2016 IL App (1st) 151323-U

No. 1-15-1323

FIFTH DIVISION
September 16, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF J.H. & M.H., Minors,	)	Appeal from the
	)	Circuit Court of
Respondents-Appellees,	)	Cook County.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Nos. 10 JA 00627
	)	10 JA 00628
v.	)	
	)	
L.S.,	)	The Honorable
	)	Richard A. Stevens,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justice Reyes concurred in the judgment.
Presiding Justice Gordon specially concurred.

O R D E R

¶ 1 *HELD***:** The manifest weight of the evidence supported the trial court's finding that respondent was unfit pursuant to subsection (g) of the Adoption Act and that it was in the best interests of her children to terminate her parental rights.

¶ 2 L.S. appeals the trial court's finding that, *inter alia*, she was unfit due to her failure to protect J.H. and M.H. from an injurious environment. L.S. additionally appeals the trial court's finding terminating her parental rights and appointing a guardian for J.H. and M.H. with the right to consent to their adoption. L.S. contends that: (1) the trial court's finding that L.S. was unfit pursuant to subsections 1(D)(b), (g), and (m) of the Adoption Act (750 ILCS 50/1(D)(b), (g), (m) (West 2010)) were against the manifest weight of the evidence; and (2) the trial court's finding that it was in the best interests of J.H. and M.H. that her parental rights be terminated also was against the manifest weight of the evidence. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 I. Initial Proceedings

¶ 5 On July 20, 2010, the State filed petitions for the adjudication of wardship of J.H. and M.H., twin brothers born on April 6, 2010, to respondent, L.S., alleging that they were abused and neglected. L.S. also was the mother to six other children. The State further alleged there was an immediate and urgent necessity to remove J.H. and M.H. from L.S.'s care.[1] In addition, the State requested that an order be entered appointing the guardianship administrator of the Illinois Department of Children and Family Services (DCFS) as the children's temporary guardian, making J.H. and M.H. wards of the court. In support of its request, the State alleged that J.H. had been admitted to the hospital on June 15, 2010, with an unexplained fracture to his femur. The State additionally alleged that, on July 12, 2010, J.H. was observed with a bruised left eye by medical professionals and that, on July 15, 2010, he was diagnosed with a skull fracture. The State further alleged that, on July 16, 2010, M.H. was diagnosed as having healing

[1] The State's petition also requested the removal of the children from Q.H., their father. Paternity had been established by Q.H.'s admission in court on July 20, 2010. Q.H., however, is not a party to this appeal.

rib fractures. According to the State, medical professionals believed the boys' injuries were the result of abuse. L.S. was unable to provide a consistent explanation for the injuries.

¶ 6 On July 20, 2010, the trial court entered a temporary custody order, finding there was probable cause that J.H. and M.H. were "abused/neglected/dependent" based on the facts in the State's petition and there was an immediate and urgent necessity to remove the children from L.S.'s home. Temporary custody was appointed to the DCFS guardianship administrator with the right to place the minors. The court also entered a visitation order allowing L.S. supervised day visits. The temporary custody order was entered and continued on a number of dates and entered with prejudice on August 16, 2010. Meanwhile, on August 10, 2010, J.H. and M.H. were placed in the foster home of L.G., who was trained to care for specialized children. J.H. was considered specialized due to his diagnoses of cerebral palsy and spastic dysplasia.

¶ 7 On March 29, 2011, the trial court entered an adjudicatory order pursuant to section 2-21 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-21 (West 2010)). A supplemental stipulation of facts entered on that date revealed that L.S.'s "paramour who resided in the house," Edwin Owens, had a report filed in May 2010 for sexual molestation of L.S.'s daughter and he was "indicated" for sexual molestation in August 2010. In addition, L.S.'s mother was reported for bruising L.S.'s daughter in May 2006. Based on the stipulation, which also restated the twin boys' injuries, and the children's medical records, the trial court found that J.H. and M.H. were physically abused and neglected due to their injurious environment. The court further found that L.S. failed to protect the children from physical abuse.

¶ 8 On May 17, 2011, the trial court held a dispositional hearing. The trial court determined that it was in the best interests of J.H. and M.H. to be adjudged wards of the court and to be placed in the guardianship of the DCFS guardianship administrator. The trial court additionally

found it was in the best interests of the children to be removed from L.S.'s custody where L.S. was unable to parent J.H. and M.H at that time. The trial court then proceeded to a permanency hearing on the same date, entering a permanency order establishing the permanency goal for the return of the children to L.S.'s home within 12 months. In so ordering, the trial court found L.S. had made substantial progress toward the children's return home.

¶ 9 In December 2011, the trial court entered another permanency order, ordering that the appropriate permanency goal remain the return of the children to L.S.'s home within 12 months. In so ordering, the trial court found that L.S. had made substantial progress toward the children's return home; however, the goal had not been achieved due to ongoing services. The trial court entered and continued a motion for unsupervised day visitation that had been filed by L.S.

