

2012 IL App (2d) 120228-U
No. 2-12-0228
Order filed June 22, 2012

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re J.L., V.H., J.D., and C.D., Minors) Appeal from the Circuit Court
) of Winnebago County.
)
) No. 08-JA-46
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Shimika D.,) Mary Linn Green,
Respondent-Appellant).) Judge, Presiding.

In re J.L., V.H., J.D., and C.D., Minors) Appeal from the Circuit Court
) of Winnebago County.
)
) No. 08-JA-47
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Shimika D.,) Mary Linn Green,
Respondent-Appellant).) Judge, Presiding.

In re J.L., V.H., J.D., and C.D., Minors) Appeal from the Circuit Court
) of Winnebago County.
)
) No. 08-JA-48
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Shimika D.,) Mary Linn Green,
Respondent-Appellant).) Judge, Presiding.

<i>In re</i> J.L., V.H., J.D., and C.D., Minors)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 08-JA-248
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Shimika D., Respondent-Appellant).)	Honorable Mary Linn Green, Judges, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

RULE 23 ORDER

Held: Respondent’s claims of error did not entitle her to a new best interests hearing, and because the State proved by a preponderance of the evidence that it was in the minors’ best interests to terminate respondent’s parental rights, the trial court’s decision was affirmed.

¶ 1 Four minors of respondent, Shimika D., are at issue in this appeal. On March 3, 2008, the State filed neglect petitions as to three of those minors: daughter J.D., born February 26, 2002; daughter V.H., born June 1, 2004; and son J.L., born May 10, 2007. For each of these minors, the State alleged three counts. Count I alleged that the minors were in an environment injurious to their welfare due to the substance abuse of respondent, Shimika D. Count II alleged that respondent used illegal drugs while pregnant with J.L., thus endangering J.L. and his siblings. Count III alleged that all three minors were neglected because J.L. was born with cocaine in his system.

¶ 2 Respondent did not appear at the initial temporary shelter care hearing on March 10, 2008, because she was participating in a 30-day inpatient substance abuse program. At that hearing, the court was advised that respondent was pregnant and had again tested positive for drugs. The court granted the Department of Children and Family Services (DCFS) guardianship and custody of the minors, who were in the care of their maternal grandmother. Respondent appeared at the next March 18, 2008, hearing, and was advised of the neglect petition. At that hearing, respondent waived her right to a shelter care hearing, and the court maintained the status quo.

¶ 3 On June 18, 2008, the parties appeared in court. The State advised the court that respondent had recently given birth to another boy, C.D., on June 13, 2008; that he had cocaine in his system; and that the State would soon be preparing a neglect petition as this fourth minor. As for the neglect petitions relating to the other three minors, respondent stipulated to count III based on J.L. having been born with cocaine in his system. The trial court entered neglect findings as to J.D., V.H., and J.L. According to a Catholic Charities report in the record, the minors had been removed from their maternal grandmother's care due to concerns for their safety and had been placed in two different foster homes. J.L. and V.H. were placed with foster parent Kim Keltner, and J.D. was placed with foster parents John and Sheri Dreska.¹ Once C.D.'s withdrawal treatment at the hospital was completed, DCFS would take protective custody and place him with Kim.

¶ 4 On June 23, 2008, the State filed a neglect petition as to the fourth minor, C.D. The petition alleged four counts. Count I alleged that C.D. was born with cocaine in his system; count II alleged that C.D. was in an environment injurious to his welfare due to respondent's substance abuse problem; count III alleged that respondent used illegal drugs while pregnant with C.D.; and count IV alleged that C.D.'s siblings had already been adjudicated neglected, and respondent had failed to cure the condition which caused their removal. Respondent waived her right to a shelter care hearing and agreed that DCFS would assume custody of C.D. On August 22, 2008, respondent stipulated to count I of the neglect petition. The court entered a neglect finding as to C.D. and granted guardianship and custody to DCFS.

¶ 5 A. Permanency Hearings and Fitness

¹Also living with the Dreska family was Sharnicca, respondent's 14-year-old daughter, who was previously removed and is not a party on appeal.

¶ 6 The court conducted permanency review hearings on December 16, 2008, and on June 16, 2009. With the exception of Sharnicca, the minors were doing well in their placements, and respondent was making reasonable efforts by engaging in services and in weekly two-hour, supervised visitation. Both J.D. and V.H. were receiving counseling for past sexual abuse.² The goal for the minors was return home within 12 months, except for Sharnicca, who was returned to respondent that day.

