



¶ 6 On March 10, 2008, the State filed a petition to adjudicate Ke.M. (born July 12, 2007) a "neglected minor" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)) and to make her a ward of the court. Section 2-3(1)(b) provided that "[t]hose who [were] neglected include[d] \*\*\* any minor under 18 years of age whose environment [was] injurious to his or her welfare." Count I alleged that Ke.M.'s environment was injurious to her welfare in that she was "expose[d] \*\*\* to domestic violence" when she resided with respondent and her mother, Lutec Johnson. Count II alleged that Ke.M. was "expose[d] \*\*\* to substance abuse" when she resided with them.

¶ 7 *2. The Adjudicatory Hearing*

¶ 8 In the adjudicatory hearing on June 4, 2008, respondent appeared—"in custody," according to the docket entry. Johnson also appeared. The two parents, both of whom were represented by attorneys, stipulated to count I of the petition for adjudication of neglect. After admonishing the parents, the trial court accepted their stipulation and found in the State's favor and against the parents on count I. The court dismissed count II.

¶ 9 *3. The Dispositional Hearing*

¶ 10 A dispositional hearing report, filed on June 25, 2008, revealed that "[o]n January 1, 2008, a report was made alleging domestic violence between Ms. Johnson and Mr. Marrisette with six month old [Ke.M.] present. Mr. Marrisette had bite marks on his arm from where Ms. Johnson had bit him." Johnson told an investigator this was not the first incident of domestic violence between respondent and herself and that she had stayed at a battered-women's shelter in November 2007. See *In re D.L.*, 226 Ill. App. 3d 177, 187 (1992) ("Although hearsay and other types of incompetent evidence may not be admissible at the adjudicatory hearing, they are admissible at the

dispositional hearing.").

¶ 11 On August 29, 2008, the Department of Children and Family Services (DCFS) filed an addendum to its dispositional report. According to this addendum, DCFS had received a police report stating that on July 31, 2008, the Champaign police were dispatched to the house where Johnson lived with her mother, Tina Mullins. A door and a window had been damaged. The addendum says: "Tina reports that she did not see this incident, but referred to a friend who witnessed Keith Marrisette crawling through a window to get into Lutece's house." A police officer spoke with this witness, who, according to the addendum, made the following statement:

"A witness reluctantly reported that as she was walking by Tina's house, she overheard, a female and male, who she knew to be Lutece and Keith, arguing in the house. It was reported [that] she saw a broken window, but did not know who or how it was broken. A short time later, Lutece and Keith were seen leaving the house. She reports Keith was holding Lutece and pulling her out of the house. This witness also reports seeing Keith choke Lutece, before leaving the area."

¶ 12 Both respondent and Johnson denied, however, that their altercation had been physical, and the police saw no sign of physical injury on Johnson. She and respondent insisted they merely had argued. The argument was over a plan to take Ke.M. to Mississippi with Johnson's mother and grandmother, a plan that respondent opposed.

¶ 13 In a dispositional hearing on September 2, 2008, the trial court found it would be in the best interests of Ke.M. to adjudicate her to be a neglected minor and to make her a ward of the



petition, and respondent stipulated to counts I, II, IV, and V. After admonishing the parents, the trial court accepted the stipulations and entered judgment on them. By agreement, the court dismissed count III.

¶ 19 *3. The Dispositional Hearing*

¶ 20 a. The Home and Background Report

¶ 21 On March 19, 2010, DCFS filed a home and background report for consideration in the dispositional hearing scheduled for March 25, 2010. According to the home and background report, DCFS had received a police report concerning Ke.M. and K.M. The Champaign police were called to Johnson's residence 3 times within a 24-hour period, beginning at shortly after midnight on December 7, 2009, due to boisterous altercations between respondent and Johnson. During one of these visits by the police, Johnson told them that respondent had "pulled what appeared to be a gun out of his pocket and began yelling at her for calling the police earlier that evening."

¶ 22 Johnson told the police that the children were in her brother Brandon's bedroom during the argument between herself and respondent. Brandon told the police, however, that the children were in the room with their parents during the argument.

¶ 23 The upshot of this episode appears to be that respondent went to prison. According to the home and background report, he currently was incarcerated for violating an order of protection forbidding him to have any contact with Johnson. He went to prison for this offense on December 28, 2009, and was scheduled for mandatory supervised release on April 28, 2013.

