

Illinois, to the respondent, Hana W., who was born on March 29, 1988. It is unclear who C.J.W.'s father is. Hurshel W. is the maternal grandfather of C.J.W. Jeffrey W., the maternal uncle of C.J.W., and Anna W., the wife of Jeffrey, are the petitioners-appellants. Hana also has another younger child.

¶ 5 At the time of C.J.W.'s birth, Hana lived with Hurshel, but she moved out in August of 2007. She went to stay with a friend in Belleville. She left C.J.W. with Hurshel. After a couple months, Hana moved in with another friend, again, without C.J.W. In 2008, Hurshel and Jeffrey were granted joint temporary custody, and thereafter, C.J.W. spent about half his time with Hurshel and half his time with Jeffrey and Anna. Approximately two years before the hearing on Jeffrey and Anna's petition, Hana moved back in with Hurshel. Currently, Hana, C.J.W., and Hana's other child reside with Hurshel in his home. At the time of the hearing, Hana, C.J.W., and Hana's other child lived with Hurshel.

¶ 6 At the conclusion of the petitioners' case-in-chief, Hana orally moved for a directed verdict. The circuit court granted Hana's motion and directed a verdict in her favor. The petitioners' motion to reconsider was denied. This expedited appeal followed. We now affirm the ruling of the circuit court.

¶ 7 ANALYSIS

¶ 8 Although the petition for adoption alleged numerous grounds for finding Hana unfit, the petitioners challenge the entry of the directed verdict against them only with respect to the following grounds: evidence of intent to forgo parental rights (750 ILCS 50/1(D)(n) (West 2010)), failure to maintain a reasonable degree of interest, concern, or responsibility as to C.J.W.'s welfare (750 ILCS 50/1(D)(b) (West 2010)), and failure to protect C.J.W. from conditions within his environment which were injurious to his welfare (750 ILCS 50/1(D)(g) (West 2010)).

¶ 9 "A parent's right to raise his or her biological child is a fundamental liberty interest,

which is protected by due process." *In re S.L.*, 2012 IL App (5th) 120271, ¶ 41 (citing *In re M.H.*, 196 Ill. 2d 356, 362 (2001)), *appeal allowed*, No. 115424 (Ill. Jan. 22, 2013). The Act generally requires that before a child may be adopted, the child's natural parents must consent to such adoption. 750 ILCS 50/8(a) (West 2010). However, an adoption may take place without the consent of the natural parents where the petitioners for adoption show, by clear and convincing evidence, that the natural parent is "an unfit person as defined in Section 1 of th[e] Act." *Id.* The Act provides several bases for a finding of unfitness. 750 ILCS 50/1(D) (West 2010). "'A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.'" *In re S.L.*, 2012 IL App (5th) 120271, ¶ 45 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005)). The proponent has a high burden in proving unfitness by clear and convincing evidence. *Id.* (citing *In re M.H.*, 196 Ill. 2d 356, 365 (2001)).

¶ 10 In the present case, the circuit court directed a verdict for Hana on the petition for adoption. A motion for directed verdict raises a question of law. *Northern Trust Co. v. Burandt & Armbrust, LLP*, 403 Ill. App. 3d 260, 280-81 (2010) (quoting *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 311 (1942)). We review *de novo* a trial court's grant or denial of a motion for directed verdict. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 650 (2010) (citing *Jackson v. Seib*, 372 Ill. App. 3d 1061, 1068 (2007)). "A directed verdict *** is properly entered where all the evidence, when viewed in the light most favorable to the nonmoving party, so overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand." *Id.* (citing *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992)). "In ruling on a motion for a directed verdict ***, the court does not weigh the evidence, nor is it concerned with the credibility of the witnesses." *Id.* (citing *Maple*, 151 Ill. 2d at 453). Rather, "the court may only consider the evidence, and any rational inferences therefrom, in the light most favorable to the nonmoving party." *Id.* With these standards in

mind, we turn to the petitioners' claims.