¶ 10 In July 2012, the trial court held a third permanency hearing, again ordering that the appropriate permanency goal remain the return of the children to L.S.'s home within 12 months. The trial court continued to find that L.S. had made substantial progress toward the children's return home; however, the permanency goal had not yet been achieved due to ongoing services. The court again entered and continued L.S.'s motion for unsupervised visitation without a ruling.

¶ 11 In October 2012, the trial court conducted a status hearing on L.S.'s progress toward reunification with J.H. and M.H. A clinical evaluation of L.S. was ordered to ascertain the appropriate permanency goal for the children, as well as to evaluate L.S.'s motion for unsupervised visitation. That motion was entered and continued again without a ruling.

¶ 12 On January 29, 2013, a report was filed by Stephanie Cornette, Psy.D. after having performed the trial court's requested clinical evaluation. The questions specifically asked by the trial court were: (1) what protective factors and parenting strengths did L.S. possess that suggested she would be able to adequately care for, parent, and protect J.H. and M.H. and what

risk factors and parenting weaknesses did L.S. possess that suggested she would be unable to adequately care for, parent, and protect J.H. and M.H.?; (2) what type of intervention and support services were recommended to decrease the risk factors and assist L.S. in caring for J.H. and M.H. during unsupervised day visits and in accomplishing reunification with the children?; (3) considering the above, would L.S. be able to protect J.H. and M.H. if unsupervised day visits were granted?; and (4) considering the above, what was the likelihood that L.S. would be able to make the necessary gains to achieve the goal of returning J.H. and M.H. to her home? In conducting her evaluation, Dr. Cornette reviewed numerous records, including DCFS records, mental health services records, parenting services records, medical records; conducted interviews with L.S., the DCFS caseworkers, L.S.'s parenting coach, and L.S.'s individual therapist; observed L.S. during a visitation with J.H., M.H., and her six other children; and administered two tests, the parenting opinion questionnaire and the child abuse potential inventory.

¶ 13 Based on her research and examination, Dr. Cornette answered the trial court's questions. In particular, Dr. Cornette found that L.S. loved her children, was emotionally stable, was willing to attend the recommended services, and was able to demonstrate learned skills from the services. However, L.S.'s passive parenting style put the children at risk. L.S. had difficulty providing structure, which caused chaos and caused the children to engage in inappropriate behavior. Dr. Cornette was concerned with L.S.'s history of poor judgment and her failure to take responsibility for J.H.'s and M.H's placement with DCFS. L.S. never provided consistent statements regarding J.H's and M.H.'s injuries. In fact, L.S. stated during her interview that "I am not supposed to say this, but I think [the injuries] happened when I gave birth." Moreover, L.S. denied that one of her daughters had been abused. Instead, L.S. continued a relationship with her boyfriend, Edwin Owens, who was indicated for both physically assaulting J.H. and

M.H. and for sexually assaulting that daughter. Dr. Cornette ultimately concluded that the children could be at risk of harm in L.S.'s care. Dr. Cornette suggested L.S. could benefit from ongoing parental coaching, housing assistance, and ongoing therapy specifically addressing J.H.'s and M.H.'s abuse in order to educate her on the children's abuse and injuries. Dr. Cornette opined that L.S. could protect J.H. and M.H. during an unsupervised visit, but was concerned with her ability to handle all eight children. Dr. Cornette concluded by opining that, to a reasonable degree of psychological certainty, it was unlikely L.S. would be able to make enough progress for the return home of all of her children. In sum, Dr. Cornette reported that the risk factors displayed by L.S. outweighed the protective factors.

¶ 14 After receiving Dr. Cornette's report, the trial court conducted a permanency hearing. The court entered a permanency order with the appropriate permanency goal changed to substitute care pending court determination of parental rights based on L.S.'s failure to make significant progress in her services instead of reunification within 12 months.

¶ 15 Following the next permanency hearing in November 2013, the trial court again ordered that the appropriate permanency goal was substitute care pending court determination of parental rights. The order provided that the reason for the permanency goal was J.H. and M.H. were "3 years old and in a pre-adoptive placement. [L.S.] has not made progress in the services to address the *** abuse of the children. The children have lived in the foster home for 3 years and 2 months." The trial court also denied L.S.'s motion for unsupervised visitation with J.H. and M.H.

¶ 16 Then, on December 5, 2013, the State filed a supplemental petition for the appointment of a guardian with the right to consent to adoption, alleging L.S. was unfit pursuant to section 1(D) of the Adoption Act and section 2-29 of the Act. Specifically, the State alleged L.S. was

unfit under subsections 1(D)(b) (for failing to maintain a reasonable degree of interest, concern or responsibility), 1(D)(e) (for committing extreme and repeated cruelty), 1(D)(g) (for failing to protect J.H. and M.H. from injurious conditions in their environment), and 1(D)(m) (for failing to make reasonable efforts to correct the conditions which were the basis for the children's removal and/or for failing to make reasonable progress toward the return of J.H. and M.H. within nine months after the adjudication of neglect or any nine-month period after the finding of neglect) of the Adoption Act. According to the State, it was in the boys' best interest to have a guardian appointed with the right to consent to their adoption because they had been living with their foster mother, L.G., since August 2010 and L.G. wished to adopt them.