¶ 24 He also was charged with obstruction of justice and destroying evidence. Those charges still were pending at the time of the home and background report.

¶ 25 b. The Dispositional Hearing

¶ 26 In the dispositional hearing on March 25, 2010, the trial court found it was in the best interests of K.M. to adjudicate him to be a neglected minor and to make him a ward of the court. This time, the court found both parents to be unfit, for reasons other than financial circumstances alone, to care for, protect, train, and discipline K.M. and that K.M.'s health, safety, and best interests would be jeopardized if he remained in their custody. The court found that respondent had "continuous and repeated offenses of violence \*\*\* against respondent mother." Therefore, the court adjudicated K.M. to be neglected and made him a ward of the court, and the court removed custody and guardianship of K.M. from his parents and awarded custody and guardianship to the guardianship administrator of DCFS.

¶ 27 The dispositional order forbade respondent to have any visitation with K.M. until further order of the court. The court concluded that any contact by respondent with K.M. would "create[] a substantial risk of physical and/or emotional harm to the minor even if the contact [were] supervised and even if it took place during a time when [respondent] was incarcerated."

¶ 28 c. The Appeal

¶ 29 Respondent appealed the dispositional order, arguing that its no-visitation provision was effectively an order of protection entered without first affording him the process to which he was entitled under section 2-25(5) of the Juvenile Court Act of 1987 (705 ILCS 405/2-25(5) (West 2008)). *In re K.M.*, No. 4-10-0259, slip order at 1 (August 17, 2010) (unpublished order under Supreme Court Rule 23). We concluded that section 2-23(3)(iii) (705 ILCS 405/2-23(3)(iii) (West 2008)) authorized the trial court to modify visitation, and hence we affirmed the trial court's judgment. *Id.* at 9.

¶ 30 C. The Permanency Review Hearing of May 4, 2010

¶ 31

1. *The Permanency Review Report*

¶ 32 On April 28, 2010, DCFS filed a permanency review report for consideration in the permanency review hearing scheduled for May 4, 2010. According to this report, respondent still was imprisoned in the Shawnee Correctional Center, serving a sentence for violating an order of protection.

¶ 33 Because of his imprisonment, respondent had not completed any services. The worker, however, was going to speak with him about services that were available in prison and was going to ask him to sign a document authorizing prison officials to release information to DCFS.

¶ 34 Respondent was "offered one visit while being held at the Danville Correctional Facility," but upon arriving there with the children, the worker learned that respondent had been taken to Champaign County for a court hearing. Consequently, the visitation did not occur. Later, on March 25, 2010, the trial court suspended all visitations between respondent and his children.

¶ 35

2. *The Permanency Review Hearing*

¶ 36 At the conclusion of the permanency review hearing on May 4, 2010, the trial court continued custody and guardianship with DCFS and kept its previous orders in force. The court found that respondent had not made reasonable and substantial progress. Because Johnson, however, had made such progress, the court kept "return home" as the permanency goal.

¶ 37

D. *The Permanency Review Hearing of September 24, 2010*

¶ 38

1. *The Permanency Review Report*

¶ 39 On September 21, 2010, DCFS filed a permanency review report for consideration in the permanency review hearing scheduled for September 24, 2010. According to this report, respondent still was serving a sentence of imprisonment for violating an order of protection, and his

expected date of release now was January 28, 2013.

¶ 40 During his confinement in Shawnee Correctional Center, respondent successfully completed a men's violence program on July 29, 2010, and he successfully completed a coping skills program on August 11, 2010.

¶ 41 *2. Permanency Review Hearing*

¶ 42 At the conclusion of the permanency review hearing on September 24, 2010, the trial court found that respondent had made reasonable efforts, though not reasonable progress. The court gave DCFS discretion to allow supervised visitation. The permanency goal was still "return home."

¶ 43 *E. The Motion To Terminate Parental Rights*

¶ 44 On March 16, 2011, the State filed a motion to terminate respondent's and Johnson's parental rights to Ke.M. and K.M. Counts I, II, and III of the motion alleged that respondent had failed to make reasonable progress. See 750 ILCS 50/1(D)(m)(iii) (West 2010). Count IV alleged he had failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. See 750 ILCS 50/1(D)(b) (West 2010). Count V alleged he was deprived. See 750 ILCS 50/1(D)(i) (West 2010). (Some of these counts were directed at Johnson, too, but she is not a party to this appeal.)

