

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).

2014 IL App (4th) 130981-U
NOS. 4-13-0981, 4-13-0982 cons.
IN THE APPELLATE COURT

FILED
March 6, 2014
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS
FOURTH DISTRICT

In re: A.S., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v. (No. 4-13-0981))	No. 12JA3
KRISTIN F. SCHWARTZ,)	
Respondent-Appellant.)	
_____)	
In re: A.S., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-13-0982))	Honorable
JEREMY R. SCHWARTZ,)	Claudia S. Anderson,
Respondent-Appellant.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which terminated respondents' parental rights.
- ¶ 2 In June 2013, the State filed separate petitions to terminate the parental rights of respondents, Kristin F. Schwartz and Jeremy R. Schwartz, as to their son, A.S. (born February 21, 2011). Following a September 2013 fitness hearing, the trial court found respondents unfit. In October 2013, the court conducted a best-interest hearing and, thereafter, terminated respondents' parental rights.
- ¶ 3 Respondents appeal, arguing that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We affirm.

¶ 4

I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In January 2012, the State filed separate petitions for adjudication of wardship, alleging that A.S. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, each petition alleged that A.S.'s environment was injurious to his welfare due to respondents' continuing domestic-violence issues.

¶ 7 Following a May 23, 2012, adjudicatory hearing, the trial court entered a written order, finding that A.S. was a neglected minor based on respondents' admission that domestic violence had occurred between them. That same day, the court entered a temporary custody order, appointing the Department of Children and Family Services (DCFS) as A.S.'s temporary guardian. Following the presentation of evidence and argument at the July 2012 dispositional hearing, the court noted that although the State's petition for adjudication of wardship alleged only domestic-violence issues between respondents, the evidence at that hearing revealed respondents engaged in drug abuse and had mental-health issues. Thereafter, the court entered a written order, adjudicating A.S. a ward of the court and maintaining DCFS as his guardian.

¶ 8 B. The State's Motions To Terminate Parental Rights

¶ 9 In June 2013, the State filed separate petitions to terminate respondents' parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). Specifically, the State alleged that respondents were unfit parents in that they (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.S.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis for A.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) failed to make reasonable progress toward the

intervention *** in her daily functioning." Kristin's score of 76 on her intelligence quotient (IQ) test indicated borderline intellectual functioning. Minyard explained that although Kristin's intellect alone would not preclude appropriate parenting, it would present "some difficulty in making decisions" and "in making appropriate judgments to parent a child."

¶ 15 Minyard noted that Kristin's ability toward adaptive behavior—that is, her ability to function in the world—showed deficits in key areas, including social judgments and social intelligence. Minyard was particularly concerned with Kristin's low social intelligence scores, which she noted were important to parenting. Minyard opined that coupled together, Kristin's test results "would have a greater effect on her parenting because she doesn't have the adaptive behaviors to compensate for [her] IQ being lower than average." Kristin's other test results showed that she suffered from (1) a "moderate range of depressive symptoms"; (2) mild to moderate anxiety; (3) severe to extreme emotional, physical, and sexual abuse; and (4) severe to extreme emotional and physical neglect.

¶ 16 Based on her evaluation, Minyard diagnosed Kristin, as follows:

"I diagnosed attention deficit[/]hyperactivity disorder [(ADHD)] combined with posttraumatic stress disorder [(PTSD)]. I noted a history of substance abuse, if not dependence. Neglect of a child, and I diagnosed borderline intellectual functioning because I just wasn't quite comfortable diagnosing mild mental retardation for her. Although, if her IQ had been just a couple of points lower, I would have felt pretty comfortable with that diagnosis, and I also diagnosed borderline personality disorder."

Minyard had also diagnosed Kristin with bipolar disorder not otherwise specified.

¶ 17 Minyard surmised that Kristin's (1) ADHD and PTSD would affect her ability to parent but not preclude it; (2) borderline intellectual functioning would affect her ability to know what to do in certain situations; (3) borderline personality disorder, which is resistant to change, would affect her ability to interact with A.S.; and (4) bipolar disorder would affect her ability to parent A.S., noting that no effective treatment exists for that disorder. Minyard added that Kristin's history of uncontrolled drug use impairs further her ability to parent.

¶ 18 Minyard opined, to a reasonable degree of psychological certainty, that Kristin suffered from a mental impairment, a mental illness, or a mental disability that would prevent her from discharging her parental responsibilities as to A.S. within a reasonable time. Minyard added that it was "not likely" that Kristin would ever be able to independently parent A.S.

