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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i>)	Appeal from the Circuit Court
RANIYA F. and RANDI B., Minors,)	of Cook County.
Respondents-Appellees,)	
(People of the State of Illinois,)	
Petitioner-Appellee)	No. 10 JA 446, 10 JA 447
)	
v.)	
)	The Honorable
Randall B.,)	Marilyn F. Johnson,
Respondent-Appellant.))	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment terminating respondent father, Randall B.'s, parental rights as to his two minor daughters is affirmed where (1) the trial court's finding of unfitness was not against the manifest weight of the evidence and (2) the termination of his parental rights was in the best interests of his daughters.

¶ 2 At the conclusion of unfitness proceedings against both parents, the trial court found Randall unfit to be a parent under the grounds in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). The court determined that Randall failed to maintain a reasonable degree

of interest, concern, or responsibility in his daughters' welfare (750 ILCS 50/1(D) (b) (West 2012)), and failed to make reasonable efforts and reasonable progress toward the return home of his children, as detailed in subsection (m) (750 ILCS 50/1(D) (m) (West 2012)). Later, the court found termination of Randall's parental rights in the best interests of his daughters.

¶ 3 Randall appeals, arguing the trial court's finding of unfitness was against the manifest weight of the evidence and the termination of his parental rights was not in the best interests of his daughters. Although this was a close case, we affirm. Every matter concerning parental fitness must be decided on the particular facts and circumstances presented. The record supports the trial court's decision to find Randall unfit under (i) ground (b)—that he failed to maintain a reasonable degree of interest, concern, and responsibility and (ii) ground (m)—that he failed to make reasonable efforts and progress towards the return of Raniya and Randi. Also, the trial court's finding that Randall's actions do not show any reasonable efforts or progress towards regaining custody under Section 1(D) (b) of the Adoption Act is not against the manifest weight of the evidence. Finally, the record supports the trial court's decision that despite the girls' bond with their father, Raniya's and Randi's best interests is to gain permanency by allowing their adoption by the foster parent who has provided the girls with a safe and loving home for the past four years.

¶ 4 **BACKGROUND**

¶ 5 Mercedes F., who is now deceased, and Randall B. had two daughters together, Raniya F., born in 2008, and Randi B., a premature birth, born in January 2010. Randi spent several weeks in the neonatal intensive care unit. Randi was discharged from the neonatal unit when she was three months old. Two weeks later, at her ophthalmological appointment, she displayed

retinal hemorrhaging in her left eye, which medical staff diagnosed as child abuse because neither of her parents could offer an explanation.

¶ 6 The girls, along with their older sister, Mercedes G., who Randall did not father and is not a part of this appeal, came to the attention of the Department of Children and Family Services because of Randi's abuse.

¶ 7 On May 25, 2010, the State petitioned for the adjudication of wardship for Raniya and Randi, alleging that the girls were in an injurious environment and at substantial risk of physical injury under section 2-3(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1) (West 2010)), and specific to Randi, that she was physically abused. Before the adjudication trial, the State filed a motion to add facts to both petitions, including the mother's admission to domestic violence incidents between her and Randall, which the trial court granted. The parties stipulated to the facts of the petitions.

¶ 8 On June 9, 2010, the court took temporary custody of Raniya and Randi. Over a year later, on August 31, 2011, the trial court found Raniya and Randi were both neglected due to an injurious environment and abused due to a substantial risk of physical injury as defined in the Juvenile Court Act (705 ILCS 405/2-3 (West 2010)). The trial court also found Randi was physically abused. Another year passed, and on August 9, 2012, the trial court adjudged the minors to be wards of the court and found both the mother and father unable, for reasons other than financial, to care for, protect, or train Raniya and Randi. The trial court placed the girls under DCFS guardianship. The court conducted the first permanency planning hearing for the girls and entered a goal of return home in 12 months. The court noted that neither parent had made substantial progress toward the return home of their daughters.