¶ 45 *F. The Permanency Review Hearing of March 18, 2011*

¶ 46 *1. The Permanency Review Report*

¶ 47 On March 18, 2011, DCFS filed a permanency review report for consideration in the permanency review hearing scheduled for March 18, 2011. The report noted that respondent had kept in contact with the worker but that his letters "are often inappropriate and he often tends to threaten Catholic Charities staff for their decisions." Respondent "has been reminded his letters are

attached to the court reports[,] and [he has been] asked to use more appropriate language when writing."

¶ 48 The letters attached to the report do not appear to be threatening (although some parts of the letters seem to have been covered when they were photocopied). The language, though, is not always polite and decorous. Respondent clearly is irate about not getting any updates about his children ("Please Ms. Motley let me know what popin!") and about not receiving any visits from them. Again and again he begs for photos of the children. He repeatedly apologizes for being "disrespectful" and for his aggrieved tone, but he is "real pissed off"—"super mad"—because he does not like being "played with" when it comes to his kids, whom he "loves to death." "So please tell me what I got to do for them to come visit me," he writes. "Please contact me today!"

¶ 49 The permanency review report observed that respondent had been transferred from Shawnee Correctional Center to Pinckneyville Correctional Center, arriving there on December 29, 2010. The counselor at Pinckneyville, a man named Heartman, informed the worker that respondent was in segregation. Heartman did not know why respondent had been transferred to Pinckneyville and why he was in segregation, but he assumed it was because of disciplinary problems at Shawnee.

¶ 50 DCFS was leery about bringing the children to visit respondent. The permanency review report says:

"During the court hearing on September 27, 2010, Judge Kennedy gave discretion to DCFS to allow supervised visitation between Mr. Marrisette and his children. On December 14, 2010[,] this worker along with supervisor Kimberly Seward discussed visitation with Mr. Marrisette. Ms. Seward made a critical decision

to continue to suspend the visits between Mr. Marrisette and his children due to the long distance drive, the young age of the children, and Mr. Marrisette's aggressive language in his letters. Paperwork was completed and sent to Mr. Marrisette."

We note it is 179 miles between Champaign and Pinckneyville, in contrast to 75 miles between Champaign and Vienna, where the Shawnee Correctional Center is located.

¶ 51 *2. The Permanency Review Hearing*

¶ 52 At the conclusion of the permanency review hearing on March 18, 2011, the trial court ordered that custody and guardianship would remain with DCFS. Given the motion to terminate parental rights, the court deferred findings as to the parents' efforts and progress, and the court changed the permanency goal to substitute care pending determination of that motion.

¶ 53 *G. The Fitness Hearing*

¶ 54 *1. Testimony of Ashley Deckert*

¶ 55 On June 7, 2011, the trial court convened an adjudicatory hearing—a fitness hearing—on the State's motion to terminate parental rights. The State called a DCFS caseworker, Ashley Deckert, who testified that in July 2008, she interviewed respondent in preparation for writing a permanency review report. Respondent told her he occasionally used cannabis and that the last time he used it was 45 days ago. He did not think his use of cannabis was a problem.

¶ 56 As of July 2008, when Deckert wrote the permanency review report, respondent had visited Ke.M. twice (Deckert was assigned to prepare the report in Ke.M.'s case). The first visit occurred in a park. This visit was supposed to last an hour, but it ended after only 40 minutes. The second visit occurred in a juvenile detention center, where respondent then was confined.

¶ 57 While respondent was in prison, Deckert sent him forms to sign and return so that DCFS could receive information about him from the Illinois Department of Corrections. He never returned the forms.

¶ 58 When respondent was released from the youth division of the Illinois Department of Corrections, Deckert made several referrals for him. One referral was to the "Change program." He was discharged from that program due to lack of attendance.

¶ 59 Respondent did not attend visitation from April 20 to May 18, 2009, after being released from prison. From August 2009 through December 2009, he visited the children only once: on December 18, 2009, for an hour. Visits typically were offered every week.