¶ 11 Forgoing Parental Rights

¶ 12 First, the petitioners argue that "[t]he fact that Jeffrey *** testified to periods in excess of twelve months when the natural mother had abandoned the child, the fact that even Hurshel *** had petitioned to adopt C.J.W. in 2008 on grounds of abandonment, and Hurshel's 2010 deposition testimony that Hana was not really acting like she was C.J.W.'s mother all defeat the directed verdict in this case, with evidence viewed in the light most favorable to the non-movants." Although section 1(D)(a) of the Act provides that a parent may be found unfit on grounds that he or she abandoned the child, the petitioners cite section 1(D)(n) in support of their argument.

¶ 13 Section 1(D)(n) of the Act provides that a parent may be found unfit based on:

"Evidence of intent to forgo his or her parental rights *** (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child ***, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so ***." 750 ILCS 50/1(D)(n) (West 2010).

¶ 14 Although the petitioners alleged abandonment as a grounds of unfitness in their petition for adoption, we believe that their citation to section 1(D)(n) rather than section 1(D)(a) demonstrates that they are claiming that there was sufficient evidence of Hana's intent to forgo her parental duties to defeat the motion for a directed verdict. We also note that at the beginning of the hearing on the petition to adopt, the parties agreed that the relevant 12-month time period was the 12 months prior to the filing of the petition to adopt and that evidence of an intent to forgo parental duties outside that time frame would not be considered. Although nothing in section 1(D)(n) specifies that this is the only 12-month period which may be considered, the petitioners do not argue that the circuit court erred in limiting the evidence of an intent to forgo parental duties to this time frame, nor could they,

having agreed to it in the trial court.

¶ 15 With regard to subsection (D)(n), and in light of the fact that Hana had been living with C.J.W. in Hurshel's home during the year leading up to the petition for adoption, the time period which was agreed to by the petitioners' counsel as the relevant period, it is quite clear that the court did not err in granting Hana's motion for a directed verdict. If Hana was living with C.J.W. during this time period, it would be nearly impossible for the petitioners to demonstrate that she intended to forgo her parental rights by failing to visit C.J.W. or communicate with C.J.W. With regard to failing to plan for the future of the child, the petitioners elicited testimony that Hana had never taken C.J.W. to the doctor on her own, that she had not attended college, and that in the event of Hurshel's death, she would not be able to support C.J.W. on her own without state aid. However, Hana testified that she and her father had taken C.J.W. to the doctor, and Hana named C.J.W.'s doctor and dentist. Additionally, Hurshel testified that Hana "has been working with [C.J.W.] every day" and that "he writes out his letters and *** his numbers and he can just about count to a hundred and he knows his ABCs."

¶ 16 Based on the lack of evidence presented regarding the relevant time period agreed to by counsel, a finding that Hana was unfit on this ground could never stand.

¶ 17 Reasonable Degree of Interest

¶ 18 Next, the petitioners allege that "a reasonable trier of fact would have found" that Hana had, "for all of the life of the child, until motivated by money ***, not maintained a reasonable degree of responsibility for the child's welfare."

¶ 19 Subsection (D)(b) of section 1 of the Act provides the following ground for a finding of unfitness: "Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2010).

¶ 20 Although section 1(D)(b) contains no time limitation, the parties and the circuit court

agreed at the beginning of the hearing on the petition that the court would only consider evidence of Hana's conduct during the 12-month period preceding the filing of the petition, and the petitioners do not challenge this limitation on appeal. Consequently, we limit our review of this ground for unfitness to the 12-month period leading up to the filing of the petition.