¶ 7 At a permanency review hearing on September 8, 2009, it was disclosed to the court that V.H., age seven, had an overnight visit with her sister J.D. at the Dreska foster home, and that she had “sexual/play” with one of J.D.’s five-year-old foster sisters. As a result, J.D. was removed from the Dreska foster home and returned to respondent. That placement did not last long, however, due to an altercation between respondent and J.D.’s older sister, Sharnicca. After respondent admitted hitting Sharnicca with a belt, causing welts and bruises on Sharnicca’s arms, Sharnicca was removed from respondent’s home on September 23, 2009. Sharnicca was placed in Normal Sleezer Youth Home, and J.D. was placed with the other three minors in Kim’s home.

¶ 8 Another permanency review hearing occurred on December 15, 2009. Catholic Charities case worker Nicole Libby apprised the court of the status of the four minors living with Kim. C.D., age one, had some developmental delays and was in speech, occupational, and physical therapy. J.L. age two, was doing very well, although he was in speech therapy because of a developmental delay. V.H., age five, was developmentally on target and receiving counseling for the previous sexual/play incident referred to above. J.D., age seven, was also developmentally on target and receiving counseling for past sexual abuse. In addition, J.D. had some medical issues with her kidneys. When

²In piecing together the record, it appears that an older cousin of the two girls had been accused of sexually abusing them.

the court asked about Sharnicca and J.D. being removed from respondent's home, Libby explained that after Sharnicca was returned to respondent in June 2009, Sharnicca was either still on the run or not cooperating with services. In September 2009, respondent and Sharnicca got into a fight that escalated, to the point where respondent struck Sharnicca's arms with a belt. The DCFS investigation of this incident was indicated. In response to the court's inquiry about the time frame for implementing unsupervised visits, Libby stated that since the removal of Sharnicca and J.D., respondent had not been as cooperative with Catholic Charities or CASA and was "short" with the minors during visits, which was a departure from before. Consequently, Catholic Charities wanted to monitor respondent before moving to unsupervised visits. Based on respondent's use of corporal punishment with Sharnicca, the court found that respondent had not made reasonable efforts and entered a permanency goal for all minors to return home in 12 months.

¶ 9 At the next permanency hearing on June 15, 2010, the status of the minors was about the same, with the exception of Sharnicca, who was on the run again with an outstanding warrant. Respondent was consistently engaged in supervised visitation and in services, and her drug test results were negative. The court found that respondent had made reasonable efforts and maintained the permanency goal of return home in 12 months.

¶ 10 On December 14, 2010, a different trial judge took over the case and a different Catholic Charities caseworker, Susan Sanchez, reported on the minors. Sanchez advised the court that Sharnicca had celebrated her 16th birthday at respondent's house with the other minors but was currently on the run again. The other four minors were still in Kim's care. J.D., age eight, was developmentally on track and being treated for kidney issues. V.H. was six years old and did not have any special needs except medication for bed-wetting. J.L., age three, had been diagnosed with

an umbilical hernia that required surgery, which was scheduled for that month. J.L. was developmentally on target but had issues when riding in the car, such as screaming, throwing things, swearing, and kicking. C.D. was two years old and had a slight delay in development; he received speech therapy. C.D. was also diagnosed with a very mild case of cerebral palsy.

¶ 11 Respondent engaged in visitation “for the most part” but missed visits and had no contact with the caseworker for six weeks during August and September. She then resumed visitation. There was a point when the visitation time increased, but it had to drop back when she went missing for six weeks. During that six-week period, two police reports were filed. One incident involved respondent and her relatives purchasing and using drugs. Respondent admitted to the officer that she had called someone named “Bo” to purchase drugs and that she and her family had smoked the drugs. The other incident involved respondent being stopped in a car in which the driver had a crack pipe. When asked for her identity, respondent gave a different name and told the officer that she looked different because she had used a lot of drugs. Overall, respondent performed two drugs tests, which were negative, but missed four tests, which were presumed positive. After hearing this report, the court found that respondent had not made reasonable efforts, and it changed the goal to substitute care pending termination of parental rights.