¶ 17 Following the final permanency hearing, on June 11, 2014, the trial court ordered that the appropriate permanency goal was substitute care pending court determination of parental rights.

¶ 18 II. Fitness Hearing

¶ 19 A fitness hearing commenced on December 4, 2014.[2] At the outset, the trial court took judicial notice of (1) the March 29, 2011, adjudication hearing wherein J.H. and M.H. were found to be physically abused and neglected due to their injurious environment; and (2) the May 17, 2011, dispositional hearing wherein J.H. and M.H. were adjudicated wards of the court and placed in DCFS guardianship.

¶ 20 Dr. Uma S. Levy, a licensed pediatrician at Rush University Medical Center, testified at the hearing that she first examined J.H. and M.H. on May 25, 2010. The boys were born prematurely on April 6, 2010, and were not released from the hospital until May 19, 2010. Upon examination, Dr. Levy learned that J.H. and M.H. both suffered from several problems related to their premature delivery, including methicillin resistant bacteria infection (MRSA) and low birth weight. Their low birth weight prevented them from receiving their initial vaccinations prior to

[2] The hearing took place over the course of three dates.

being discharged from the hospital. At the May 25, 2010, visit, M.H. had gained enough weight to receive his vaccinations, but J.H. had not. J.H. instead received his initial vaccinations on June 3, 2010. During the May 25, 2010, examination, Dr. Levy did not find any broken or fractured bones or any skeletal abnormalities in either boy.

¶ 21 Dr. Levy testified that she next examined the twin boys on June 28, 2010. L.S. and an unknown man brought the children to the appointment. At that time, J.H. was wearing a cast due to a femur fracture that occurred on June 15, 2010. J.H. had no other injuries and M.H. did not display any injuries. Dr. Levy testified that she conducted an examination, including an examination of the boys' skulls. Neither boy exhibited any pain or distress during the examination. According to Dr. Levy, J.H.'s broken femur resulted from physical abuse. Dr. Levy opined that MRSA would not have caused a broken bone nor would any immunizations.

¶ 22 Dr. Levy further testified that she was aware M.H. suffered from rib fractures at some time after the June 28, 2010, examination. In addition, Dr. Levy identified a photograph of J.H. in which he suffered from bruising around his eye and a small hemorrhage in his eye. Dr. Levy opined that such an injury would have required significant force and would not have been caused by a child rolling into a railing or the side of a crib. According to Dr. Levy, the fact of J.H.'s and M.H.'s premature birth and the complications associated therewith would not have affected the stability or structure of their bones.

¶ 23 Lisa Carswell, a DCFS child protection investigator, testified that she was assigned to J.H.'s and M.H.'s cases on June 15, 2010, as a result of a hotline call related to J.H.'s femur fracture. Carswell was also assigned to L.S.'s six other children, ages 20, 19, 14, 12, 9, and 6. Carswell testified that she spoke to L.S. regarding the incident with J.H.'s leg. L.S. explained that she left the twin boys in the care of her teenage daughter and later observed J.H.'s leg was

"hard," so she took him to the hospital. Carswell testified that she placed J.H. and M.H. in a safety plan outside of L.S.'s care due to the unexplained femur fracture. The safety plan removed the children to their uncle's home from July 15 to July 22. During her investigation, Carswell also learned that L.S. was still living with her boyfriend, Owens, even though he was being investigated for sexually assaulting L.S.'s oldest daughter. Carswell stated that the case was then transferred to another investigator.

¶ 24 Debra Robinson, another DCFS child protection investigator, testified that she began working on J.H.'s and M.H.'s case on June 17, 2010. Robinson stated that, when she was assigned to the case, there was an ongoing investigation from May 3, 2010, regarding Owens' sexual assault of L.S.'s daughter. Ultimately, Owens was indicated by DCFS for that sexual assault. At the time, Owens was living with L.S. According to Robinson, Owens was present on the occasions when she visited the family. Owens was also indicated for physically abusing J.H. because he was considered a primary caretaker with L.S. Robinson stated that L.S. informed her that J.H.'s injuries were caused by his immunizations.

¶ 25 Robinson testified that, on July 15, 2010, she visited the family and observed that J.H. had a black eye and scratches on his neck. The boys were taken for medical attention and it was discovered that M.H. had rib fractures. As a result, Robinson placed J.H. and M.H. in protective custody on July 16, 2010.

¶ 26 L.S. testified that she lived with her mother at the time in question. L.S. stated that her mother was investigated by DCFS in 2006 related to allegations that she "whipped" L.S.'s oldest daughter. According to L.S., Owens did not live with her at her mother's house at the relevant time, but he did sleep over periodically. L.S. stated that she was initially released from the hospital two days after giving birth to J.H. and M.H. However, L.S. was readmitted to the

hospital from April 15, 2010, until May 12, 2010, due to complications with MRSA. When she was released from the hospital once again, she had a catheter and an intravenous line in her arm to deliver medication. L.S. testified that she had difficulty picking up and holding the babies during her recovery and needed assistance to care for the children.

