

2013 IL App (2d) 130383-U
No. 2-13-0383
Order filed October 15, 2013

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

<i>In re</i> KIESE C., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 11-JA-159
)	
)	Honorable
(The People of the State of Illinois, Petitioner-Appellee, v. KEITH C., Respondent-Appellant).)	Brian Dean Shore
)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved by a preponderance of the evidence at the adjudicatory hearing that the minor was neglected based upon all five counts in the State's petition. Further, at the dispositional hearing the State also proved by a preponderance of the evidence that respondent was unfit to care for the minor. Accordingly, the trial court's rulings that the minor was neglected and that respondent was unfit were not against the manifest weight of the evidence.

¶ 2 Respondent-father, Keith C. (respondent), appeals from an order of the trial court: (1) adjudicating his daughter, Kiese C. (Kiese), neglected based upon all five counts alleged in the State's petition (705 ILCS 405/2-3 (West 2010)); and (2) finding him unfit, unable and unwilling to care for Kiese (705 ILCS 405/2-27(1) (West 2010)). For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Reports filed by the Department of Children and Family Services (DCFS) indicate that Kiese was born on October 20, 2010. On April 7, 2011, Sharzetta Lymon¹, Kiese's mother (mother), reported that earlier that day she had taken her five-month-old daughter off of her apnea monitor, bathed her, placed her in her car seat, and propped a bottle of water with a rolled blanket underneath it to support the bottle. She then took a shower and began cleaning the home. When she checked on Kiese after 20 or 30 minutes, Kiese's skin tone was blue and the bottle was on the floor. The mother said that she began CPR and called 911. Kiese was taken to Rockford Memorial Hospital where she was placed on a ventilator. The mother was reported to smell of alcohol when she arrived at the hospital and later admitted to having one glass of wine. Kiese was identified as having minimal brain function and needed 24 hour skilled care. On May 25, 2011, she was released from Rockford Hospital and transferred to a skilled nursing facility. DCFS reports also indicated that prior to this event, Kiese's medical history included premature birth, seizures, acid reflux and apnea.

¶ 5 Kiese was taken into protective custody on May 25, 2011. On May 26, 2011, a temporary shelter care hearing was held. At that hearing, Robert Nolan, a child abuse investigator for DCFS, testified that on April 7, 2011, he first observed Kiese in the pediatric intensive care unit of Rockford Memorial Hospital. Nolan was told that Kiese had been brought to the hospital by paramedics and she was reported to have stopped breathing.

¶ 6 Nolan testified that the mother told him that she had Kiese hooked up to the apnea monitor, but had removed the monitor in order to bathe her. After the bath, she rolled some blankets up to prop a bottle so that Kiese could drink the bottle while she showered. Nolan said the mother told

¹Lymon has filed a separate appeal.

him that from the time the bottle was placed with the child until she checked on her again was somewhere between 15 and 20 minutes. Nolan said that Kiese's physician told him that based upon the results of the EEG, Kiese was in a persistent vegetative state and that she only had brain stem activity. The physician also said that Kiese would remain in that state and would require 24-hour skilled nursing care.

¶ 7 With regard to Kiese's previous medical conditions, Nolan testified that the mother told him that on November 10, 2010, Kiese was brought to Swedish American Hospital after she stopped breathing and her lips turned blue. Kiese was then placed on an apnea monitor. Nolan said that when the hard drive of the monitor was checked, it initially showed consistent use of the monitor, but as time went on there were large gaps in the use of the monitor.

¶ 8 After the hearing, DCFS was awarded temporary guardianship and custody of Kiese. That same day, the State filed a five-count neglect petition pursuant to section 2-3 of the Juvenile Court Act of 1987 (Act). 705 ILCS 405/2-3 (West 2010). On March 12, 2012, the State amended the neglect petition.

¶ 9 In the amended neglect petition, the State alleged that Kiese was neglected in the following ways: (1) the mother did not follow up with doctor's appointments and using the apnea monitor on Kiese between October 20, 2010² and April 7, 2011 (705 ILCS 405/2-3 (West 2010)); (2) Kiese's environment was injurious to her welfare in that the mother propped Kiese up with a bottle and left her unsupervised for a period of time, thereby placing her at risk of harm (705 ILCS 405/2-3(1)(b))

² In count I of the neglect petition the State incorrectly noted Kiese's date of birth instead of the day she was prescribed the apnea monitor.