¶ 21 The petitioners elicited testimony from Hana that she was aware that Hurshel, either in 2007 or 2008, had petitioned to adopt C.J.W., alleging that Hana had abandoned him. She further admitted that she had previously "left [her] son with [her] father." However, any abandonment during this time was outside the scope of the agreed limiting time period. Additionally, Hurshel testified that Hana had turned things around one "hundred percent." The petitioners did not present any evidence that, within the 12 months prior to the filing of the petition, Hana had failed to maintain a reasonable degree of concern or interest for her child.

¶ 22 With regard to failing to maintain a reasonable degree of responsibility for C.J.W., the petitioners elicited testimony that Hana was not working, that she had, at some point, been terminated from her job as a waitress, and that she was financially dependent on Hurshel. Hana acknowledged that, in the event of Hurshel's death, she would be unable to provide financial support for C.J.W. without state aid. However, she advised that she knew aid was available. Hana testified that she had not taken C.J.W. to the doctor by herself. However, as previously stated, she had taken C.J.W. to the doctor with Hurshel. Also, Hurshel testified that Hana was teaching C.J.W. to read and write.

¶ 23 Failing to be the sole financial supporter under these circumstances, for the limiting period agreed to by counsel, is not sufficient for a finding of unfitness by clear and convincing evidence for failing to maintain a reasonable degree of responsibility.

¶ 24 The petitioners also allege that "a reasonable trier of fact" would have found that Hana

"failed to protect C.J.W. from injurious conditions."

¶ 25 A parent may be found unfit for "[f]ailure to protect the child from conditions within his environment injurious to the child's welfare." 750 ILCS 50/1(D)(g) (West 2010).

¶ 26 Hurshel and Jeffrey testified as to having seen scratches on C.J.W. The petitioners also elicited testimony that there were five cats living in Hurshel's home, along with C.J.W., Hana, and Hana's younger child. They further presented testimony that there was one or, at most, two litter boxes in the home for all five cats. There was no testimony as to the extent or frequency of the scratches. Additionally, Hana testified that the Illinois Department of Children and Family Services had been to Hurshel's home to investigate based on a complaint about the cats and that the Department found the complaint to be unfounded.

¶ 27 The petitioners point to other conditions which they allege were injurious to C.J.W.: "intolerably dirty cat urine all around and ten to twelve dirty diapers on the floor, not placed in diaper pails." Norma Chinido, the ex-wife of Hurshel, testified that she had come to Hurshel's home on a prior occasion and voluntarily did some cleaning. She testified that she observed "twelve or more" diapers lying around the house and that there was no diaper pail.

¶ 28 The petitioners elicited testimony from Hurshel regarding C.J.W. and Hurshel's Glock pistol. Hurshel testified that one time, when he was the adult in charge, he had retrieved his gun from a lockbox in the home but failed to put it back and C.J.W. had picked it up. However, Hana testified that this situation had been remedied and that she did not believe it would happen again. Hurshel also testified that he had experienced depression and suicidal thoughts in relation to not being promoted in the Air Force. However, he further testified that things had turned around and he was no longer depressed. Hana testified that Hurshel sometimes drinks alcohol and smokes cigarettes in the garage, but the petitioners introduced no evidence that this activity was injurious to C.J.W. Additionally, Hana testified that her children routinely sleep with Hurshel.

¶ 29 While the testimony regarding the improperly disposed-of diapers and the cats is not favorable, it could not support a finding that Hana is unfit. Likewise, one incident, although quite cautionary, involving Hurshel's gun, is not sufficient to find Hana unfit. Also, the fact that Hurshel occasionally smokes and drinks is not sufficient for a finding, by clear and convincing evidence, that Hana is unfit. Finally, while it may not be ideal for a four-year-old and a younger child to sleep with their grandfather, there was no indication or allegation of impropriety or injury. Based on the evidence presented, we agree with the trial court and the respondent that a finding of unfitness by clear and convincing evidence could never stand.

¶ 30

CONCLUSION

¶ 31 Based upon the findings herein, we hereby affirm the judgment of the circuit court of St. Clair County.

¶ 32 Affirmed.