¶ 19 With regard to Jeremy, Minyard tested his mental status, IQ, achievement, and adaptive behavior. Although Jeremy knew the testing sought to evaluate his ability to parent A.S., he did not take the evaluation seriously, which caused Minyard difficulty in obtaining accurate information. During her clinical interview with Jeremy, Minyard noted that "his cognitive deficits were pretty obvious" in that Jeremy was socially inappropriate and exhibited a poor understanding of social norms. Jeremy's IQ score of 62 was "within the range *** of mild mental retardation" and would affect his ability to parent independently. Minyard added that "Jeremy probably needs a little bit more structure and guidance than he's been receiving." Jeremy's academic achievement testing revealed that he was functioning at a second-grade level and that his adaptive behavior test results placed him in the "extremely low to borderline range," which indicated that Jeremy would have difficulty functioning independently. Minyard added that Jeremy's mild mental intellectual disability, coupled with his distractible, impulsive behavior, would prevent him from appropriately regulating his behavior.

¶ 20 Minyard opined, to a reasonable degree of psychological certainty, that Jeremy suffered from a mental impairment, a mental illness, or a mental disability that would prevent him from discharging his parental responsibilities as to A.S. within a reasonable time. Minyard added that Jeremy's deficient intellectual ability is a lifelong condition that may require the appointment of a guardian.

¶ 21 DCFS contractor Michael Tolles testified that he was (1) assigned to A.S.'s case from October 2012 to March 2013 and (2) reassigned responsibility in July 2013. During that time, Jeremy and Kristin remained married, but on at least two occasions either Jeremy or Kristin left their marital home for a brief period. In January 2013, Jeremy and Kristin moved to Hoopeston, Illinois, for financial reasons, which was the seventh move since Tolles was first assigned. Tolles advised them not to move, citing their lack of transportation, which interrupted the services they were receiving in connection with their respective DCFS client-service plans. Tolles noted that although their Hoopeston home was suitable for A.S., he had concerns about the four dogs the couple owned and the instability caused by approximately seven instances in which different family members moved in and out of that home.

¶ 22 With regard to Kristin's efforts to comply with her assigned client-service-plan goals, Tolles testified that she (1) did not regularly attend individual counseling sessions or complete any counseling goals assigned; (2) successfully completed parenting classes in January 2013 but could not implement the skills taught because she could not focus on A.S.'s needs for any length of time; (3) did not comply with her domestic-violence counseling goals; (4) did not complete a drug-treatment program; and (5) did not regularly attend her weekly supervised visits with A.S. Tolles acknowledged that since 2013, when he was reassigned to the case, Kristin has tested negative for drug use.

¶ 23 As to Jeremy's client-service plan, Tolles summarized that he had not complied with the following goals: (1) attend individual counseling, (2) refrain from consuming drugs, (3) complete drug treatment, (4) comply with drug testing, and (5) complete domestic-violence counseling. In January 2013, Jeremy successfully completed parenting classes but, thereafter, failed to demonstrate the ability to appropriately parent A.S. Three weeks prior to the instant fitness hearing, Jeremy admitted to Tolles that drug testing him would produce positive results for cannabis. In April 2013, Jeremy and Kristin had a domestic-violence altercation.

¶ 24 Tolles acknowledged that in the 15 months since May 2012, when the trial court adjudicated A.S. neglected, Kristin and Jeremy had yet to successfully comply with their respective client-service-plan goals.

¶ 25 Neither Kristin nor Jeremy presented evidence.

¶ 26 b. The Trial Court's Ruling

¶ 27 Following argument, the trial court found that the State proved respondents unfit on the grounds that they (1) failed to make reasonable progress toward the return of A.S. to their care within nine months after an adjudication of neglect (May 23, 2012, to February 23, 2013); and (2) demonstrated an inability to discharge their parental responsibilities supported by competent evidence from a licensed clinical social worker of mental impairment, mental illness, or an intellectual disability, and there existed sufficient justification to believe that the inability to discharge their parental responsibilities would persist beyond a reasonable period of time.