(West 2010)); (3) Kiese was left without supervision for an unreasonable period of time without regard for her mental or physical health, safety or welfare (705 ILCS 405/2-3(1)(d) (West 2010)); (4) the mother committed the offense of child endangerment in that she removed Kiese from the apnea monitor and propped her up with a bottle after previously being advised not to engage in such conduct, and then left her unsupervised for a period of time, thereby placing her at risk of harm (705 ILCS 405/2-3(1)(b) (West 2010)); and (5) Kiese's environment is injurious to her welfare in that she had substantial medical needs and the mother had been inconsistent with those past medical needs, thereby placing her at risk of harm (705 ILCS 405/2-3(1)(b) (West 2010)).

¶ 10 On June 28, 2012, an adjudicatory hearing was held. Christina Swartout, a former respiratory therapist for Swedish American Home Health, testified that Kiese was one of her patients that she treated for apnea at Swedish American. Swartout explained that apnea occurs when a patient stops breathing for 20 seconds or longer. She said that she received detailed training on the use of an apnea monitor, and she knew that Kiese's mother had been trained on its use. She also said that all parents are told that the baby needs to be on the monitor at all times except for bathing.

¶ 11 Swartout explained that the apnea monitor needed to be downloaded in order to relay information to the child's doctor. If downloaded, the doctor would receive a compliance record, which would indicate how often the baby is actually on the monitor, along with reports of any events when the baby stopped breathing or if her heart rate went significantly up or down. The monitor was supposed to be downloaded weekly. To do this, the parent would make an appointment and bring in the monitor for downloading. Swartout said that Kiese's mother would make appointments to come in and download the monitor, but then she would not show up. She said that Swedish American left voice mails for the mother but could not get in touch with her. She also would not

return phone calls and, as a result, Swartout sent the mother a certified letter. After April 7, 2011, Swartout had the apnea monitor downloaded and discovered the monitor was not used regularly. In fact, she said that Kiese was off the monitor for days, even weeks.

¶ 12 On cross-examination, Swartout said that she had never met the mother or instructed her on how to use the monitor. She also said that apnea monitors do sometimes fail, and that it will not prevent or detect a life-threatening event. An apnea monitor will not monitor seizure activity, and it would not activate during a seizure unless the child had also stopped breathing.

¶ 13 Detective Jeff Schilling of the Rockford Police Department testified that on April 7, 2011, he was dispatched to Rockford Memorial Hospital to investigate a possible deceased six-month-old baby. Schilling spoke with the mother, and she told him that she had propped a water bottle up with blankets for Kiese to drink while she did chores around the house. She told Schilling that about 20 to 25 minutes later she found Kiese blue in the face. She called 911 and performed CPR. The mother admitted to Schilling that the apnea monitor was not on Kiese at the time. She also told Schilling that Kiese was on medication for seizures and that she had a history of choking and digestive problems.

¶ 14 Mary Morrison testified that she was a child welfare specialist for DCFS. Morrison interviewed the mother on April 7, 2011. At that time, the mother told her that she had taken Kiese out of the bathtub, put her in a car seat, and propped up a bottle for Kiese to drink. The mother then proceeded to do chores around the house. She told Morrison that this was a regular routine for her. When she came back to check on Kiese she was blue in the face. Like Schilling, the mother also told Morrison that she called 911 and performed CPR on the baby. She also told Morrison that Kiese was not on the apnea monitor when she stopped breathing on April 7, 2011.

¶ 15 DCFS investigator Nolan testified again about his involvement in this case, and then the adjudicatory hearing was continued until October 30, 2012.

¶ 16 When the adjudicatory hearing resumed, Shannon Krueger, a pediatric nurse practitioner for Crusader Community Health, testified that Kiese was her patient for five months.³ Krueger said that when Kiese was around one month old, she had an acute life-threatening event and was prescribed an apnea monitor. Kiese had suffered from acid reflux, apnea, and seizures. She was prescribed a special formula for the reflux, anti-seizure medication, and a monitor for the apnea. The apnea monitor would not detect seizures. Krueger said that she had conversations with the mother where she reenforced to her that Kiese was supposed to be on the apnea monitor at all times except for bathing. Krueger said that she would see Kiese about every one or two months, sometimes more often. She said that although the mother missed some appointments, she followed up with all of them or went to all of the Kiese's regular check ups. She also received at least three phone calls from the mother in six months. Krueger said that although she was a mandatory reporter, she never felt the need to contact DCFS regarding the mother's care of Kiese. However, she said she did not know that the mother was not downloading the apnea monitor regularly, or that she had missed appointments to download the monitor.