¶ 9 The next permanency hearing was held in December 2012. Again the court noted the goal of return home in 12 months and that neither parent had made substantial progress toward the return home of Raniya and Randi.

¶ 10 At the third permanency hearing in March 2013, the permanency goal was changed from return home to substitute care pending termination of parental rights because the girls' mother failed to complete services. On June 12, the State filed motions for appointment of a guardian with the right to consent to the adoption of Raniya and Randi, alleging under section 50/1(D)(b) of the Adoption Act (Act) (ground (b)) (750 ILCS 50/1(D)(b) (West 2012), that both mother and father were unfit for their "failure to maintain a reasonable degree of interest, concern or responsibility as to [Raniya's and Randi's] welfare," and under section (D)(m) of the Act (ground (m)) (750 ILCS 50/1(D)(m) (West 2012), that both parents failed "(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the [children] from the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, or (ii) to make reasonable progress toward the return of the [children] to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." The two nine-month periods were August 10, 2012, through May 10, 2013, and May 11, 2013, through February 11, 2014.

¶ 11 On June 4, 2014, the court heard evidence on the parents' fitness. The State asked the court to take judicial notice of the minors' adjudication and disposition orders and of the motions for termination of parental rights. The State entered three exhibits—service plans dated June 8, 2011, June 5, 2012, and December 9, 2012.

¶ 12 Doris Byrd, the girls' DCFS caseworker, testified for the State. Byrd testified she was assigned the case in June 2010, when Raniya and Randi first entered the child protection system and she remained the assigned case manager. From the beginning, their father, Randall, "consistently stated that he wanted the children at the time returned to the mom." Byrd noted that because Randall was visiting his daughters, he needed to participate in domestic violence counseling.

¶ 13 Byrd referred Randall to domestic violence counseling at the Salvation Army in October 2010. Randall did not attend any sessions. He informed Byrd that "he really did not feel he needed to be involved with the type of clients that they serviced at the Salvation Army," which she understood to mean that he did not want to be involved in a program that assisted people with criminal backgrounds. Randall asked Byrd to refer him to Universal Family Connections for counseling. Byrd's agency had safety concerns about referring Randall there because the mother was receiving service from that agency.

¶ 14 In March 2013, when the goal changed from return home to substitute care pending termination of parental rights, Randall was still searching for a place to participate in domestic violence counseling. Ultimately Randall attended Universal Family Connections for domestic violence counseling and paid for the services himself. As of June 17, 2013, however, Randall still had not completed the domestic violence counseling. Because of his failure to complete the domestic violence counseling, Byrd rated Randall's progress "unsatisfactory" for the two nine-month periods—August 10, 2012, through May 10, 2013, and May 11, 2013, through February 11, 2014.

¶ 15 Randall participated in unsupervised visits of his daughters until 2011, when two instances of domestic violence took place between Randall and the girls' mother. After that, Byrd

never again was able to recommend unsupervised visits for Randall with Raniya and Randi. During cross-examination, Byrd explained that this was because even though Randall completed domestic violence counseling, there were "still issues and concerns surrounding domestic violence" because he continued to have contact with the girls' mother. Byrd testified that when Randall sought to have Raniya and Randi returned to his custody in March 2012—the girls were unable to be returned to their mother's care after she failed to participate in the recommended services—the agency probably would have reassessed Randall for services if he had so indicated before the permanency goal was changed.

¶ 16 Randall testified on his own behalf:

"[The caseworker] assessed me for domestic violence because I said when me and [the mother] argue, I'll push her out of the way. [The caseworker] says that's domestic violence. But, obviously I didn't feel that way about it. And I support them going home to their mom, so I didn't participate in any of the services. So that's one reason why I didn't start it on time. I didn't really start the program until I found out they were changing the plan from return home to mom to terminating rights. So then that's when I decided to find my own resources that was closer and more convenient for me to go to."

