NOTICE
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2012 IL App (4th) 110906-U

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NOS. 4-11-0906, 4-11-0907 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: R.H. and S.H., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v. (No. 4-11-0906)	)	No. 9JA158
QUENTIN HESS,	)	
Respondent-Appellant.	)	
	)	
----------	)	
In re: R.H. and S.H., Minors,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-11-0907)	)	Honorable
AMANDA HESS,	)	Kevin P. Fitzgerald,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's judgment terminating respondents' parental rights as a sufficient factual basis supported the father's knowing, voluntary admission of unfitness and sufficient evidence supported the court's finding that the mother was unfit.

¶ 2 In September 2011, the trial court entered an order terminating the parental rights of respondents, Quentin and Amanda Hess, with respect to their minor children, R.H., born November 22, 2006, and S.H., born October 12, 2010. The parents' appeals have been consolidated. In case No. 4-11-0906, Quentin argues the court erred by accepting his admission of unfitness to parent in that the State presented an insufficient factual basis. In case No.

4-11-0907, Amanda argues insufficient evidence supported the court's finding that she was unfit. We disagree with the parents and affirm.

¶ 3 I. BACKGROUND

¶ 4 These proceedings began in response to an incident that occurred October 20, 2009. That day, a concerned neighbor reported that she observed R.H., then two years old, wandering outside unsupervised. She approached R.H. and asked where he lived. R.H. did not respond verbally but walked away and entered a trailer home. Responding officers and an employee of the Department of Children and Family Services (DCFS) later knocked on the door of the trailer home. When no one answered, due to the possibly emergent circumstances, these responders entered through the unlocked front door. They observed that the home was badly cluttered with garbage, dirty clothes and dishes, and animal feces. They found R.H. in a bedroom, where Amanda and an unrelated 16-year-old boy named M.H. were hiding together under the covers, feigning sleep. The ensuing investigation revealed that Quentin and Amanda had entered into a sexual relationship with M.H. several weeks earlier and that Amanda had continued her relationship with M.H. even after she discovered he was 16 years old.

¶ 5 Following the investigation, Amanda was arrested and charged with aggravated criminal sexual abuse in connection with her involvement with M.H. When she was released on bail, a condition of Amanda's bond prohibited her from having any contact with minor children, including her own. Meanwhile, DCFS advised Quentin, who retained custody of R.H., not to allow any contact between Amanda and R.H. Over the months that followed, DCFS learned that Quentin had allowed unsupervised contact between Amanda, R.H., and Quentin's 12-year-old son, A.H.

¶ 6 On December 17, 2009, DCFS took protective custody of R.H. At a shelter-care hearing the next day, the parents stipulated that R.H. was neglected in that his environment was injurious to his welfare as alleged in the State's petition for adjudication of wardship. Accordingly, the trial court entered an order granting temporary custody of R.H. to DCFS.

¶ 7 In April 2010, the trial court held an adjudicatory hearing. The parents stipulated that R.H. was neglected pursuant to a supplemental allegation of neglect—that, "on or about October 20, 2009, [R.H.] was left unsupervised and was living in a filthy and unsanitary residence." The court entered an order adjudicating R.H. neglected.

¶ 8 In June 2010, the trial court held a dispositional hearing. As recommended by the dispositional report prepared for the hearing, the court found the parents unfit and unable to parent. R.H. was made a ward of the court. The court ordered that custody would remain with DCFS and set a permanency goal of R.H.'s return home in 12 months.

¶ 9 On October 15, 2010, three days after S.H. was born, the State filed a petition for adjudication of wardship with respect to S.H. based on the parents' continuing unfitness in R.H.'s case. Although initially filed separately, the custody case regarding S.H. was later consolidated with the case regarding R.H.

¶ 10 In November 2010, the trial court held an adjudicatory hearing with respect to S.H. and a permanency hearing with respect to R.H. The parents admitted that S.H. was neglected as alleged in the State's petition. The court found accordingly and granted custody of S.H. to DCFS. With respect to R.H., the court found, in accordance with the permanency report, that the parents remained unfit and unable to parent, and the permanency goal continued to be his return home in 12 months.