¶ 60 *2. The Testimony of Stephanie Reid*

¶ 61 The State next called Stephanie Reid, a caseworker at Catholic Charities, who testified that no unknown father had come forward claiming that Ke.M. and K.M. were his children. She also testified that after she became respondent's caseworker in October 2010, she received letters from him while he was in prison. Toward the beginning, she received letters from him every couple of months, but lately the letters had grown more frequent. He wrote about visitation and "would ask a lot of questions just regarding the case and how the kids were doing."

¶ 62 *3. The State's Request To Admit Facts*

¶ 63 The State had served upon respondent a request to admit facts, and in a previous hearing, the trial court held that the facts were admitted. In the fitness hearing, the court again acknowledged that the facts in the request were admitted. Those facts were as follows:

"1. You are the father of [Ke.M.], born July 12, 2007 and  
[K.M.], born April 27, 2009.

2. In March 2007, you dropped out of high school after being suspended. (See dispositional hearing report, dated June 19, 2008.)

3. As of June, 2008, you were living with your grandmother and uncle. (See dispositional hearing report, dated June 19, 2008.)

4. In June, 2008, you told your case worker that you occasionally used marijuana. (See dispositional hearing report, dated June 19, 2008.)

5. In June, 2008, you told your case worker that your last use of marijuana was approximately forty-five days ago. (See dispositional hearing report, dated June 19, 2008.)

6. In June, 2008, you told your case worker that you did not think that your marijuana use was a problem. (See dispositional hearing report, dated June 19, 2008.)

7. As of August 20, 2008, you were residing with your grandmother and your aunt. (See supplemental dispositional hearing report, dated August 2, 2008.)

8. As of December 9, 2008, you were incarcerated at the Illinois Youth Center. (See permanency hearing report, dated December 9, 2008.)

9. As of December 9, 2008, you were unemployed due to your incarceration. (See permanency hearing report, dated December 9, 2008.)

10. On October 8, 2008, you were terminated from the CHANGE Program, at Cognition Works due to lack of attendance. (See permanency review hearing report, dated December 9, 2008.)

11. As of December 9, 2008, Shawna Abner, your individual therapist, reported that prior to your incarceration your attendance in counseling was very sporadic. (See permanency review hearing report, dated December 9, 2008.)

12. As of December 9, 2008, Shawna Abner, your individual therapist, reported that prior to your incarceration Shawna Abner wanted to close out your case unsuccessfully due to your lack of attendance. (See permanency hearing report, dated December 9, 2008.)

13. Since September 2008, you have only visited with [Ke.M.] on two occasions. (See permanency hearing report, dated December 9, 2008.)

14. As of March 3, 2009, you were incarcerated at the Illinois Youth Center. (See permanency hearing report, dated March 3, 2009.)

15. As of March 3, 2009, you had not returned consents for release of information to your case worker which has impacted your visitation of [Ke.M.] (See permanency hearing report, dated March 3, 2009.)

16. As of September 8, 2009, you were residing with your grandmother. (See permanency hearing report, dated September 8, 2009.)

17. As of September 8, 2009, you had not shown your case worker proof of employment. (See permanency hearing report, dated September 8, 2009.)

18. On May 14, 2009, you were re-referred to Cognition Works for domestic violence counseling. (See permanency hearing report, dated September 8, 2009.)

19. On July 15, 2009, you were discharged from the CHANGE program due to lack of attendance. (See permanency hearing report, dated September 8, 2009.)

20. On July 27, 2009, you were re-referred again to Cognition Works for domestic violence counseling. (See permanency hearing report, dated September 8, 2009.)

21. As of September 8, 2009, you had not arranged to complete an intake assessment with Cognition Works. (See permanency hearing report, dated September 8, 2009.)

22. From August 3, 2009, until September 8, 2009, you had not arranged any visits with your children. (See permanency hearing report, dated September 8, 2009.)

23. After your release on bond in October, 2009, you did not

contact your case worker until December 17, 2009. (See re-dispositional hearing report, dated December 30, 2009.)

24. Prior to December 30, 2009, you were unsuccessfully discharged from individual counseling due to lack of attendance. (See re-dispositional hearing report, dated December 30, 2009.)

25. On December 17, 2009, you reported to Heidi Gulbrandson that you had been abusing multiple substances and in your words were using 'anything that you could get your hands on.' (See re-dispositional hearing report, dated December 30, 2009.)