¶ 12 On March 9, 2011, the State moved to terminate respondent’s parental rights as to all four minors. The State alleged three counts of unfitness as to each minor. Count I alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors’ welfare. Count II alleged that respondent failed to protect the minors from conditions within their environment injurious to their welfare. Count III alleged that respondent failed to make reasonable progress toward the return of the minors during any nine-month period after the end of

the initial nine-month period following adjudication of neglect. On August 25, 2011, respondent stipulated to count III of the State's petitions to terminate parental rights as to all four minors, and the State dismissed the remaining counts. The four fathers, who are not parties on appeal, were also found unfit.

¶ 13

B. Best Interests Hearing

¶ 14 The court conducted a best interests hearing on two dates. The first date was November 2, 2011, on which the girls, J.D., and V.H., testified in the court's chambers. J.D., age nine, stated that she saw respondent about once a month and wished she could see her more often. When asked where she would live if she could live anywhere, J.D. said she would want to live with Mama Kim because she is "very outgoing and nice." J.D. also described Kim's daughter Brooke³ as being a "good big sister" to her. V.H., age seven, thought that living with Mama Kim was "awesome." She liked school and her teachers and was getting good grades. V.H. saw respondent around once a month, and she loved both Kim and respondent. V.H. wanted to continue living with Kim but also wanted respondent to be part of her life. Both minors stated that Mama Kim helped them with school and activities that she had enrolled them in, and they brought pictures books depicting their lives.

¶ 15 The remainder of the best interests hearing occurred on February 1, 2012. Caseworker Suzanne Sanchez of Catholic Charities was the only witness to testify on behalf of the State. Sanchez was not assigned to the case at its inception in 2008; she was assigned to the case in the fall of 2010, about 1½ years ago. The history of the case was that V.H. and J.L. were placed with Kim in May 2008; C.D. was placed with Kim in June 2008; and J.D. was placed with Kim in September

³Kim had one adopted daughter, Brooke, who was 15 years old and Chinese. Kim also had biological children who were grown.

2009. Kim's adopted teenage daughter, Brooke, also lived in the home. Sanchez described Brooke's relationship with the four minors as "typical siblings"; they got along well.

¶ 16 Sanchez testified specifically regarding the four minors. Beginning with nine-year-old J.D., she suffered a kidney condition that required her to see a specialist every six months to one year. Kim made the appointments, took J.D. to the doctor, and watched for various symptoms, such as a urinary tract infection. J.D. was required to take medication for her kidney issue at different times. In school, J.D. struggled with reading and math, and Kim was able to get the teacher to work with her more closely. Kim also helped J.D. with her schoolwork at home and arranged for a family friend to help her with math. J.D. "really went to Kim for comfort," and when there was a licensing issue with Kim's significant other, Theo, J.D. was afraid that she would be removed from the home. The minors would also go to Kim for comfort after visits with respondent, especially on one occasion when respondent missed the visit.

¶ 17 Turning to seven-year-old V.H., she also had kidney issues, which manifested in "accidents" and frequent urinary tract infections. Kim was in charge of V.H.'s medication and doctor's appointments and made sure V.H. received whatever medical treatment was required. Kim also made sure V.H. attended counseling appointments for past sexual abuse until V.H. no longer needed counseling. There were no issues at school; V.H. was an excellent student who would excitedly show Kim her positive feedback from teachers. Like J.D., V.H. went to Kim for comfort.

¶ 18 As for four-year-old J.L., he received speech therapy weekly, and Kim worked with him to make sure he pronounced words correctly. J.L. referred to Kim as "Mama Kim," and "very much consider[ed] her mom." He did not remember living anywhere else.

¶ 19 Finally, the three-year-old boy, C.D., suffered a very mild case of cerebral palsy. He also had speech issues, which Kim and the school helped to improve, to the extent that he no longer needed an individual educational plan (IEP). C.D. was “really attached” and bonded to Kim. When Sanchez conducted home visits, he was usually sitting on her lap or right next to her, wanting to hug her.

¶ 20 Sanchez noted that the two older girls, J.D. and V.H., had expressed their wishes of where they wanted to live at the November 2011 hearing. As for the two younger boys, J.L. and C.D., they were too young to verbalize their preferences. Still, Sanchez thought that she knew where J.L. wanted to live, based on a visit to respondent that week. During the entire car ride to respondent’s house, J.L. said multiple times that he did not want to go but just wanted to go home, meaning Kim’s house. Sanchez thought that this behavior indicated where J.L. wished to live, and J.L. had expressed similar sentiments before.