¶ 17 Krueger explained that bottle propping is when a bottle is held to a baby's mouth either by a device, a blanket, or another object, when the baby is feeding from the bottle so that the baby does not have to be held during the feeding. She said that she advises parents against bottle propping because that activity creates a high risk of choking.

³Krueger did not testify as to the time frame when she was Kiese's nurse, but from her testimony it is clear that she cared for Kiese prior to the incident on April 7, 2011.

¶ 18 Upon the conclusion of all testimony the mother and respondent both made a motion for a directed finding. Both motions were denied. Following closing arguments the trial court took the matter under advisement.

¶ 19 On November 28, 2012, the trial court held that Kiese was a neglected minor on all five counts of the second amended neglect petition. With regard to count I, which dealt with the failure to follow up with doctor appointments and with the use of the apnea monitor, the court said that although nurse practitioner Krueger testified that the mother kept most of the regular appointments, there were problems with getting the mother in for the download appointments, which were technically doctor appointments but for a specific purpose of downloading the information contained in the apnea monitor. The court stressed that this was a matter needing a very high level of compliance because Kiese had significant, serious health issues which had led to a hospitalization very early in Kiese's life. The court went on to say that this was not a typical pediatric case, and although it did not find any neglect solely on the basis of missed doctor appointments, the failure to keep the download appointments was a serious factor to consider in determine whether Kiese was neglected. With regard to the apnea monitor, the court found that the issue was not whether the monitor was used on April 7, 2011, but that the alleged neglect was based on whether the monitor was used during the entire time it had been prescribed for Kiese. The court said the evidence showed that the mother missed appointments to download the apnea monitor several times, despite attempts to reach her, and that Swartout testified she even used certified mail in an attempt to reach the mother. Further, it noted that the reports from the monitor showed significant noncompliance, where the monitor was off for hours, days, and close to one month. Finally, the court found that when it considered the serious problems that Kiese had experienced, the failure to use the apnea monitor on

her was proof beyond a preponderance of the evidence that Kiese was not receiving the proper or necessary medical care as recognized under state law, and that Count I had therefore been proven.

¶ 20 With regard to count II, which dealt with propping up the bottle and leaving Kiese unsupervised, the court noted that there was no dispute that Kiese was left alone for 20 minutes or more with a propped up bottle. In addition, the court noted, Kiese had a significant history of choking, breathing and digestive problems, and therefore propping a bottle for Kiese under the circumstances of this case left Kiese in an environment that was injurious to her welfare and placed her at harm. Therefore, the court found that count II had been established by a preponderance of the evidence.

¶ 21 With regard to count III, which alleged that Kiese was left unsupervised for an unreasonable amount of time without regard for her mental or physical health, safety and welfare, the court noted that it had reviewed the statutory factors to be considered in determining the reasonableness of any time period of non-supervision. Specifically, it noted that Kiese was left unsupervised despite her very young age and medical condition. The court held that when taken together, there was overwhelming evidence of unreasonableness, and therefore count III had also been proven by a preponderance of the evidence.

¶ 22 With regard to count IV, which alleged that Kiese was neglected because the mother committed the offense of child endangerment, the court said that it believed that if tried in the criminal court, the State would be able to prove child endangerment beyond a reasonable doubt. Therefore, the court held, Kiese should be found neglected on this count as well.

¶ 23 Finally, the court noted that count V pertained to Kiese's substantial medical needs and that the mother has been inconsistent with past medical needs, and thereby placed Kiese at risk of harm.

The court found that the inconsistency in the apnea monitor alone, which was documented and proven, was grounds to find that Kiese's medical treatment had been inconsistent. It also found that the lack of consistent attendance at doctor visits and the failure to appear for appointments to download the apnea monitor also showed inconsistency. Therefore, the court held that count V had also been proven by a preponderance of the evidence.