26. From August 29, 2009, until December 30, 2009, you had not participated in any visits with your children. (See re-dispositional hearing report, dated December 30, 2009.)

27. As of March 19, 2010, you were incarcerated in the Illinois Department of Corrections. (See home and background report, dated March 19, 2010.)

28. As of April 28, 2010, you were incarcerated in the Illinois Department of Corrections. (See permanency hearing report, dated April 28, 2010.)

29. As of September 21, 2010, you were incarcerated in the Illinois Department of Corrections. (See permanency hearing report, dated September 21, 2010.)

30. As of March 14, 2011, you were incarcerated in the

Illinois Department of Corrections. (See permanency hearing report, dated March 14, 2011.)

31. As of March 14, 2011, you were in segregation in the Illinois Department of Corrections. (See permanency hearing report, dated March 14, 2011.)"

¶ 64 *4. Judicial Notice of Previous Convictions*

¶ 65 At the State's request, the trial court took judicial notice of the following cases: Nos. 08-CM-86, 08-CF-996, 09-CF-1519, 09-CF-2163, and 09-CM-1645. The record does not appear to reveal much about these cases other than respondent's being a criminal defendant in all of them—and obviously the CF cases are felony cases, and the CM cases are criminal misdemeanor cases. (We infer, though, that because the court ultimately found respondent to be "depraved," he was convicted in these cases. See *In re Marriage of Baniak*, 2011 IL App (1st) 92017, ¶ 32 ("[W]e must resolve any doubts which may arise from the incompleteness of the record against the appellant and presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis".))

¶ 66 *5. Respondent's Testimony*

¶ 67 The State rested, and respondent took the stand. He testified he was imprisoned in Pinckneyville and that his release date was November 31, 2012, although he could be released earlier if he accumulated more good-conduct credits (he already had earned 45 days of good-conduct credit). He had availed himself of every program that the Department of Corrections offered. At Pinckneyville, he had participated in Narcotics Anonymous, adult basic education, and anger management classes. At Shawnee, he had completed a coping skills program and a men's violence

program.

¶ 68 While in prison, he had been trying to keep in contact with Deckert and Reid, both by letter and by phone. He had been writing them every month.

¶ 69 He intended to participate in further programs (by which he would earn more good-conduct time), and once he was released, he intended to be a good father to his children.

¶ 70 *6. The Trial Court's Decision*

¶ 71 The trial court found respondent to be an "unfit person" as alleged in count I, count II, count III, court IV (but only as to the element of responsibility), and count V of the motion to terminate parental rights. The court also found Johnson to be an unfit person.

¶ 72 *H. The Best-Interest Hearing*

¶ 73 *1. The Best-Interest Report*

¶ 74 *a. Ke.M.*

¶ 75 On August 3, 2011, DCFS filed a best-interest report. According to the report, four-year-old Ke.M. and her brother, two-year-old K.M., lived with a relative for over a year, but they were removed from the relative's home because of two hotline calls. Now they are living in a traditional foster home in Savoy.

¶ 76 Ke.M. is doing well in this foster home, although at first she had some behavioral problems. She refused to do as she was told, she ate "items on the floor," she was aggressive, and she made herself throw up. These behaviors, however, have subsided owing to the beneficial influences of a structured home life and a daycare, Chesterbrook Academy, that uses a rewards system for good behavior. Ke.M. also attends play therapy at ABC Counseling, to help her get over the domestic violence to which she has been exposed.

¶ 77 Ke.M. is healthy, although she has mild hearing loss in both ears, more in her right ear than in her left. A doctor said this could affect her speech.

¶ 78 Initially, the foster parents were considering adopting Ke.M. and K.M. if parental rights were terminated, but because of "recent personal issues," they have decided not to do so. The foster parents are expecting a child, and it is a high-risk pregnancy. Also, they are unsure they are completely committed to adoption. They are willing to keep Ke.M. and K.M., however, until another good home can be found for them.

¶ 79 b. K.M.

¶ 80 K.M. eats and sleeps well, and the foster parents have begun working on potty training, but they report that he is stubborn. They also report that he can be clingy. He becomes anxious and tearful when leaving daycare or the foster home. The foster parents say, however, that this does not happen every day and that all in all, he is a happy child.