¶ 27 According to L.S., she and Owens were out of the house on June 11, 2010, leaving J.H. and M.H. with her mother. The next day, L.S. observed swelling and redness on J.H.'s leg. L.S. contacted J.H.'s doctor and was advised to give him pain medication and to rub the area with alcohol. L.S. testified that the twin boys had received immunizations in their legs on June 3, 2010, and she was advised of possible side effects, including pain, redness, and swelling. L.S. stated that she complied with the doctor's instructions and the swelling in J.H.'s leg reduced. However, three days later, on June 15, 2010, L.S. observed that J.H.'s leg was "hard." She took him to the emergency room as a result, where he was diagnosed with a femur fracture.

¶ 28 L.S. further testified that she brought J.H. and M.H. to doctor's appointments on June 28, 2010, and July 5, 2010. Then, on the morning of July 12, 2010, L.S. noticed a bruise on J.H.'s eye. The day prior, L.S.'s mother and Owens were caring for the twin boys. Owens explained to L.S. that J.H. was found in his bed against the wall. L.S. stated that she took the twin boys to a previously scheduled doctor appointment and then to the emergency room. L.S. added that she then took J.H. to the hospital on July 15, 2010, for a skeletal survey. On that date, L.S. learned about additional injuries to both J.H. and M.H. L.S. stated, at that time, she understood "it was serious."

¶ 29 L.S. testified that she ended her relationship with Owens after July 16, 2010. L.S., however, admitted that she was with Owens in February 2014 and he had been at her mother's

home twice since that time. In fact, L.S. stated that Owens had signed for mail on her behalf at her address as of November 6, 2014.

¶ 30 Ginette Perkins, a caseworker assigned to J.H. and M.H. from April 2011 until July 2014, testified that L.S. attended all of the requisite meetings. L.S. understood the requirements for regaining custody of J.H. and M.H. According to Perkins, L.S. was rated satisfactory in her progress in most services. However, Perkins clarified that the rating was an indication of L.S.'s attendance and not her actual progress. Perkins explained that she was concerned about L.S.'s parenting during her supervised visitations. Perkins additionally testified that she was concerned L.S. did not accept that J.H. and M.H. were physically abused and did not take responsibility for the abuse. Perkins, however, admitted that she never asked L.S. to admit she abused J.H. and M.H. nor inquired who did. Perkins testified that she was not able to recommend L.S. regain custody of J.H. or M.H. while she was the acting caseworker.

¶ 31 Brandi Lewis, a family caseworker assigned to the case in September 2014, testified that L.S. had been re-referred for therapy because of her admitted contact with Owens. Lewis never recommended unsupervised visitation of J.H. and M.H. or their return to L.S.

¶ 32 The parties stipulated that, if called, Dr. Jill Glick from the University of Chicago Comer Children's Hospital, would testify that she was a licensed physician board certified in pediatrics and child abuse pediatrics. According to Dr. Glick, M.H. had nine to ten rib fractures that occurred between the last week of May 2010 and the last week of June 2010. Dr. Glick opined that the fractures could not have occurred during birth or before M.H.'s discharge from the hospital following his birth. Dr. Glick would testify, to a reasonable degree of medical certainty, that the fractures were "categorically" most often caused by abuse due to their multiple locations.

¶ 33 Q.H. testified that he did not live with L.S. when the twin boys were born. He identified Owens as L.S.'s boyfriend. Q.H. said he observed Owens pick up L.S. from the juvenile court house after one of the hearings.

¶ 34 Dr. Cornette testified that, while performing her evaluation for the court-ordered report, she met with L.S. on three separate occasions. Dr. Cornette opined, based on a reasonable degree of psychological certainty, that the risk factors L.S. displayed outweighed the protective factors in terms of caring for J.H. and M.H. Dr. Cornette was concerned with L.S.'s continued lack of acceptance that J.H. and M.H. were physically abused despite the services she received. Dr. Cornette also expressed concern over L.S.'s ongoing relationship with Owens. Dr. Cornette, however, stated that the cause of J.H.'s and M.H.'s injuries was undetermined.

¶ 35 Dr. Cornette testified that L.S. lacked engagement and the ability to redirect her children. In particular, during one visit, L.S. held J.H. the entire time while allowing M.H. to roam around a public location without supervision.

¶ 36 Dr. Cornette also testified regarding the results of the parenting opinion questionnaire and the child abuse potential inventory. According to Dr. Cornette, L.S.'s answers indicated she failed to understand the basic fundamentals of child development. In addition, Dr. Cornette stated that L.S.'s results on the child abuse potential inventory were invalidated, in part, because L.S. was "faking good." In other words, Dr. Cornette opined that L.S. attempted to present herself in a more favorable light. Dr. Cornette clarified that L.S.'s "faking good" was not a concern in and of itself, but was concerning in combination with her high rigidity factor, in that L.S. had rigid expectations for her children. Dr. Cornette added that L.S. admitted she should have better protected her children.