¶ 17 After closing argument, the court found both the mother and father unfit under grounds (b) and (m). As to Randall, the court specifically found:

"[Randall's] performance of the service was quite belated. *** even if one were to deem that he made progress with that service in the second nine-month period identified, which is between May 11th, 2013, and February 11th, 2014, I don't believe that was a reasonable effort because of the belated nature of which it was

done and the absence of communication about what his desire and intent was with respect to these minors."

The trial judge clarified that her ruling as to Randall regarding ground (m), was "that on the second time period, I think reasonable progress was met but not reasonable efforts."

¶ 18 On June 19, 2014, the court held a dispositional hearing to determine the best interests of Raniya and Randi. Foster mother, Edna Dillard, testified about her relationship with the girls. Raniya and Randi, along with their older sister, Mercedes, came to live with Dillard on July 23, 2010.

¶ 19 Dillard testified that when Raniya arrived at her home, she was extremely quiet. After about a year, she was able to open up, and presently was outgoing, even to the point of getting in trouble at school for talking too much. Raniya likes to ride her bike, play with dolls, and ask neighborhood children over to play. Randi was a baby when she came into Dillard's care and there was concern about the head trauma she suffered. Now, Randi likes to be the boss of her older sisters and is talkative.

¶ 20 To help the girls with their schoolwork, Dillard turned the front room of her home into a school room, where they can do their homework and practice lessons. Dillard walks the girls to and from school each day and occasionally they go to church. Dillard testified she favors Randall continuing to visit Raniya and Randi. The girls are always happy to see their father and that it is good for them to continue visits with him.

¶ 21 Byrd testified. She described Raniya as a shy girl when she went to live with Dillard, but since then, she has seen Raniya "blossom." As for Randi, she is "very connected" to Dillard and Dillard has been instrumental in nurturing the development of the girls, especially Randi, who came into her care due to head trauma. Neither of the girls needs any special services and Dillard

communicates with the girls' teachers and supports their relationship with their parents. When Byrd was asked to describe the role Dillard has played in the girls' lives, she testified that it is "immeasurable" and that "it's made all the difference in the world in terms of overall development of the girls." Byrd testified she has no concerns that Dillard would prevent Raniya and Randi from visiting with their father. Byrd's recommendation, in conjunction with her agency, was that the best of interests of Raniya and Randi was that the rights of their parents be terminated to allow Dillard to adopt both girls.

¶ 22 Randall testified that he did not want his parental rights terminated. He asked the court to return Raniya and Randi to him, as well as allow him the opportunity to adopt their older sister, Mercedes, who he did not father. Randall informed the court that he has known Mercedes since she was 10-months-old and even though he is not her biological father, she thinks of him as her father. Randall addressed the court:

"I understand that right now I'm on the verge of having my father's rights terminated, and I don't understand. I don't think that would be a good idea because, like, I have never had a problem with any drugs, no criminal background. I have a steady job. I live in a very nice neighborhood. I just—I think it would be a tragedy if I lost my rights to my children because as you know, we don't really have enough fathers out there, and I believe that I'm a great father. Everybody who knows me knows that I'm a great father, and I just think that it would be a tragedy if I lost my rights to my children."

¶ 23 The trial court found it to be in the best interests of Raniya and Randi to terminate the parental rights and allow the girls to be adopted by Dillard. In ruling, the court stated, "No one understands more than me, I think, that these parents do love and care about these girls." The

court expressed frustration that the parents did not participate in the services provided more readily. The trial court noted that it had never seen a foster parent testify more sincerely than Dillard about maintaining the girls' relationship with their father.