¶ 21 Sanchez went on to testify that although Kim was Caucasian and the minors were African-American, the community they lived in had a mixture of races, including African-American families. The schools and church they attended were also diverse in terms of race. In addition, Kim’s adopted daughter, Brooke, was Chinese. Kim had friends of both Caucasian and African-American descent, and her significant other, Theo, was “a good strong [African-American] male role model for the kids.”

¶ 22 The minors enjoyed interacting with Theo, although Sanchez admitted that she had not witnessed their interactions except on the one or two occasions that he had been around when Sanchez visited. The minors appeared to really like Theo. Kim and the minors told Sanchez that Theo engaged in family outings such as going to the park, fishing, and watching movies. Sanchez admitted that Theo’s history did include some “barrable” offenses, which meant that DCFS could

not license him to be a foster parent or live in the home full-time. Sanchez did not have any concerns regarding these barrable offenses, however, because none of the offenses were aggressive or of a battery-type nature and because none of the minors had ever expressed any fears or concerns about Theo being in the home. Kim was also aware that she needed to be present whenever Theo was around the minors. The minors reported that Theo had spent the night at the house even though Kim knew that he was not allowed to do so, which caused DCFS to open a licensing investigation. Sanchez then discussed the matter with Kim, who signed a letter stating that she would not have Theo in the home before or after certain hours of the day. Since then, Sanchez had made unannounced, sporadic visits to the home and Theo had not been there. In addition, the minors had not reported any more violations.

¶ 23 Sanchez further testified that Kim's extended family accepted the minors and celebrated holidays and other events with them. The minors also maintained a relationship with respondent, although Sanchez did not believe that she could provide a safe and stable home for the minors any time in the near future. Sanchez's opinion was based on the following: as late as 2010, police reports indicated that respondent was still involved with drugs, which was the reason the minors were initially removed; respondent's disappearance for a period of time over the summer; respondent's behavior in hitting Sharnicca with a belt and causing bruises and marks, which resulted in Sharnicca and J.D. being removed from the home a second time; respondent's failure to sign consents for Sanchez to contact her probation officer until the month before; and respondent's continued issues with anger management despite completing anger management services.

¶ 24 Sanchez further noted that during the life of the case, there was a point when visits were moved outside of respondent's home because there was concern that people involved in drug use

would try to shoot respondent or inflict violence during the visits. For that reason, visits were temporarily moved to a hotel and to other locations. Sanchez opined that it was in the minors' best interests to be freed for adoption. Kim wished to adopt the four minors, and she supported the minors maintaining a relationship with respondent and Sharnicca.⁴

¶ 25 On cross-examination, Sanchez confirmed that Kim had been diligent about taking the minors to doctor appointments. When asked to what extent the agency had included respondent with respect to medical treatment and involvement, the State objected on the basis that it was a best interests hearing, not a fitness hearing. Counsel for CASA joined in the State's objection. Respondent's attorney countered that the testimony was "probative as to what's in the best interest of the children if [respondent] has not been included, even been given an opportunity to be included in things important as medical care for the children." The court sustained the objection.

¶ 26 Sanchez was then questioned about Theo and the nature of his barrable offenses. Sanchez testified that "a couple of them were drug offenses"; she did not remember what the other ones were. Respondent's attorney asked Sanchez why she had no concern over the minors' safety with Theo if she could not remember what offenses he had committed. Sanchez explained that she had become aware of Theo's offenses in the past but simply could not remember them now. They were not aggressive, violent crimes. Sanchez was aware that Kim had violated the agency's policy on two occasions by having Theo spend the night. Although the licensing procedure required Kim to be present when Theo was around the minors, Sanchez reiterated that she did not fear for the minors'

⁴Sadly, Sharnicca was on the run throughout most of these proceedings, and she bounced from placement to placement. At the time of the best interests hearing, she was pregnant and had been arrested on a drug possession charge.

safety. If Kim adopted the minors, she would be free to associate with Theo or whomever, and the agency would have “no further control over that.”

¶ 27 During cross-examination, Sanchez was also questioned about respondent’s visits with the minors being moved to a hotel. Sanchez admitted that she did not have any details about those visits because they occurred before she became the caseworker. Regarding the incident in which respondent hit Sharnicca with a belt, Sanchez knew that Sharnicca had recanted her version of events. However, the report was still indicated by DCFS investigators. The incident occurred before Sanchez inherited the case, and the file contained a letter written by Sharnicca saying that respondent had not hit her.