¶ 37 Ultimately, Dr. Cornette stated that she was unable to recommend that J.H. and M.H. be returned to L.S.

¶ 38 Wendy Manto testified on behalf of L.S. Manto was L.S.'s individual therapist for nearly three years. Manto testified that L.S. never missed a therapy session and progressed toward her goals. Manto stated that she believed L.S. accepted the source of J.H.'s and M.H.'s injuries, albeit with great difficulty. Manto, however, admitted that as of March 21, 2012, L.S. still believed J.H. and M.H. were injured during their birth. In fact, Manto stated that L.S. maintained that belief as late as November 2013. Manto could not recall when she believed L.S. finally accepted that J.H. and M.H. had been abused. Manto added that L.S. took responsibility for failing to protect her children.

¶ 39 Manto testified that she would be concerned if L.S. was in a relationship with Owens because she believed he was the likely perpetrator of the abuse against J.H. and M.H. Manto additionally noted that L.S.'s inconsistency in reporting domestic violence with romantic partners was concerning. Manto reasoned that violence toward L.S. could lead to violence against the children. In addition, Manto said she observed some visits with L.S. and her eight children, but she could not recall how L.S. divided her time amongst the children.

¶ 40 The trial court ultimately determined that L.S. was unfit under three subsections of the Adoption Act. First, pursuant to subsection 1(D)(m) of the Adoption Act, the trial court found that the State established by clear and convincing evidence that L.S. was unfit due to her lack of progress toward reunification with J.H. and M.H. The court explained that L.S. made efforts toward correcting the conditions that led to J.H. and M.H. being placed with DCFS, but she failed to make any reasonable progress toward reunification. The court relied on the fact that the service providers working with L.S. did not recommend unsupervised visitation nor return home

of the children. The court expressly found the testimony of Dr. Cornette to be "very credible" while noting that Manto had a bias in favor of L.S. and was not credible. The court concluded:

> "So these children were abused in different ways at different times and it wasn't accidental. And for [L.S.] to have gone literally years while these children were in foster care without accepting that they really were physically abused by someone that she allowed to care for them, she failed to make reasonable progress, and so for that reason, she's unfit under [subsection] [m]."

Second, pursuant to subsection 1(D)(b), the trial court found the State established by clear and convincing evidence that L.S. was unfit for having failed to maintain a reasonable degree of responsibility for J.H.'s and M.H.'s welfare for the same reasons supporting the finding under subsection 1(D)(m). Third, pursuant to subsection 1(D)(g), the trial court found the State established by clear and convincing evidence that L.S. was unfit for failing to protect J.H. and M.H. from an environment injurious to their welfare wherein the boys suffered physical abuse. In particular, the court highlighted that L.S. left J.H. and M.H. in the care of Owens, who was under investigation by DCFS at the time for the sexual assault of L.S.'s daughter. In addition, L.S. left the twin boys in the care of her mother, who had been investigated for physical abuse.[3]

¶ 41 III. Best Interests Hearing

¶ 42 The trial court subsequently held a best interest hearing beginning on April 20, 2015.

¶ 43 Erica Goolsby testified that she was a supervisor at UPC Seguin of greater Chicago, a specialized foster care agency. Goolsby served as Brandi Lewis' supervisor, the caseworker for J.H. and M.H. Goolsby explained that J.H. was considered "specialized" because of his diagnoses of cerebral palsy and spastic dysplasia, which prevented his ability to walk on both

[3] The trial court found the State did not establish by clear and convincing evidence a fourth basis for unfitness pursuant to subsection 1(D)(e) for extreme or repeated cruelty.

feet. Goolsby, however, stated that J.H. received occupational and physical therapy at school and had recently learned to walk.

¶ 44 Goolsby testified that the foster mother's home was visited frequently since February 2015. Goolsby reminded the court that J.H. and M.H. had lived with L.G. since August 9, 2010. According to Goolsby, L.G.'s home appeared safe and appropriate with no signs of abuse or neglect or any unusual incidents. Goolsby added that she personally observed J.H. and M.H. interact with L.G. The boys referred to L.G. as "mom" and indicated their love for her. J.H. and M.H. also were bonded with L.G.'s three other adopted children in the home. Goolsby opined that the boys had a sense of security and familiarity in the foster home. Goolsby additionally testified that J.H. and M.H. had visits with their older six biological siblings twice per month. L.S. was present at those supervised visits as well and displayed appropriate behavior. Goolsby stated that J.H. and M.H. also referred to L.S. as "mom."

¶45 Goolsby expressed concern over L.S.'s relationship with former therapist, Monique Smith. In fact, Goolsby had Smith removed from the case in November 2014. The catalyst for the change was a phone call Goolsby received from Smith in which Smith vocalized her displeasure with the foster care agency's recommendation that L.S.'s parental rights be terminated. Smith alerted Goolsby that she advised L.S. to commence litigation against the foster care agency. Goolsby realized the relationship between Smith and L.S. had crossed professional boundaries and was no longer therapeutic.