¶ 24

ANALYSIS

¶ 25

The involuntary termination of parental rights by petition of the State is governed by the Juvenile Court Act of 1987 (705 ILCS 405/1 *et seq.* (West 2012)), and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2012)). The involuntary termination of parental rights is a two-step process. *In re D.F.*, 201 Ill. 2d 476, 494 (2002). First, the State must show by clear and convincing evidence that the parent is "unfit," as the term is defined in section 1(D) of the Adoption Act. *Id.* If the court determines the parent is unfit, it then will consider whether it is in the best interests of the child to terminate the parental rights. *Id.* at 494-95.

¶ 26

When a parent appeals the termination of his or her parental rights by challenging the sufficiency of the evidence to support the trial court's finding of unfitness under the Adoption Act, as a reviewing court, we will reverse only if the finding is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). In determining whether the trial court's decision is contrary to the manifest weight of the evidence, we are mindful that every matter concerning parental fitness is *sui generis*—meaning it must be decided on the particular facts and circumstances presented. *Id.*

¶ 27

Randall asks this court to overturn the trial court's holding that the State proved that it was in the best interests of his daughters to terminate his parental rights and appoint a guardian with the power to consent to adoption. Randall argues the trial court erred when it found him unfit under two statutory grounds: (1) ground (b)—that he failed to maintain a reasonable degree

of interest, concern, and responsibility and (2) ground (m)—that he failed to make reasonable efforts and progress towards the return of Raniya and Randi.

¶ 28 Failure to Maintain a Reasonable Degree of Interest, Concern, or Responsibility

¶ 29 Section 1(D)(b) of the Adoption Act allows a finding of unfitness based on a parent's "[f]ailure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2012). Factors the trial court should consider in analyzing the elements of ground (b) include consideration of a parent's efforts to visit and maintain contact with their child, as well as other signs of interest, such as inquiries into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). Our supreme court has directed that in reviewing a finding of unfitness under ground (b), the court must examine the parent's conduct in the context of the parent's particular circumstances. *In re T.D.*, 268 Ill. App. 3d 239, 246 (1994) (citing *In re adoption of Syck*, 138 Ill. 2d 255, 278 (1990)). Relevant circumstances include: (i) difficulty in obtaining transportation, (ii) the parent's poverty, (iii) statements made by others to discourage visitation, and (iv) whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference towards them. *In re T.D.*, 268 Ill. App. 3d at 246 (citing *Syck*, 138 Ill. 2d at 279). Recognizing the significant role DCFS plays in these types of cases, a parent's noncompliance with the service plan may be considered evidence of unfitness. *In re T.D.*, 268 Ill. App. 3d at 246. The trial court, however, must focus on the reasonableness of a parent's efforts to show interest, concern, or responsibility, not necessarily the success of the efforts. *In re M.J.*, 314 Ill. App. 3d 649, 656 (2000).

¶ 30 Randall contends he maintained a reasonable degree of interest in his daughters by seeking out domestic violence counseling on his own when he did not feel comfortable with the clientele of the program he was referred to, successfully completing the 26-week program,

paying for it out of his own pocket, and promptly notifying the agency as soon as he completed the program. Randall also attended all of the court hearings and visited his daughters. He calls Dillard to arrange his visits with his daughters. He argues his actions show he did not fail to maintain a reasonable degree of interest, concern, or responsibility in his daughters' welfare.

¶ 31 The State responds that Randall fails to recognize that being willing to have his daughters return home to his custody, after three years in foster care and before he even attempted to complete the recommended domestic violence counseling, does not constitute reasonable interest, concern, or responsibility for his daughters' welfare. The State points to Randall's delay in participating in the recommended counseling, as well as his completion of it at the same facility as the mother despite the agency's concern with ongoing domestic violence issues between the two, as demonstrating a lack of interest in gaining custody. The State also cites Randall's failure to gain unsupervised visits as further support under ground (b).