¶ 11 In January 2011, the trial court held a dispositional hearing with respect to S.H. and a permanency hearing with respect to R.H. Following evidence and arguments, the court found the parents unfit and unable to parent with respect to S.H. and made her a ward of the court. The court set a permanency goal in each case of return home pending a status hearing.

¶ 12 In May 2011, the trial court held a permanency hearing. The State indicated its intention to file a petition for termination of parental rights. After hearing evidence and arguments, the court set a permanency goal for both children of substitute care pending the conclusions of the termination proceedings.

¶ 13 In June 2011, the State filed a petition to terminate the parents' parental rights. In relevant part, the petition alleged the parents were unfit and their parental rights should be terminated because each had failed to make reasonable efforts to correct the conditions that were the basis for R.H. and S.H.'s removal (750 ILCS 50/1(D)(m)(I) (West 2010)) and had failed to make reasonable progress toward R.H.'s return home within nine months after he was adjudicated neglected (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 14 In September 2011, the trial court held a two-day termination hearing. Quentin admitted that he was unfit to parent as alleged in the petition to terminate. When asked by the court, Quentin stated he had not been promised anything in exchange for his admission or threatened to admit his unfitness. To provide a factual basis, the State cited several reports prepared in the course of the proceedings regarding Quentin's efforts and progress toward the children's return. Quentin, through his attorney, stipulated to the existence of a factual basis. The court accepted the admission and found Quentin unfit.

¶ 15 Evidence concerning Amanda's unfitness included various reports submitted to

the trial court over the course of the proceedings and testimony by Amanda, Quentin, R.H. and S.H.'s foster mother, and several mental healthcare providers and social workers who had evaluated, monitored, or treated Amanda during these proceedings. Details of the evidence are discussed as necessary in our analysis. Following the evidence and arguments, the court found that Amanda was unfit to parent in that she had failed to make reasonable efforts to correct the conditions that led to the children's removal and had failed to make reasonable progress toward their return in the nine-month period following the adjudication of R.H.'s neglect. The court further found it was in the children's best interest that DCFS should exercise guardianship and custody of the children with the ultimate goal of their adoption.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Case No. 4-11-0906

¶ 19 In case No. 4-11-0906, Quentin argues the trial court erred by accepting his admission of unfitness since the State's factual basis for his admission was insufficient. Specifically, Quentin complains that the factual basis lacked an actual description of facts supporting the finding of his unfitness and consisted, instead, of citations to reports containing such facts. We find Quentin's argument unpersuasive.

¶ 20 Initially, we note that Quentin forfeited this argument by stipulating to the sufficiency of the factual basis for his admission of unfitness. In general, "a party cannot complain of error that it induced the court to make or to which it consented." *In re Ch. W.*, 408 Ill. App. 3d 541, 547, 948 N.E.2d 641, 648 (2011). "The rule of waiver, however, is a limitation on the parties and not on the courts." *In re Madison H.*, 215 Ill. 2d 364, 371, 830 N.E.2d 498,

503 (2005). Reviewing courts have ignored a party's waiver and proceeded to address the merits of an argument affecting a child's well-being or termination of parental rights, as in such situations the concern for reaching a just result often overrides considerations of waiver. See, *e.g.*, *id.* Under the circumstances of this case, we elect to reach the merits of Quentin's argument despite his waiver.

¶ 21 We will reverse only if the trial court's determination that an adequate factual basis supported Quentin's admission of unfitness constituted an abuse of discretion. *In re C.K.G.*, 292 Ill. App. 3d 370, 376-77, 685 N.E.2d 1032, 1036 (1997).

