259. The presumption was rebutted here, as is obvious when we consider a couple of alternative scenarios. If, for instance, the trial court had made an unspecified reference to documents in the record, we certainly would have to conclude that the court considered only those documents that related to the factual basis outlined by the State. Alternatively, if the trial court had made the same remarks it did here, but the “original statement of facts” had at least some content relating to the frequency of respondent’s visits, we would have to conclude that the court considered only that relevant content. Here, however, the entirety of “the original statement of facts” was irrelevant to the visitation issue. Hence, there was no content in that document that the trial court could have had in mind that was pertinent to the visitation issue. The only way to avoid finding error here is to construe the court’s citation to the

“original statement of facts” as the product of misunderstanding or inadvertence. I see nothing to indicate that the trial court did not mean what it said or know what it was talking about.

¶ 55 The majority also observes that respondent had an opportunity in the trial court to object to the factual basis but did not. Slip op. at ¶ 35. While the majority seems to suggest forfeiture only with respect to the inaccuracies in the State’s proffered factual basis, I emphasize that respondent did not forfeit his objection that the trial court improperly enlarged the factual basis. It was the affirmative, constitutional obligation of the State and the trial court to fully apprise respondent of the factual basis for the stipulation to unfitness. The majority cites no case under the Act where a parent was found to have forfeited a challenge to the factual basis for a stipulation to unfitness.

¶ 56 For the foregoing reasons, I would vacate the determination of unfitness and remand this case for a new termination hearing. Accordingly, I would not reach the issue of best interests.