¶ 32 The trial court found Randall unfit under ground (b). In explaining her ruling, the trial judge stated she had presided over the case since the girls came into DCFS's care in 2010 and acknowledged that the desired goal of the case was to promote family reunification. The court recognized that both parents loved and cared about their daughters, but found that Randall did not make reasonable efforts when he delayed his engagement in the domestic violence counseling and never informed the agency he changed his mind and wanted his daughters returned to his care. The court found it unreasonable "in terms of the overall assessment of [Randall's] completion of [the recommend service]" that there was "no impediment, other than [Randall's] desire, not to attend domestic violence services at a place where he didn't like the other participants."

¶ 33 The record shows the trial court carefully considered all of the evidence in making its determination. Even though we acknowledge Randall's visitation and completion of domestic violence counseling as positive steps that does not itself cause us to say the trial court's decision—that he failed to maintain a reasonable degree of interest or concern or responsibility as to Raniya and Randi's welfare—was against the manifest weight of the evidence. Accordingly, we uphold the court's ruling of unfitness under ground (b).

¶ 34 Failure to Make Reasonable Efforts or Progress

¶ 35 Next, Randall claims the trial court's findings of unfitness under subsections 1(D)(m)(i) and (D)(m)(ii) of the Adoption Act are against the manifest weight of the evidence.

¶ 36 Under section 1(D)(m) of the Adoption Act, a parent will be found unfit if he or she fails:

"(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or (ii) to make reasonable progress toward the return of the child to the parent within any 9 month period after adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(m) (West 2012).

¶ 37 Reasonable efforts and reasonable progress are two different grounds for finding a parent unfit in section 1(D)(m) of the Adoption Act. *In re C.N.*, 196 Ill. 2d 181, 210-11 (2001).

Reasonable efforts concern the goal of correcting the conditions that caused the removal of the child from the parent (750 ILCS 50/1(D)(m)(i) (West 2012)), and are judged by a subjective standard based on the amount of effort that is reasonable for a particular person (*In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67 (2006)).

¶ 38 Reasonable progress, in contrast, is evaluated by an objective standard and relates to making progress—measurable or demonstrable movement—toward the goal of returning the

child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). The standard for measuring a parent's progress under section 1(D)(m) of the Adoption Act includes the parent's compliance with the service plans and the court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known and would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d at 216-17. If the trial court can conclude that it will be able to order the child returned to parental custody in the near future, reasonable progress has been established. *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

¶ 39 The trial court concluded that during the first 9-month period, Randall made minimal progress and no efforts, and during the second 9-month period, "reasonable progress was met but not reasonable efforts."

¶ 40 Randall argues that during the first 9-month period, he was consistent with his visits and supported the original goal of reunification of his daughters with their mother and, thus, made reasonable progress and efforts. He argues that neglecting domestic violence counseling during this period does not detract from his reasonable progress and efforts toward the original goal—return home of his daughters to their mother. Randall contends he went on two separate occasions to the referred facility, but did not attend counseling because he felt uncomfortable with the clientele, not because he refused to engage in the services. Randall argues that even if his efforts "were to be considered less than ideal, those efforts were subjectively reasonable—and that complies with the law." The trial court disagreed.

¶ 41 The court found no reasonable efforts based on the belated nature of Randall's completion of the referred service and absence of communication about his desire to have his daughters return to his custody after the permanency goal changed. Byrd testified that Randall was rated

"unsatisfactory" during the two periods of time regarding how much progress he made toward completing the one service in which he was initially asked to participate. Moreover, although Randall argues he consistently visited his daughters, all of his visits since 2011 have been supervised. Unsupervised visits were revoked in 2011 after Randall engaged in domestic violence with their mother on two separate occasions. Nothing in the record indicates that Randall attempted to have unsupervised visits with his daughters reinstated.