¶ 28 2. *The October 2013 Best-Interest Hearing*

¶ 29 a. The State's Evidence

¶ 30 Tolles testified that shortly after DCFS assumed custody of A.S. 2 1/2 years ago, DCFS placed him with Jeremy's aunt, Sheila Hardwick, and her husband, Billy Hardwick. Also

residing with the Hardwicks was A.S.'s brother, E.S. (born April 30, 2013). (E.S. is not a party to this appeal.) Tolles observed that A.S. had bonded with his foster parents and called them "Mama" and "Dada." Tolles stated that he had no cause for concern regarding A.S.'s placement, opining that the Hardwicks' home was a safe and appropriate place. The Hardwicks had already started the process of adopting A.S. Tolles confirmed that (1) A.S. was not receiving any DCFS services and (2) the Hardwicks did not use Jeremy's mother for child-care services.

¶ 31 Neither Kristin nor Jeremy presented evidence.

¶ 32 b. The Trial Court's Ruling

¶ 33 Following argument, the trial court found that it was in A.S.'s best interest that respondents' parental rights be terminated.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 Respondents argue that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 37 A. The Trial Court's Fitness Findings

¶ 38 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 39 At the time of the fitness hearing in this case, section 1(D)(p) of the Adoption Act provided, in pertinent part, as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has

relinquished a child in accordance with the Abandoned Newborn
Infant Protection Act:

* * *

(p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability ***, or developmental disability ***, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period." 750 ILCS 50/1(D)(p) (West 2012).

¶ 40 To prove a parent unfit pursuant to section 1(D)(p) of the Adoption Act, the State must show (1) the parent suffers from a mental impairment, mental illness, mental retardation, or developmental disability that prevents the parent from discharging his or her parental responsibilities; and (2) such inability will extend beyond a reasonable period of time. *In re Michael M.*, 364 Ill. App. 3d 598, 608, 847 N.E.2d 911, 920 (2006).

¶ 41 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is

clearly evident from a review of the record. *Id.*

¶ 42 *2. The Trial Court's Fitness Findings*

¶ 43 Respondents argue that each of the trial court's fitness findings were against the manifest weight of the evidence. We disagree.

¶ 44 In this case, the evidence presented by Minyard, who respondents do not contest was a licensed clinical psychologist within the meaning of section 1(D)(p) of the Adoption Act, showed that Kristin suffered from ADHD, PTSD, borderline intellectual functioning, borderline personality disorder, and bipolar disorder not otherwise specified. With regard to each of Kristin's aforementioned medical conditions, Minyard explained how (1) each individual ailment affected Kristin's ability to parent A.S. and (2) the combinations of certain conditions—such as Kristin's low social intelligence score and low IQ— would further prevent Kristin from adequately fulfilling her parental responsibilities. Based on her diagnoses, Minyard opined, to a reasonable degree of psychological certainty, that Kristin suffered from a mental impairment, a mental illness, or a mental disability that would prevent her from discharging her parental responsibilities as to A.S., adding that it was "not likely" that Kristin would ever be able to independently parent A.S.

¶ 45 Similarly, Minyard diagnosed Jeremy's deficient intellectual disability as a life-long condition, opining further that Jeremy himself required additional assistance to become an independent, functioning member of society. Thus, based on his low IQ, intellectual disability, and low academic comprehension, Minyard also opined, to a reasonable degree of psychological certainty, that Jeremy suffered from a mental impairment, a mental illness, or a mental disability that would prevent him from discharging his parental responsibilities as to A.S. within a reason-

able time.

¶ 46 Although Kristin and Jeremy both argue that the State failed to explicitly state what parental deficiencies either would not be able to fulfill for A.S., we note that section 1(D)(p) does not mandate such specificity. We conclude that the evidence the trial court considered in finding respondents unfit satisfied our standard of review. Accordingly, we reject respondents argument that each of the court's fitness findings were against the manifest weight of the evidence.

¶ 47 Having so concluded, we need not consider the trial court's other findings of parental fitness against respondents. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 48 B. The Trial Court's Best-Interest Finding

¶ 49 1. *Standard of Review*

¶ 50 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 51 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 52 *2. The Trial Court's Best-Interest Determination*

¶ 53 Respondents argue that the trial court's best-interest findings were against the manifest weight of the evidence. We disagree.

¶ 54 In this case, the only evidence presented at the October 2013 best-interest hearing showed that A.S. had lived for 2 1/2 years with his paternal aunt and uncle, and recently, his younger brother, E.S. Tolles noted that A.S.'s foster family was (1) actively engaged in providing permanency for A.S. by adopting him and (2) willing and able to provide A.S. a loving and stable home life. Accordingly, we conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 55 **III. CONCLUSION**

¶ 56 For the reasons stated, we affirm the trial court's fitness and best-interest determinations.

¶ 57 Affirmed.