¶ 81 K.M. has a developmental speech disorder as well as delayed cognitive development. He is receiving services from Child and Family Connections for early intervention. He also has a mild hearing loss and a minor behavioral problem: he throws tantrums now and then.

¶ 82 c. The Children's Relationship With Their Parents

¶ 83 Visits with Johnson generally do not go well. Although Ke.M. shows a bond with her mother, she can be disobedient and disrespectful toward her mother during visitation. K.M. likewise shows a bond with his mother, but he throws tantrums when he does not get his way or if the mother's attention is diverted from him. The children's behavioral problems tend to come out most strongly after visits with their mother, but eventually they regain their equilibrium.

¶ 84 As for the children's relationship with their father, the best-interest report says:

"Since March 2011, no visits have occurred between Mr. Marrisette and his children. Due to the distance and the young age of the children visits have not occurred. Before Mr. Marrisette was incarcerated he did not attend visits regularly with the children. There appears to be no relationship between Mr. Marrisette and his children. Mr. Marrisette continues to write to the children and express his love and apologize for the situation. The children are too young to understand this. [Ke.M.] only understands that her dad was being bad and is in prison. The children do not ask about their father nor express a want to go see him. When [K.M.] is asked if she would like to visit her dad she expresses she does not want to go to jail."

¶ 85

## *2. The Best-Interest Hearing*

¶ 86

The trial court began the best-interest hearing on August 9, 2011, by saying it would consider the best-interest report, subject to any corrections. No corrections were proposed. The State presented no additional evidence. Respondent introduced a certificate of completion for the anger management program at the prison. Johnson was the only party who presented testimony.

¶ 87

At the conclusion of the hearing, respondent's attorney emphasized the constructive things respondent had done while in prison. He argued:

MR. APPLEMAN: \*\*\* [Mr. Marrisette] has essentially been doing what he can while he has been incarcerated. Yes, he has been incarcerated for most of the life of this case unfortunately, and that has extremely limited his interaction with his children.

Nevertheless, he has consistently requested visits. He has contacted me about it. He has contacted the case worker about it. He has done what he can to improve himself. He—according to the report, he is going to be paroled in the very foreseeable future and therefore be more available both for services and for interaction with his children. I would ask the court to find that the State has not shown that it is in fact in the best interest of either of these children to terminate my client's rights. He is dedicated to them."

¶ 88 After hearing the arguments, the trial court acknowledged that respondent had done what he could while in prison: he had participated in all the available programs, and he had written letters. And it was clear that he genuinely cared about his children and genuinely wanted to have a relationship with them. It did not follow, however, in the court's view, that the children's interests would best be served by preserving his parental rights. The court found that respondent had been detrimental to the permanence and stability that the children needed and that, given his history, he would most likely continue to be detrimental to their permanence and stability. The court said:

"As to Mr. Marrisette, the court is considering all the factors in the best interest statute, and the—particularly with respect to the issue of the opportunity of these children for permanence. \*\*\* Mr. Marrisette has been, while incarcerated, diligent about attending services that he can and completing successfully services that he can. That and also the evidence that has been introduced, the evidence that has been introduced by way of prior reports detailing

correspondences from Mr. Marrisette, the participation of Mr. Marrisette in trying to attempt to regain visitation with his children, clearly all convinces the court that it is true that Mr. Marrisette does care about his children and wants the opportunity to reunite with his children. But the evidence is compelling that Mr. Marrisette, even after incarceration, would not be able to reunite with his children for a significant period of time. He would not be ready upon parole to resume any role of custodian. He would not be able to provide the children with permanence. Furthermore, given Mr. Marrisette's record in regard to criminal activity and periods of incarceration, it would be—it would be foolish for the court to decide that this is likely to be the last time that Mr. Marrisette would be incarcerated. I hope that's true; I'm sure he hopes it's true; but his track [record] is not one so to speak to bet on, and the children need to have a parent who would be there all the time, not some of the time. That's not Mr. Marrisette's history, and it would be foolish to think that the history is definitely going to change when he is released on parole.