¶ 22 Due process requires the State to provide a factual basis before a trial court may accept a parent's admission of unfitness. *In re M.H.*, 196 Ill. 2d 356, 368, 751 N.E.2d 1134, 1142-43 (2001); see also *In re C.J.*, 2011 IL App (4th) 110476, ¶ 30, WL 5244420, *5 (clarifying that the factual basis may be provided at any time before the trial court accepts an admission of unfitness, even after the admission has been made). In *C.J.*, 2011 IL App (4th) 100476 at ¶ 48, WL 524420 at *9, this court considered the sufficiency of the State's factual basis to support a parent's admission at the adjudicatory stage that her child was abused. This court indicated the factual basis required in proceedings for adjudicating neglect or abuse "can be no more burdensome for the State than that required in a criminal context." *Id.* at ¶ 54, WL 5244420 at *10. Further, it indicated, the factual basis need not be recited aloud—for example, the trial court may *sua sponte* note "that it had already heard evidence [in earlier stages of the proceedings] that constituted a factual basis for respondent's admission." *Id.* at ¶ 56, WL 5244420 at *10. While *C.J.* specifically addressed the requirements for an admission at the adjudicatory stage of neglect proceedings, we find its discussion of appropriate procedures

applies to other stages of such proceedings as well.

¶ 23 The trial court did not abuse its discretion in this case. The State's factual basis alerted the court that the reports filed earlier in the proceedings adequately demonstrated that Quentin was unfit to parent. The court, aware of the contents of these reports, could have reasonably found a factual basis for Quentin's admission of unfitness. Quentin does not challenge the sufficiency of the evidence contained in the reports to support a conclusion that Quentin was unfit.

¶ 24 Nevertheless, Quentin, who reads at a third-grade level, contends that the State's citation to the contents of written reports denied him an opportunity to examine the factual basis independently and to reconsider his admission in light of any discrepancies. He relies on the supreme court's statements in *M.H.*, 196 Ill. 2d at 365-66, 751 N.E.2d at 1141, that the factual-basis requirement is designed to ensure that the State's allegations of unfitness are meritorious and the parent's admission of unfitness is knowing and voluntary. This argument misses the point of the factual-basis requirement. The relevant burden is on the court, not the parent, to satisfy itself that a factual basis exists before it accepts the parent's admission. *C.J.*, 2011 IL App (4th) 100476 at ¶ 30, WL 5244420 at *5. Knowingness and voluntariness are ensured not because the recitation of a factual basis allows the parent an opportunity to refute any misstatements of fact and to reconsider his admission, but because the objective evidence of the parent's unfitness, independent of the admission itself, corroborates the parent's admission and assures the court that its final judgment accepting the admission is just. Moreover, Quentin's position is inconsistent with this court's statements in *C.J.* that (1) a factual basis may follow the parent's admission so long as it is provided before the court accepts the admission and (2) a

factual basis consistent with evidence already elicited earlier in the proceedings may be noticed by the court *sua sponte*. Under Quentin's understanding of due process, neither of these procedures would be proper.

¶ 25 For these reasons, we reject Quentin's argument that the factual basis supporting his admission of unfitness was insufficient. The trial court did not err in accepting the admission.

¶ 26 B. Case No. 4-11-0907

¶ 27 In case No. 4-11-0907, Amanda argues the evidence of her unfitness was insufficient to support the trial court's finding. We disagree.

¶ 28 "A trial court's determination that a parent's unfitness has been established by clear and convincing evidence will not be disturbed on review unless it is contrary to the manifest weight of the evidence. A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). Each case concerning a parent's fitness must be decided on its own particular facts and circumstances. *Id.* at 354, 830 N.E.2d at 517.

¶ 29 In this case, the trial court found the State proved by clear and convincing evidence that Amanda was unfit in that she failed (1) to make reasonable efforts toward correcting the conditions that led to R.H. and S.H.'s removal and (2) to make reasonable progress toward R.H.'s return home within the nine months following the adjudication of his neglect. We will affirm if either of these findings was permissible. See *id.* at 349, 830 N.E.2d at 514 ("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by

clear and convincing evidence.").

¶ 30 The trial court's finding that Amanda failed to make reasonable efforts was not erroneous. By statute, a parent is unfit if he fails "to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent." 750 ILCS 50/1(m)(I) (West 2010). Courts have described this as presenting a "subjective standard, focusing on the amount of effort that is reasonable for the particular parent whose rights are at stake." *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999).