¶ 24 After finding Kiese neglected on all five counts, the court set a dispositional hearing for March 19 and 20, 2013. At the dispositional hearing, Tamara Sleger, a caseworker with DCFS, testified that the respondent had completed services and was consistent with completing court ordered drug screens. She said that the respondent visited Kiese once a month for about an hour. She was concerned that the respondent had not spent a full day with Kiese because without doing so the respondent would not have the ability to understand everything that was involved with Kiese's care. She acknowledged that the company that DCFS had contracted with to provide transportation for the respondent to visit Kiese failed to provide that service. However, the respondent never told her that the company failed to take him to see Kiese. Further, at the time of the dispositional hearing, the respondent had his own transportation and he still did not increase his visitation time.

¶ 25 Sleger also said that neither the mother nor the respondent was having consistent contact with her with regard to Kiese's current condition and that she had initiated all contact. Sleger said that the respondent did not have the adequate health care training to take care of Kiese, a special needs child. Kiese required a 24-hour skilled nursing facility. Sleger admitted that she did not offer the respondent any medical training. She also acknowledged that since Kiese required skilled nursing care not even a specialized foster care parent could tend to Kiese's needs.

¶ 26 The respondent testified that when Kiese stopped breathing on April 7, 2011, he was at work in Chicago. When Kiese was initially taken into care he visited her almost daily. He was able to do that because of the distance to the hospital and he had the finances to visit her. At that time he was making about \$36,000 per year. At the time of the hearing, he worked as a maintenance man in Rockford and made around \$20,000 per year. He said that it was not likely that Kiese would ever be able to live at home and that she needs to be in a facility. He said that he looked into Illinois' All Kids insurance program for medical insurance for Kiese. He believed that Kiese would be eligible for All Kids if he became Kiese's guardian, but that he could not fill out an application for her since he was not currently her guardian. However, he acknowledged that Kiese was in the All Kids' program currently while under DCFS' care. He said that he had insurance through his employer, but he could not afford it.

¶ 27 The respondent testified that when he visits with Kiese she is brought into the family area of Children's Habilitation Center, where she was currently being treated. The staff must transfer Kiese into that room and hook up all her equipment to the wall. These connections are not designed to be permanent, and patients in the family area are cannot stay there for long periods of time.

¶ 28 The respondent also testified that no one had ever invited him to spend an entire day with Kiese. Although he owns a car, he said it would be a financial burden on him to visit Kiese more than once a month. He has six other children, and one of his children has hydrocephalus, a condition whereby the child has seizures due to water on the brain. He said he received specialized training to take care of that child. However, he acknowledged that the child did not live with him. He would be willing to undergo any training when appropriate so that Kiese could return home if that was the decision of her medical providers.

¶ 29 The respondent also said that he does not have differences of opinion with Kiese's mother on parenting issues, not even occasionally. He said that together they are able to make decisions concerning Kiese's care. He was, however, willing to make a determination that he felt was in Kiese's best interest, even if it differed than that of Kiese's mother.

¶ 30 On cross-examination, the respondent admitted that although he lives in Rockford, where Kiese is also currently living, he still only visits her once a month. He also acknowledged that a DCFS caseworker had offered him free transportation and he had turned it down. With regard to visiting Kiese in the family area of CHC, the respondent "guessed" that the visits took place in that room instead of Kiese's room due to complaints about him. He admitted that he was consistently taking pictures of Kiese in the room when other DCFS wards were present in the room as well, even after he was told that it was inappropriate to do so. However, he said that he was only told not to take pictures with his phone because "services from the phone" would throw off the machines. He denied that he was told to stop taking pictures on privacy grounds, and he continued to take pictures with a camera despite requests not to do so.

¶ 31 After the respondent finished testifying, caseworker Sleger was recalled as a witness. She testified that she was concerned about the respondent's ability to protect Kiese based upon his denial that the mother neglected Kiese. Sleger was also concerned about whether the respondent would keep Kiese in her current facility if he was granted guardianship and custody of her. She was also concerned about whether the respondent would allow the mother to make decisions for Kiese.