Further, not terminating the parental rights of Mr. Marrisette at this time would be detrimental to the opportunity that the children may have to have permanence in another home, whether it's the home of Miss Johnson or the home of another person. The factor of Mr. Marrisette—frankly Mr. Marrisette in the past in regard to these

children has been a counterproductive person. He has hurt the opportunity for permanence of the children in their home, not helped it. So the fact of Mr. Marrisette continuing as a parent and having parental rights, having visitation perhaps, having further involvement with the children, would be detrimental to their opportunity to achieve permanence. It wouldn't help their opportunity to achieve permanence. All of the factors, other than his interest, which is genuine, in having a relationship with his child, favor granting the State's request in regard to Mr. Marrisette."

¶ 89 Therefore, the trial court terminated respondent's parental rights to Ke.M. and K.M. (The court continued the proceedings for arguments on the issue of whether Johnson's parental rights likewise should be terminated.)

¶ 90 This appeal followed.

¶ 91 II. ANALYSIS

¶ 92 In his brief, respondent does not challenge the trial court's finding that he is an "unfit person." In other words, he does not challenge the outcome of the fitness hearing. Instead, he challenges the outcome of the best-interest hearing. He challenges the court's finding that it was in the best interest of Ke.M. and K.M. to terminate his parental rights.

¶ 93 We ask whether that finding is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). Our standard of review is deferential. The court's finding is against the manifest weight of the evidence only if it is *clearly evident* that the State failed to carry its burden of proving, by a preponderance of the evidence, that terminating respondent's parental

rights would be in the children's best interest. See *In re Faith B.*, 216 Ill. 2d 1, 14 (2005); *In re D.T.*, 212 Ill. 2d 347, 366 (2004).

¶ 94 For essentially two reasons, respondent maintains it is clearly evident that the State failed to carry this burden of proof. First, he argues that although incarceration has interfered with his establishing a relationship with his children, "that interference had a foreseeable end." His projected date of release was in November 2012, and by accumulating good-conduct credit, he most likely would be released earlier, at which time he "could still establish a strong parental bond with each of the children." Second, he has been doing all he can, while incarcerated, to make a better parent of himself and to show his love for Ke.M. and K.M.

¶ 95 These arguments leave us with a couple of reservations, the first of which is that the "strong parental bond" between respondent and the children should have come into existence a long time ago. Respondent had a four-year-old daughter and a two-year-old son whom he barely knew and who barely knew him. The trial court could have reasonably concluded that Ke.M. and K.M. did not deserve to be kept in a state of uncertainty as to their future while respondent caught up. One of the factors a court must consider when determining a child's best interest is "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." 705 ILCS 405/1-3(4.05)(g) (West 2010).

¶ 96 Could respondent ever become a source of permanence and stability for the children? That question expresses our other reservation: not only would the children be kept in limbo while respondent got up to speed as a parent, completing whatever additional services that DCFS deemed necessary (probably, at a minimum, parenting classes and substance-abuse counseling), but it is far from clear that the wait ultimately would pay off.

¶ 97 As a parent, respondent seems to be a different person inside prison than he is outside prison. In prison, he diligently participates in remedial programs and writes letters fervently declaring his love for his children and begging to receive visits from them—and we do not question the sincerity of these letters. Outside prison, however, where there are more distractions and less structure, he has not shown much interest in visiting his children; and it is far from clear that he would act differently next time. In other words, by maintaining respondent's parental rights, the trial court would have been taking an undeniable risk that the court could have reasonably decided was against the children's best interest to take. The court could not *count* on respondent's walking out of prison a changed person, someone who was attentive to his children and who no longer got into scary altercations with their mother, grabbing her, choking her, or brandishing a pistol at her, while the children were standing there looking on (see 705 ILCS 405/1-3(4.05)(d)(ii) (West 2010) ("the child's sense of security")). One hopes the anger-management classes and the coping classes helped, but the real test—life on the outside—has yet to be administered. Also, given respondent's criminal history, we are constrained to agree (although we hope he proves us wrong) that his staying out of prison would not be a "good bet," as the trial court put it—which brings us back to the consideration of permanence, stability, and continuity of relationships with parent figures (705 ILCS 405/1-3(4.05)(g) (West 2010)).

¶ 98 In sum, the finding in question—that it is in Ke.M.'s and K.M.'s best interest to terminate respondent's parental rights—is not against the manifest weight of the evidence, and therefore we uphold the finding.

¶ 99 III. CONCLUSION

¶ 100 For the foregoing reasons, we affirm the trial court's judgment.

¶ 101 Affirmed.