¶ 31 In this case, R.H. was initially removed and adjudicated neglected because his environment was injurious to his welfare. Specifically, R.H. was found residing in a filthy home cluttered with garbage, dirty clothes and dishes, and animal feces. S.H. was, in turn, removed because of Amanda's continuing unfitness in R.H.'s case. Amanda's unfitness was due, in large part, to her inability to maintain stable, suitable housing. Accordingly, the trial court focused its reasonable-efforts analysis on, among other things, Amanda's evolving housing situation.

¶ 32 Amanda's housing difficulties were well documented in periodic reports addressed to the trial court. These showed that over the course of proceedings Amanda changed residences a number of times. They chronicled her moves between residences and communities as follows. When DCFS first became involved, on October 20, 2009, the parents were living in Bloomington in a trailer home belonging to an acquaintance; they had moved in only two weeks earlier. After she was arrested and subsequently released on bond, Amanda moved into a motel room in Normal which, at one time, she shared with Quentin, another couple, and another adult male. Later, Quentin and Amanda moved in with Amanda's mother and stepfather, a registered sex offender, in Lincoln. For some time, Quentin and Amanda resided in Lincoln in a two-story,

two-bedroom home with sufficient space for R.H., but they had not signed a lease. They shared this residence for some time with a friend named Jessica and an adult male. Jessica's relationship with the family troubled Amanda's caseworker, who noted that Jessica, an adult with a child of her own, considered Quentin and Amanda to be her "adoptive parents"; referred to herself as "Sissy" when interacting with R.H.; and accompanied Amanda to her supervised visits with the children, often performing parenting tasks such as preparing food.

¶ 33 When the parents were living in this Lincoln home, Amanda was convicted of aggravated criminal sexual abuse. She subsequently tested positive for cannabis in preparation of her presentence investigation report and blamed the positive test on Quentin, who she alleged spiked her food with marijuana. Around this time, Amanda became aware that Quentin was having an affair, and the two separated, Quentin moving in with his paramour. Amanda continued to reside with Jessica. After giving birth to S.H., Amanda and Jessica were evicted due to nonpayment of rent and utilities. They then moved in with Jessica's sister. Amanda later moved back in with her mother and stepfather. Due to the stepfather's status as a sex offender, this residence was an inappropriate home for children. Moreover, the caseworker noted, Amanda would be prohibited from living there if her sentence required her to register as a sex offender. Amanda contemplated moving to Normal or moving in with a friend in southern Illinois but was, according to a status report, "essentially homeless." The caseworker noted that Amanda relied too heavily on her friends and family to find housing for her.

¶ 34 Amanda was subsequently sentenced to probation and some jail time. Following her release, Amanda moved into a hotel, where she stayed for 10 days until she could no longer afford it. She subsequently reconciled with Quentin—who was, at that time, subject to a separate

DCFS investigation concerning allegations that he had allowed his minor son, A.H., to witness him having sexual relations with his then-girlfriend—and moved in with him at his father's house in Bloomington. The caseworker found this house inappropriate for the return of the children due to the clutter there.

¶ 35 Quentin and Amanda subsequently moved into a two-bedroom home in Lincoln, where they resided through the termination proceedings. The caseworker found this residence to be appropriate for children. However, she expressed some concern that Quentin and Amanda intended for Jessica or another adult, rather than the children, to move into the second bedroom.

¶ 36 These moves all occurred between October 2009 and June 2011. They reflected Amanda's attitude, noted by her caseworker, that "she didn't think [the instability of her housing] was that big of a deal because people move all the time." They further reflected Amanda's noted unwillingness to take responsibility for her actions and to assume control over her chaotic personal life. As a result of these issues, Amanda continued to be found unfit throughout the proceedings—when R.H. was removed, when S.H. was born, and when Amanda's parental rights were terminated. Under these circumstances, we cannot say the trial court erred in finding Amanda failed to make reasonable efforts to correct the conditions that led to the children's removal. As this conclusion necessarily results in our affirming the court's judgment finding Amanda unfit and terminating her parental rights, we need not address the further question whether sufficient evidence supported the finding that Amanda failed to make reasonable progress toward R.H. and S.H.'s return.

¶ 37 III. CONCLUSION

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

¶ 39 Affirmed.