¶ 32 At the conclusion of all testimony, closing arguments were heard. The guardian *ad litem* argued that custody and guardianship of Kiese should be with DCFS. Upon conclusion of all arguments, the court found the respondent unfit and unable to care for Kiese. Specifically, the court

found that due to the respondent's absence and his deference to the mother, the respondent lacked the ability to understand the seriousness of Kiese's circumstances. The court also noted that it did not see him as an independent character who could have guardianship and custody of Kiese and yet not be controlled by the opinions and ideas of the mother. Further, the court was unconvinced that the respondent would be able to follow the advice of the physicians when he had violated the rules of the facility and the restrictions imposed upon him in the past. Instead, the court believed that the respondent would follow medical advice only if he agreed with the doctors. Therefore, the court held that the respondent was unfit and unable to have custody and guardianship of Kiese. The court also held that the mother was unfit and unable to have custody and guardianship of Kiese. Therefore, it placed custody and guardianship of Kiese with DCFS, subject to permanency reviews in the future.

¶ 33

II. ANALYSIS

¶ 34 On appeal, the respondent argues that the trial court erred in finding that: (1) Kiese was a neglected minor; and (2) the respondent was unfit, unable and unwilling to care for Kiese. He argues that both of these findings were against the manifest weight of the evidence.

¶ 35

A. Finding of Neglect

¶ 36 Neglect occurs when a parent fails to exercise the care demanded by the circumstances and includes willful as well as unintentional disregard of the parent's duties. *In re K.B.*, 2012 IL App (3d) 110655. Cases involving allegations of neglect and adjudication of wardship are *sui generis*, and must be decided on the basis of their unique circumstances. *In re Arthur H.*, 212 Ill. 2d 441, 463 (2004). The burden is on the State to prove an allegation of neglect by a preponderance of the evidence. *Id.* at 463-64. A proposition is proved by a preponderance of the evidence when the proposition is more probably true than not. *Id.* at 464.

¶ 37 At the adjudicatory hearing, the trial court is to determine whether the child is neglected, and not whether the parents are neglectful. *Id.* at 467. A trial court's finding of neglect will not be disturbed unless it is against the manifest weight of the evidence. *Id.* at 464. Such a determination is only against the manifest weight of the evidence when the opposite conclusion is clearly evident from the record or the determination is arbitrary, unreasonable, or not based on the evidence presented. *In re Addison B.*, 2013 IL App (2d), 121318, ¶ 22.

¶ 38 With regard to count I, the respondent argues that the trial court's finding of neglect was against the manifest weight of the evidence because the State failed to provide sufficient evidence at the adjudicatory hearing in support of missed doctor's appointments. The respondent alleges that the only testimony presented regarding this allegation was that the mother did not attend some doctor's visits, but there was no testimony regarding the specific number of visits missed, or what information would have been given to the mother at the visits. Further, he claims, the only testimony regarding the use of the apnea monitor was that it was not designed to prevent life-threatening events and that it had a failure rate. Therefore, he contends, there was not enough evidence to conclude that Kiese was neglected under count I.

¶ 39 We disagree. Again, count I alleged that Kiese was neglected because the mother did not follow up with doctor appointments and did not use the apnea monitor between the period of October 10, 2010, and April 7, 2011. As we have previously noted, the State incorrectly listed the date of Kiese's birth instead of the date she was actually prescribed the apnea monitor, approximately one month after her birth. However, the respondent did not object to the date before the trial court, and he does not do so on appeal. Therefore, he has forfeited any contention that the date is in error. See *In re H.D.*, 343 Ill. App. 3d 483, 489-90 (2003).

¶ 40 We have reviewed the evidence presented at the adjudicatory hearing and hold that it was sufficient to prove by a preponderance of the evidence that Kiese was a neglected minor under count I. First, it is clear that the mother did not follow up with the download appointments. The trial court held that the download appointments were technically doctor appointments, but for a specific purpose of downloading the information from the apnea monitor. At the hearing, Swartout testified that Kiese's monitor was supposed to be downloaded weekly, but the mother did not make or keep weekly appointments to bring the monitor in to be downloaded. Swartout said she left the mother voice messages and even sent her a certified letter in order to try to reach the mother about downloading the monitor. The information contained in those downloads was crucial information that Kiese's doctors needed to determine the status of Kiese's condition. The State also proved that the apnea monitor was not used consistently from the time Kiese was put on the monitor until she stopped breathing on April 7, 2011. Swartout said that when the monitor's history was checked it showed large gaps of time in which it was not used. In addition, nurse Krueger testified that after Kiese was hospitalized on April 7, 2011, she reviewed the records of the apnea monitor and learned that Kiese had been off the monitor at almost all times. Accordingly, the trial court's ruling that Kiese was neglected under count I of the State's petition was not against the manifest weight of the evidence.