¶ 46 Goolsby testified that, as of February 2015, she, Lewis, and Goolsby's supervisor agreed the foster care agency's recommendation to the court was that L.S.'s parental rights be terminated. The reasons for the recommendation were that J.H. and M.H. had been living with L.G. since August 2010 and exhibited a bond with her, in addition to L.S.'s potential ongoing

relationship with Owens. Goolsby recommended that, if L.S.'s parental rights were terminated, the permanency goal be for L.G. to adopt J.H. and M.H.

¶ 47 Lewis testified that she was the family's assigned caseworker from July 2014 until February 2015. During that time, Lewis visited J.H. and M.H. three times per month at L.G.'s home. According to Lewis, L.G.'s home consistently was safe and appropriate without signs of abuse or neglect. Lewis testified that J.H. and M.H. were "extremely bonded" with their three older foster siblings. Lewis also observed a strong bond and great affection between the twin boys and L.G. Both boys reported they liked living with L.G., referring to her and considering her their "momma." Lewis highlighted that J.H. and M.H. had lived with L.G. since they were four months old and her home was the only home they had ever known. According to Lewis, L.G. ensured that the twin boys attended school and all of their medical appointments.

¶ 48 Lewis agreed with the foster care agency's recommendation that L.S.'s parental rights be terminated. Lewis reasoned that L.S. continued to deny the reason J.H. and M.H. were in DCFS custody and remained in a relationship with Owens, the individual who not only could have caused J.H.'s and M.H.'s abuse, but also was an indicated perpetrator of sexual abuse to her daughter. Most importantly, though, Lewis testified that the recommendation was due to the twin boys' bond with L.G. Lewis opined that it would "do more damage than good" to remove J.H. and M.H. from L.G.'s home.

¶ 49 L.G. testified that she had cared for J.H. and M.H. for nearly five years. When she first cared for the boys, J.H. had just had his cast removed from his leg and was recovering from a skull fracture, while M.H. was recovering from broken ribs. L.G.'s older adopted boys were 20 years old, 19 years old, and 16 years old. According to L.G., J.H. and M.H. treated them as big brothers. All the boys got along very well. L.G. stated that J.H. and M.H. attended church with

her, participating in Sunday school classes, bible studies, and monthly outings. L.G. added that J.H. and M.H. had relationships with her extended family, referring to her mother as "grandma." L.G. expressed her love for the twin boys, stating that she was "blessed" to have them. L.G. said she wanted to adopt J.H. and M.H.

¶ 50 L.G. further testified that she was willing to allow J.H. and M.H. to see their biological siblings if L.S.'s parental rights were terminated. In addition, L.G. did not object to L.S. having continued contact with J.H. and M.H. L.G. would continue to allow L.S. to attend the twin boys' doctor appointments as she had done in the past.

¶ 51 Angela May, L.S.'s prior parenting coach, testified on behalf of L.S. May was assigned to L.S. from 2012 to 2013. May recognized that J.H. and M.H. entered DCFS care because of abuse, likely at the hands of Owens. May testified that she never discussed Owens with L.S. May, however, stated that she observed a bond between J.H. and M.H. and L.S., as well as with their biological siblings.

¶ 52 Smith, L.S.'s family therapist from February 2013 until December 2014, also testified on behalf of L.S. Smith stated that she observed L.S. with the twin boys on two occasions. During those visits, J.H. and M.H. appeared bonded to L.S. and their biological siblings. Smith testified that she disagreed with the change in permanency goal; however, Smith did express concern over L.S.'s contact with Owens. Smith could not testify regarding the injuries sustained by the twin boys.

¶ 53 Ultimately, the trial court found it was in the best interests of J.H. and M.H. to terminate L.S.'s parental rights and appoint the DCFS guardianship administrator as their guardian with the right to consent to adoption. In so finding, the trial court considered that L.S. had never cared for the twin boys, instead the boys lived with L.G. and their three adoptive siblings for nearly their

entire lives. The court recognized the importance of bonds with biological siblings; however, the court advised that it was required to seek permanency for J.H. and M.H. In that vein, there was no certainty of permanency if the court did not terminate the parental rights of L.S. when she continued her relationship with Owens. The trial court expressly found the testimony of L.G. to be very credible, in that she loved the boys and wished to adopt them. In addition, the court found the testimony of Goolsby and Lewis to be credible. Conversely, Smith's testimony failed to provide much substance for the court.

¶ 54 The trial court ruled that J.H.'s and M.H.'s permanency goal was adoption.

¶ 55 This appeal followed.

¶ 56 ANALYSIS

¶ 57 The involuntary termination of parental rights, as occurred in this case, involves a two-step process. *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). The first step requires an adjudication of parental unfitness. 705 ILCS 405/2-29(2) (West 2010). If a court makes the requisite finding of unfitness, it then considers whether it is in the best interests of the child that the parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010).

¶ 58 I. Findings of Unfitness

¶ 59 L.S. first[4] contends the trial court's determination that she was an unfit parent was against the manifest weight of the evidence and must be reversed.