¶ 28 Respondent never had a positive drop from actually taking a chemical test. Her positive drops resulted from failures to appear that were considered positive. After two unsuccessful attempts at drug treatment, respondent successfully completed drug treatment. Sanchez did not know if respondent still needed treatment, but she believed that respondent still needed to attend meetings. Respondent had submitted meetings sheets for Alcoholics Anonymous (AA) and Narcotics Anonymous (NA). Sanchez was not sure if respondent had resolved the issue of substance abuse, which is the reason the case had originally come into care. She did not have any current information on that subject.

¶ 29 Sanchez was asked about respondent’s visits with the minors. According to Sanchez, respondent lavished the minors with extravagant gifts at every visit. She provided them with meals and involved extended family as much as possible. Respondent, in her own way, showed love for the minors at the visits.

¶ 30 The first witness to testify on behalf of respondent was Rachel Phillips, her probation officer. Phillips had been respondent's probation officer since April 2007. Phillips' relationship with respondent did not start out well, but respondent had done very well since completing treatment. Respondent attended NA meetings on a regular basis, and Phillips had no concern that she was currently using drugs. During probation, there were a couple of occasions when respondent was embarrassed about relapses between June and September 2011. Respondent and Phillips worked through those relapses. Phillips had not required respondent to provide a urinalysis since August 2011 because respondent was honest about relapsing. Phillips identified written documentation of respondent's attendance at NA meetings.

¶ 31 On cross-examination, Phillips testified that in 2008, a petition to vacate probation was filed against respondent due to her use of drugs. Respondent was successfully discharged from substance abuse treatment in 2009, and she had been active in NA meetings since that time. Phillips admitted that there were at least two relapses since her 2009 discharge from treatment: one involving the two police report incidents in 2010, and the other involving a three-month period in 2011.

¶ 32 The next witness, Dana Page, was familiar with respondent through NA meetings and church. Respondent attended NA meetings on a regular basis for four years. For one or two years, she held a secretary position for one of the home groups, which entailed scheduling business meetings, keeping the group updated on upcoming events, and posting reports for various things. Respondent was candid and honest with the group. On cross-examination, Page explained that there were official and unofficial NA meetings. Unofficial meetings were not documented and would occur if a member relapsed and then reached out for help. These meetings were more intense and followed the official meetings. Respondent continued to be engaged in meetings when she relapsed.

¶ 33 Respondent testified on her own behalf as follows. Respondent admitted that she had participated in “some” services but not all services. She had attended inpatient and outpatient drug treatment on five occasions and successfully completed all but one program. Respondent engaged in drug treatment, counseling, joint counseling with Sharnicca, drug drops, and anger management; she was cooperative. NA meetings had been a constant in respondent’s life, despite her relapses. She intended to continue NA meetings and had remained drug-free since September 2011.

¶ 34 When respondent’s attorney questioned her about a service plan in which she was rated unsatisfactory for not engaging in counseling with Sharnicca, the State objected on the basis that Sharnicca’s case was not at issue before the court. Respondent’s counsel replied as follows:

“Judge, the rated service plan stating that [respondent] was not successful was as a result of [respondent] not complying with the recommendations of the department. I believe it goes to the best interest of the four children who we are here in court for because it shows a pattern that the department did not make all efforts possible to maintain engagement of my client in services.”

The State responded that such evidence may have been relevant for the fitness hearing but was not relevant for a best interests hearing. The court sustained the objection.

¶ 35 Respondent went on to testify regarding her visitation with the four minors. Visits had been weekly, with a couple of overnight visits, until 2009, when the visits became monthly. C.D. had never lived with her and during visits, he “kind of stayed glued to another case aide” because he “did not fully know” her; the visits were the only opportunity she had to bond with C.D. As for V.H., V.H. loved respondent “no matter what,” and respondent loved her “no matter what.” V.H. was her “smart child,” and all the minors had their own labels. V.H. had lived with respondent for four years

before she was removed, and they were bonded. Moving on to J.L., he was the “man of the house” because he was the first-born son. Finally, J.D. was the “quiet one” who did not always share her feelings.

¶ 36 Respondent felt that it was in the minors’ best interests to live with her because she deserved a chance and because she was their mother. According to respondent, her past was her past, but she believed that she deserved a future. It was in the minors’ best interests to bond with each other and with her.