¶ 41 With regard to counts II and III, the respondent claims that the trial court's ruling was against the manifest weight of the evidence because the counts themselves do not state a cause of neglect. Specifically, he argues that the phrase used in both counts, "a period of time," does not, by itself, constitute neglect, and it does not fulfill the fact pleading requirement "mandating the pleading of the ultimate fact." Again, in count II the State alleged that Kiese was neglected because her mother

propped Kiese up with a bottle and left her unsupervised “for a period of time,” thereby placing her at risk of harm. In count III, the State alleged that Kiese was under the age of 14 and a parent or other person responsible for her welfare left her without supervision “for an unreasonable period of time” without regard for Kiese’s mental or physical health, safety or welfare.

¶ 42 Again, we are not persuaded. First, the respondent does not cite any authority for his assertion that the phrase “a period of time” in counts II and III needed to be more specific. Second, and more important, he has forfeited any claimed error in the wording of the neglect petition because he never challenged it below. *In re H.D.*, 343 Ill. Ap. 3d 483, 489-490 (2003) (mother forfeited her argument that the State’s petition to terminate her parental rights was defective when she failed to object to the petition before the trial court or allow the court to remedy the alleged defect). At the shelter care hearing, investigator Nolan testified that the mother told him she left Kiese unattended for 15 to 20 minutes. Further, she told Detective Schilling that she left Kiese unattended to 20 to 25 minutes. Based upon this information, and the testimony regarding Kiese’s prior medical problems with apnea, the State proved in both counts that the decision to leave this child unattended and not attached to her apnea monitor “for a period of time” constituted neglect. Therefore, the trial court’s determination of neglect on these counts was also not manifestly erroneous.

¶ 43 With regard to count IV, the respondent alleges that the determination of neglect was manifestly erroneous because the State never proved the elements of the offense (child endangerment) contained within the count. Specifically, he argues: (1) the offense itself was never specified by name, because no offense of “child endangerment” exists in Illinois ; and (2) since the description alleged by the State was a non-existent offense, neither the State nor the court could have determined the elements of the offense. Further, he claims, even if this court inferred which offense

the State meant, and the trial court acquiesced to, he was not put on notice as to what to defend against.

¶ 44 As with counts I, II and III, we find that the respondent has forfeited any argument with regard to the defectiveness of the wording in count IV of the State's petition when he failed to object to the contents of the petition at trial or allow the court to remedy the alleged defect. *In re H.D.*, 343 Ill. App. 3d 483, 489-490 (2003).

¶ 45 With regard to the merits of count IV, we hold that the State proved by a preponderance of the evidence that Kiese was neglected under that count.

¶ 46 At the time of the neglect hearing, Illinois law provided that a person endangered the life or health of a child when he or she: (1) willfully caused or permitted the life or health of a child under the age of 18 to be endangered; or (2) willfully caused or permitted the child to be placed in circumstances that endangered the child's life or health. 720 ILCS 5/12-21.6(a) (West 2010). Here, it is clear that the State proved the elements of that offense by a preponderance of the evidence. Again, DCFS investigator Nolan and Detective Schilling both testified that the mother admitted leaving Kiese unattended, anywhere from 15 to 25 minutes. Further, the mother chose to leave Kiese unattended with a propped up bottle even after she knew that Kiese suffered from a very serious medical condition in which she could stop breathing at any moment. Further, nurse practitioner Kruger, who treated Kiese for five months before the incident on April 7, 2011, testified that she advises parents against bottle propping because that activity creates a high risk of choking. As a result of this decision, Kiese has extremely limited cognitive function and requires 24-hour skilled nursing care. Accordingly, the trial court's determination that Kiese was neglected under count IV was not against the manifest weight of the evidence.