¶ 60 Section 1(D) of the Adoption Act provides the grounds for a finding of parental unfitness. See 750 ILCS 50/1(D) (West 2010). A finding of parental unfitness must be established by the State and supported by clear and convincing evidence. *In re Janira T.*, 368 Ill. App. 3d 883, 892 (2006). A reviewing court will not disturb the lower court's finding of parental unfitness unless it is against the manifest weight of the evidence. *Id*. A finding is considered against the manifest

[4] We have chosen to address L.S.'s contentions, out of the order presented in her appellate brief.

weight of the evidence only where the opposite conclusion is clearly evident. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). We give great deference to a trial court's finding of unfitness, defer to the trial court's findings of fact and credibility assessments, and do not reweigh the evidence on appeal. *In re J.B.*, 2014 IL App (1st) 140773, ¶ 49. "Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d at 244.

¶ 61 As previously stated, the trial court in this case found L.S. unfit under subsections (b), (g), and (m) of section 1(D) of the Adoption Act. We first address the trial court's finding pursuant to subsection (g), under which a parent may be declared unfit for failing to protect her children from conditions within her environment that were injurious. 750 ILCS 50/1(D)(g) (West 2010). L.S. argues that, during the relevant time period prior to July 16, 2010, she took reasonable steps to protect her children. More specifically, L.S. maintains that she acted responsibly by arranging for childcare assistance from her mother and Owens after she was released from the hospital following the twins' birth, as she was suffering from MRSA herself and had physical limitations linked to her recovery. During that time period, Owens had not yet been indicated by DCFS for sexual assault. L.S. adds that she immediately sought medical attention when J.H. exhibited signs of injury and attended at least six doctor appointments with J.H. and M.H. during the relevant time period. L.S. further asserts that she terminated her relationship with Owens immediately upon realizing M.H. suffered serious, undetectable injuries.

¶ 62 Based on the timing of the injuries suffered by J.H. and M.H. and the circumstances occurring within the household at the time, we conclude the trial court's finding of unfitness

based on subsection (g) was not against the manifest weight of the evidence. There is no question that J.H. and M.H. suffered multiple injuries over the course of June and July 2010. Admittedly, L.S. left the twin boys in the care of Owens and her mother during the relevant time periods. L.S. did so with knowledge that, as of May 3, 2010, Owens was under DCFS investigation for sexually assaulting L.S.'s older daughter. In addition, although she testified that she never observed her mother harm her children, there was an investigation in 2006 into allegations of physical abuse by her mother against L.S.'s eldest daughter. More importantly, J.H.'s femur fracture was diagnosed by Dr. Levy, the boys' pediatrician, as a result of physical abuse. Accordingly, L.S. had knowledge that the injury was not a side effect from his immunizations.

¶ 63 Despite this knowledge, L.S. continued to leave J.H. and M.H. under the care of Owens and/or her mother, and injuries continued to occur: (1) on July 12, 2010, L.S. noticed a bruise on J.H.'s eye and (2) on July 15, 2010, following a hospital examination, L.S. learned that J.H. had a skull fracture and M.H. suffered multiple bruised ribs sometime between having been examined by Dr. Levy on May 28, 2010, until late June, 2010. L.S. admittedly did not think her children's injuries were "serious" until observing the x-rays on July 15, 2010. Therefore, L.S. continued to expose her children to an environment in which it was clearly observable that J.H. suffered a broken femur, bruises to his eye, and scratches to his face, as reported by Robinson during her home visit, without making efforts to protect J.H. and M.H. from such harm. See *In re Brown*, 86 Ill. 2d 147, 152 (1981). As a result, we do not find that the opposite conclusion was clearly evident based on the evidence presented to the trial court. Instead, we conclude the conduct clearly and convincingly demonstrated a failure to protect the twin boys from conditions in the environment injurious to their welfare.

¶ 64 L.S. contends the trial court erred in admitting Dr. Cornette's expert testimony related to her performance on the child abuse potential inventory. More specifically, L.S. argues that the child abuse potential inventory was not established as a reliable test in the scientific community for a person not alleged to have been a perpetrator of physical abuse in violation of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). Pursuant to a supervisory order, we have been advised by our supreme court to consider L.S.'s argument in light of *In re Detention of New*, 2014 IL 116306. We must acknowledge that L.S. never requested a *Frye* hearing and did not object to the challenged testimony presented by Dr. Cornette at the fitness hearing. Notwithstanding, L.S. requests that we review her argument under the doctrine of plain error.

¶ 65 Generally, a failure to object to a challenged error before the trial court results in forfeiture. *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 8 (2007); *In re Lakita B.*, 297 Ill. App. 3d 985, 991 (1998). A forfeited error in a civil case, such as this, may be reviewed under the doctrine of plain error only in "exceedingly rare" cases. *Matthews*, 375 Ill. App. 3d at 8. " ' [T]his doctrine is applied in civil cases only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself. ' " *Id.* (quoting *Lange v. Freund*, 367 Ill. App. 3d 641, 649 (2006)). Based on the foregoing, we find plain error does not apply to L.S. 's unpreserved error in this case.