¶ 42 Contrary to Randall's contention, the fact that he complied with the recommended DCFS services is not, in and of itself, sufficient to show reasonable progress. Although compliance is relevant, our supreme court has rejected "mechanical application of a rule" that measures a parent's reasonable progress only in terms of compliance with plans. *In re C.N.*, 196 Ill. 2d 181, 215 (2001). Rather, "the overall focus in evaluating a parent's progress toward the return of the child remains, at all times, on the fitness of the parent in relation to the needs of the child." *Id.*

¶ 43 The trial court's finding that Randall's actions do not show any reasonable efforts or progress towards regaining custody is not against the manifest weight of the evidence. Accordingly, we affirm the trial court's finding that Randall was unfit under ground (m) of the Adoption Act.

¶ 44 Termination of Parental Rights as being in the Best Interests of the Minors

¶ 45 Lastly, Randall argues the State failed to prove that terminating his parental rights was in the best interests of his daughters. Specifically, he argues the evidence showed that continued contact with him would be beneficial, not harmful to Raniya and Randi.

¶ 46 When the trial court finds a parent unfit under one of the grounds of section 1(D) of the Adoption Act, it must then determine whether termination of parental rights is in the best interests of the child under 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West

2012)). The State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest. See *In re D.T.*, 212 Ill. 2d 347, 366 (2004). We will not disturb a trial court's best interests determination on appeal unless it is against the manifest weight of the evidence, meaning the opposite conclusion is clearly evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010).

¶ 47 Under section 1-3(4.05) of the Juvenile Court Act, the court must consider the following factors when making a decision about the best interests of a child: the child's physical safety and welfare; the development of the child's identity; the child's familial, cultural, and religious background; the child's sense of attachment, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; the child's wishes; the child's ties to his or her community; the child's need for permanence, including his or her need for stability and continuity of relationships with parent figures and other relatives; the uniqueness of every family and child; the risks related to substitute care; and the preferences of the person available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 48 The evidence presented at the best interests hearing showed Raniya and Randi, along with their older sister Mercedes, had been living with Dillard for four years. Both the caseworker, Byrd, and foster mom, Dillard, testified to the significant changes each of the girls experienced while living with Dillard. Byrd testified the girls have "blossomed" in Dillard's care, showing they feel love for and are attached to Dillard. The evidence further established that the girls are tied to their community. They attend school in the neighborhood, walking to and from with Dillard, and have play dates with neighborhood children.

¶ 49 The evidence also showed that Randall has a good bond with his daughters and that he is a positive influence in their lives. Byrd testified the girls enjoy their father's visits and want them to continue. She found the visits appropriate and their interactions good.

¶ 50 Most important from the trial court's perspective was the permanency Dillard can offer the girls. At the time of the hearing, there was no evidence that Randall had been reassessed for services with the goal of gaining custody of his daughters; in fact, he still had not achieved unsupervised visits with his daughters.

¶ 51 In ruling that termination of their parents' rights was in the best interests of Raniya and Randi, the trial court observed, "I have never—and I say this without any hyperbole—observed a foster parent testify about her willingness to maintain contact should she be allowed to adopt the children, I've never observed a foster parent that I have found to be more credible in my observation. *** I think she understands where the parents come into the mix in terms of the well-being of these girls, but they come into the mix in concert with Ms. Dillard being their permanent caregiver and providing the stability and security for them that she has provided over the last four years ***." (We note too how rare it is for a judge to make a statement like this and express our appreciation for Edna Dillard's care of the children.)

¶ 52 Randall asks this court not to terminate his parental rights, but also to allow the girls to remain with Dillard, which is a contention he raises for the first time on appeal. This was not Randall's position at the best interests hearing and he gives no explanation of how this arrangement would be in the best interests of the children, particularly with the trial court's stated concern for permanency.

¶ 53 Although this is a close case, the trial court's decision terminating Randall's parental rights as the father of Raniya and Randi was in his daughters' best interests and was not against

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the manifest weight of the evidence. The record supports the trial court's decision that despite the girls' bond with their father, it was in Raniya's and Randi's best interests to gain permanency by allowing their adoption by Dillard, who has provided a safe and loving home for them for the past four years.

¶ 54 Affirmed.