¶ 47 Finally, with regard to count V, the respondent argues that the trial court's ruling was against the manifest weight of the evidence because, while the court found Kiese's medical care to be inconsistent, that inconsistency was not found to be neglectful, and the testimony from the medical providers at the adjudicatory hearing was internally inconsistent regarding the mother's missed appointments. Further, the respondent argues, count V did contain the ultimate fact to be proven – the specific inconsistency giving rise to the risk of harm of the child.

¶ 48 Again, in count V, the State alleged that Kiese was neglected because she had substantial medical needs and the mother had been inconsistent with those needs, thereby placing Kiese at risk of harm. In finding this count proven, the trial court found that the inconsistency in the apnea monitor alone, which was documented and proven, was grounds to say that Kiese's medical treatment had been inconsistent.

¶ 49 As with counts I, II, III and IV, the respondent has forfeited any argument regarding the wording of count V because he did not object to the wording of the State's neglect petition below. Therefore, we need not address his claim that the count failed to contain the specific inconsistency giving rise to the risk of harm to Kiese. *In re H.D.*, 343 Ill. Ap. 3d 483, 489-490 (2003).

¶ 50 We have reviewed the trial court's findings and hold that its determination of neglect under count V of the State's petition was not against the manifest weight of the evidence. We agree with the trial court that the mother's inconsistent use of the apnea monitor, of which there was ample evidence, was sufficient alone to prove that the mother had been inconsistent with Kiese's past medical needs. Accordingly, we find no error. For all these reasons, the trial court's determination of neglect under all five counts in the State's petition was not against the manifest weight of the evidence.

¶ 51

B. Finding of Unfitness

¶ 52 Next, the respondent argues that the trial court's ruling at the dispositional hearing that he was unfit, unable and unwilling to care for Kiese was against the manifest weight of the evidence.

¶ 53 A trial court may make a child a ward of the court if the court finds that the parents are unfit, unwilling, or unable for some reason, other than financial circumstances alone, to care for, protect, train, or discipline the minor and that the health, safety and best interest of the minor will be jeopardized if the minor remains in the custody of the parents. 705 ILCS 405/2-27(1) (West 2010).

At this stage, where a finding of unfitness will not result in a complete termination of parental rights, the State has the burden of proving unfitness by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245, 257 (2001). On review, the trial court's dispositional decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate disposition. *In re Ta.A.*, 384 Ill. App. 3d 303, 307 (2008). A determination will be found to be against the manifest weight of the evidence only if the record shows that the opposite conclusion is clearly evident. *April C.*, 326 Ill. App. 3d at 257. Since a trial court is in a superior position to assess the credibility of witnesses and weigh the evidence, a reviewing court will not overturn the trial court's findings merely because the reviewing court may have reached a different conclusion. *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1998).

¶ 54 Here, the respondent argues that the decision to find him unfit was against the manifest weight of the evidence because he was never involved with or responsible for the reasons this case came into care. He also claims that although the State and DCFS argued that he was unfit because his visitation of Kiese was inconsistent, his visitation was only inconsistent because of his work schedule. He also argues that DCFS never made arrangements for him to be educated on how to care

for Kiese. Further, DCFS caseworker Sleger testified that he had completed all of the services DCFS provided to remedy the reason the case came into care, and that he and Kiese's mother visited more frequently than Sleger. Finally, with regard to his ability to provide healthcare for Kiese, the respondent said that he was told that he could insure Kiese through All Kids, but that he could not officially apply for the insurance because he did not have guardianship and custody of Kiese.

¶ 55 In ruling that the respondent was unfit, the trial court found that due to the respondent's absence and his deference to the mother, he lacked the ability to understand the seriousness of the circumstance. The court specifically said that it did not see him as an independent character who could have guardianship and custody of Kiese and yet not be controlled by the opinions and ideas of the mother. Further, it noted that while the respondent claimed to be prepared to follow the leads of Kiese's doctors, he has violated rules of the facility in the past, and restrictions have been imposed upon him. The court said it believed that the respondent would follow medical advice only if he agreed with the doctors. The trial court's findings were based upon ample evidence in the record, and its credibility determinations must be given deference. Accordingly, the trial court's determination that the respondent was unfit was not against the manifest weight of the evidence.

¶ 56 For the following reasons, the circuit court of Winnebago County is affirmed.

¶ 57 Affirmed.