¶ 37 As a support system, respondent had her biological family and NA family to help her. Prior to the case coming into care, respondent admitted that the minors were not close with the extended family, due to “fear.” She then denied having her nephew (the minors’ cousin), the one who had allegedly sexually abused the girls, around during visits with the minors. On rebuttal, however, Sanchez testified that respondent and her mother had repeatedly asked to have that nephew “re-included in visits.” Respondent felt that the minors should be raised by their biological family, including the extended family of grandparents, aunts, uncles, cousins, nieces, and nephews. Respondent admitted that her significant other, Ricky Lane, had obtained two orders of protection against her for domestic violence. She also admitted that the minors had a bond with Kim.

¶ 38 On cross-examination, respondent was asked about the minors’ special needs. J.D. had proteinuria, and “the struggling with math” she had just heard about “on the stand.” Respondent knew that V.H. had bladder spasms, but this was the first she had heard about an issue with V.H.’s kidneys. J.L. had speech issues, and as for C.D., respondent had never seen any paperwork indicating that he had a mild case of cerebral palsy.

¶ 39 When asked if she attended doctor's appointments throughout the life of the case, respondent replied that she did in the beginning. However, the subsequent appointments were scheduled at 6 or 7 a.m., and she did not drive or have a driver's license to be able to attend those appointments. Respondent's current transportation depended on her getting rides because she did not drive or have a driver's license. Transportation was not at issue, however, because she could get a ride when she needed one. Respondent said that she missed the early morning doctor appointments because Ricky worked the third shift. As far as school appointments, respondent answered that she went "in the past with [J.D. when she was] in [Dreska's] foster home; [V.H.] in [Kim's] home; [J.L.], when he was doing his developmental things, I just did a briefing with the staff there. Other than that, that was probably the last time, probably between 2009 and 2010."

¶ 40 Next, Kim, the foster parent, was allowed to make a statement to the court. Kim did not see her relationship with the minors any differently than her relationship with her biological children; they had a very close and loving bond. Still, Kim believed that it was important for the minors to maintain a relationship with respondent and respondent's extended family. To maintain the minors' cultural and racial heritage, Kim explained that she lived in a diverse community and involved the minors in a multi-cultural church and school. According to Kim, the school recognized many holidays and traditions of other cultures. Kim also had friends who were Caucasian and African-American, as well as books and toys of both cultures. Kim felt the minors deserved stability and positive encouragement with their schooling. The older minors had expressed a preference to remain with her yet maintain a bond with respondent.

¶ 41 The court rendered its decision on February 15, 2012. It found that the State had proven by a preponderance of the evidence that it was in the minors' best interests that respondent's parental rights be terminated. The court changed the permanency goal to that of adoption.

¶ 42 Respondent timely appealed.

¶ 43 II. ANALYSIS

¶ 44 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.* ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the minors' best interests. *Id.* Respondent stipulated to one count of unfitness, and that finding is not at issue on appeal. Rather, it is the best interests portion of the proceedings that respondent challenges.

¶ 45 Under the Act, the best interests of the minors is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 46 Respondent first argues that the trial court improperly excluded certain evidence by sustaining the State's objections, thus denying her a fair best interests hearing. The State responds that this argument is forfeited, and we agree that these evidentiary issues are procedurally defaulted because respondent failed to raise them in the trial court. See *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 29 (the argument was procedurally defaulted because the respondent failed to raise the issue in the trial court); see also *In re M.W.*, 232 Ill. 2d 408, 430 (2009) (the same forfeiture principle of raising errors before the trial court, thereby allowing the court to correct its errors, applies in

proceedings under the Juvenile Court Act of 1967). Although respondent was required to raise these evidentiary issues in the trial court to preserve them for review, forfeiture is a limitation on the parties and not this court's jurisdiction (*In re C.J.*, 2011 IL App (4th) 110476, ¶ 22). Given the importance of a parental rights determination, we relax the forfeiture rule in this case and consider respondent's argument. See *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30 (this court relaxed the forfeiture rule given that termination of parental rights affects a fundamental liberty interest).

¶ 47 Respondent points to two instances in which she argues the trial court improperly sustained the State's objections and barred evidence relevant to the best interests of the minors. The first instance occurred when respondent's attorney attempted to elicit testimony from caseworker Sanchez regarding to what extent the agency had included respondent in medical treatment for the minors. The State objected on the basis that it was a best interests hearing, not a fitness hearing. Counsel for respondent responded that the testimony was probative of whether respondent was given an opportunity to be included in medical care for the minors.

¶ 48 The second instance occurred during the direct examination of respondent, when her attorney asked if there was a service plan in which she was rated unsatisfactorily for not engaging in counseling with Sharnicca. The State objected on the basis that Sharnicca was not a minor at issue in that hearing. Respondent's attorney responded that the evidence was relevant to show a pattern that the agency "did not make all efforts possible to maintain" respondent's engagement in services. The State again posited that such evidence was relevant for the unfitness stage of the proceedings, but not the best interests stage. According to respondent, the testimony sought to be elicited invoked at least two of the best interest factors set forth in the Juvenile Court Act of 1967 (Act); namely, the health of the minors and where the child actually feels love. See 705 ILCS 405/1-3(4.05) (West 2012).

¶ 49 Regarding the first claimed error, respondent essentially argues that the State used Kim's actions in treating the minors' medical needs to bolster its case yet prevented respondent from doing the same. We disagree that respondent was prevented from presenting evidence in this regard, because she did in fact testify regarding her involvement (or lack thereof) in the minors' medical issues. The objection that the court sustained did not pertain to respondent's actions regarding the minors' medical needs; it pertained to DCFS's efforts to facilitate respondent's involvement in the minors' medical treatment. This is a critical distinction because whether DCFS made reasonable efforts is not a proper focus of a best interests hearing. See *In re William H.*, 407 Ill. App. 3d 858, 869 (2011) (it is the best interest analysis that is key, not a finding regarding whether reasonable efforts were employed by the agency involved in the cause). Such evidence is relevant in a temporary custody hearing or a fitness hearing (see 705 ILCS 405/2-10 (West 2012) (in temporary custody hearings, the court shall require documentation from DCFS as to the reasonable efforts that were made to prevent or eliminate the necessity of removal of the minor from his or her home or the reasons why no efforts reasonably could be made to prevent or eliminate the necessity of removal), but not in a best interests hearing (see *In re Austin W.*, 214 Ill. 2d at 49 (a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors)).

¶ 50 The same is true for respondent's second claimed error. By asking respondent about her unsatisfactory rating based on her failure to engage in counseling with Sharnicca, respondent's attorney was attempting to show a pattern that the agency "did not make all efforts possible to maintain" respondent's engagement in services. Again, the efforts of DCFS to engage respondent in counseling with a minor, especially one who is not a party of the best interests hearing, are not the focus of a best interests hearing. Because the evidence that respondent sought to elicit focused on

the efforts of DCFS rather than the minors' actual health or where the minors felt love, as respondent claims, it was properly excluded.

¶ 51 Respondent's second argument is the trial court's decision terminating her parental rights was against the manifest weight of the evidence. A reviewing court will not disturb the trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The reason for this deferential standard is that the trial court is in a superior position to assess the witnesses' credibility and weigh the evidence than we are. *Id.*

¶ 66. A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re William H.*, 407 Ill. App. 3d at 866.

¶ 52 The Act sets forth the factors to be considered whenever a best interest determination is required, and they are to be considered in the context of the minors' ages and developmental needs:

“(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 such 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;
- (j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2012).

Also relevant in a best interests determination is the nature and length of the minors' relationships with their present caretaker and the effect that a change in placement would have upon their emotion and psychological well-being. *In re William H.*, 407 Ill. App. 3d at 871.

¶ 53 Respondent challenges the State's evidence at the best interests hearing in several regards. Before addressing respondent's specific arguments, we explain generally why the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. Overall, the case spanned from March and June 2008, when the neglect petitions were filed, to February 2012, when the best interests hearing was completed. Of the four minors, the two younger boys either did not remember living with respondent or had never lived with her at all. Specifically, C.D. had never lived with respondent and was placed with Kim in June 2008. The older boy, J.L. had lived with respondent for about one year before being placed with Kim and did not remember living with respondent. Sanchez testified that just that week, J.L. did not want to visit respondent but simply wanted to go home, meaning Kim's house. The two older girls had a strong bond with respondent but expressed a desire to remain with Kim. The oldest girl, J.D., was six years old when she was originally removed from respondent. J.D. was then placed with Kim in September

2009 after a failed return-home attempt with respondent. If she could live anywhere, J.D. said she would want to live with Mama Kim because she was “very outgoing and nice.” Finally, V.H. was nearly four years old when she was removed from respondent’s care, and she had been placed with Kim since May 2008. V.H. loved both Kim and respondent, but wanted to continue living with Kim, which was “awesome.”

¶ 54 The minors were doing well in Kim’s care, and she was diligent about addressing their medical and educational needs. Kim also honored the minors’ African-American heritage by exposing them to a diverse community, church, and school, and by giving them culturally appropriate books and toys. She wished to adopt all four minors, while at the same time expressing a commitment to maintaining the minors’ relationship with respondent and their older sister, Sharnicca. Though the minors were attached to respondent, visits never progressed beyond two-hour supervised, weekly visits and a few overnight visits. As respondent admitted, the visits had not increased but had become monthly. There was also evidence that respondent had relapsed as recently as 2011, and two drug-exposed minors was the reason the case had come into care. Sanchez opined that the minors should be freed for adoption, and that respondent would not be able to provide a safe and stable home in the near future. Presented with this record, we cannot say that the trial court’s decision was against the manifest weight of the evidence.

¶ 55 Moreover, none of respondent’s specific contentions of error are persuasive. First, respondent argues that Sanchez did not recall details and was only “marginally familiar” with the facts of the case. Respondent’s characterization of Sanchez is inaccurate. Sanchez inherited the case from another caseworker and obviously could not testify in detail about events that occurred prior to her involvement. For anything that transpired before the 18-month period in which she assumed the case, Sanchez had to rely on whatever DCFS reports were filed. Still, Sanchez offered specific

testimony for the time frame in which she was involved regarding the minors' relationship with Kim and respondent, and regarding what was in their best interests. And, contrary to respondent's assertion, Sanchez's testimony that respondent lavished the minors with gifts during visits was not "unsubstantiated." Sanchez was present during the visits between respondent and the minors and testified as to what she observed.

¶ 56 Similarly, respondent's argument that Sanchez was somehow unfamiliar with the case details because she did not know whether respondent's substance abuse issues had been resolved lacks merit. Given respondent's history, which included two unsuccessful attempts at drug treatment, one successfully completed drug treatment, and at least two relapses in 2010 and in 2011, Sanchez could not opine as to whether respondent still needed treatment. Sanchez did testify that she believed respondent still needed to attend NA meetings. As for Sanchez's statement that she did not have any current information as to whether respondent had resolved her substance abuse issues, Sanchez was likely referring to respondent's failure to sign the consent forms to allow communication with the probation officer. Respondent did not sign the form until the month prior to the best interests hearing. While respondent argues that her failure to sign the form was a failure of procedure and immaterial to her compliance with services, we reiterate that the focus of a best interests hearing is on the minors in relation to the factors set forth in the Act. Respondent stipulated to one ground of unfitness, and her compliance or noncompliance with services at the best interests phase was only relevant in terms of the best interests of the minors.

¶ 57 Respondent next argues that Sanchez did not know the nature of Theo's barrable offenses, which she acknowledged could have involved violence. Yet Sanchez did not testify, as respondent asserts, that his barrable offenses could have involved violence. Rather, Sanchez testified that a couple of Theo's offenses were drug offenses, but she did not remember what the others were.

Sanchez explained that she had previously learned what his offenses were but simply could not remember them at the time of the hearing. She did remember, however, that they were *not* aggressive, violent crimes. Therefore, respondent did not testify that Theo's offenses in particular could have involved violence. Instead, Sanchez was asked by respondent's attorney if her background exposed her to individuals with a history of drug offenses, to which she replied yes. Counsel's next question was whether "sometimes the attendant circumstances involving illicit drugs can involve violence," and Sanchez answered "[t]here's that possibility." Sanchez's testimony in this regard was based on general experience and not Theo, specifically.

¶ 58 Finally, respondent argues that the State took the position that only official NA meetings were "recognized," even though the full range of a parent's conduct should be considered. The State questioned Page regarding the difference between official and unofficial meetings, and she explained that unofficial meetings were not documented and would occur if a member relapsed and then reached out for help. Though the State argued that only official NA meetings should be recognized, the trial court heard both respondent's and Page's testimony about respondent's attendance at unofficial meetings. Thus, respondent was not prohibited from presenting evidence of the "full range" of her conduct, and the court was free to weigh that evidence as it saw fit.

¶ 59

III. CONCLUSION

¶ 60 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County terminating respondent's parental rights.

¶ 61 Affirmed.