¶ 66 "In Illinois, the admission of scientific evidence is governed by the *Frye* standard [citations], which has now been codified by the Illinois Rules of Evidence: 'Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have

gained general acceptance in the particular field in which it belongs.' " *In re Detention of New*, 2014 IL 116306, ¶ 25.

Whether a *Frye* hearing is necessary is a questions of law, which we review *de novo*. *Id* ¶ 26.

¶ 67 Neither the parties nor our research have revealed an Illinois case addressing whether the child abuse potential inventory meets the *Frye* test for admissibility. Two Illinois cases refer to the child abuse potential inventory, but no challenges were raised to the admissibility of the results in those cases where the parents tested within normal limits. See *In re Edward T.*, 343 Ill. App. 3d 788, 789 (2003); *In re L.F.*, 306 Ill. App. 3d 748, 751 (1999). Our review of the record in this case reveals a sufficient foundation was not established to demonstrate that the child abuse potential inventory has gained general acceptance in the community when administered against an individual not suspected of perpetrating the abuse in question. That said, the instant case is distinguishable from *In re Detention of New*, where the respondent not only filed a motion *in limine* to bar the use of the challenged testimony, but the challenged testimony involved expert testimony regarding a diagnosis provided at respondent's civil commitment trial. *In re Detention of New*, 2014 IL 116306, ¶¶ 1, 4-5. In this case, as stated, L.S. did not seek a *Frye* hearing related to the child abuse potential inventory. More importantly, though, here, the results of the challenged test were invalidated; therefore, the results of the child abuse potential inventory were not relied upon by Dr. Cornette or the trial court.

¶ 68 We recognize that, in an effort to avoid forfeiture, L.S. contends she was entitled to a *Frye* hearing. L.S.'s actual argument, however, is that Dr. Cornette should have been barred from testifying that the child abuse potential inventory results were invalidated because L.S. was "faking good" on the test. In fact, L.S. insists that Dr. Cornette's testimony was used as a method of discrediting L.S.'s reliability and truthfulness and, thus, affected the integrity of her

proceedings. On the contrary, we conclude that, because the results of the child abuse potential inventory were invalidated, no error occurred here. Moreover, the challenged testimony composed a minor percentage of the expert testimony Dr. Cornette provided across the length of the termination proceedings. Furthermore, the testimony regarding L.S.'s "faking good" on the child abuse potential inventory related to Dr. Cornette's testimony of L.S.'s unfitness under subsection (m), in that she lacked progress toward reunification with J.H. and M.H. The trial court expressly found Dr. Cornette to be "very credible" when discussing its findings related to subsection (m). As stated, however, this court has found the evidence was sufficient to support the trial court's finding of unfitness based upon subsection (g). See *In re Donald A.G.*, 221 Ill. 2d at 244 (a finding of unfitness, if properly proven, on any one ground is sufficient to enter a finding of unfitness). Contrary to L.S.'s argument, her credibility was not at issue when she testified that, during the relevant time period from June 2010 to July 2010, the boys were left in the care of Owens or her mother. Indeed, both Cornette and Manto, L.S.'s witness and individual therapist, testified that L.S. admitted she should have better protected her kids. In sum, we conclude L.S. was not entitled to a *Frye* hearing under the circumstances presented in this case.

¶ 69 We additionally note that L.S. argues she suffered prejudice due to unsubstantiated assertions by the guardian *ad litem* and the State that Owens continuously was in contact with her children and was the alleged perpetrator of the twin boys' physical abuse. We disagree. The relevant time period for application of subsection (g) was when J.H. and M.H. sustained their injuries. Contact between Owens and the twin boys unquestionably was established during that time. L.S. openly testified that Owens slept over periodically during that time period and was either in charge of the twin boys when the incidents occurred or was present around the time the injuries were discovered. Whether L.S. allowed Owens to have contact with her children after

July 16, 2010, has no bearing on whether she failed to protect the boys from injurious conditions prior to that date. Moreover, with regard to improperly insinuating Owens was the perpetrator of the abuse, the trial court considered all of the evidence and was in the best position to make findings of fact and credibility assessments. See *In re J.B.*, 2014 IL App (1st) 140773, ¶ 49. We will not reweigh that evidence on appeal.

¶ 70 L.S. additionally raises a brief procedural due process challenge to subsection (g). L.S. contends the trial court's finding under subsection (g) was unconstitutional as applied to her because the evidence did not demonstrate that she had knowledge of her sons' physical abuse. According to L.S., because M.H.'s rib injuries were only detectable via x-ray, there was no basis to establish she had knowledge that he had been physically abused. Moreover, although J.H. did exhibit signs of injury to his leg, L.S. argues she could not be held responsible for failing to protect him where Owens and her older daughter provided explanations for the injuries and L.S. sought out medical attention on J.H.'s behalf. We find that L.S.'s procedural due process rights were protected by the statutory requirement that the State prove her unfitness by clear and convincing evidence. A three-day fitness hearing was held by the trial court during which L.S. was free to, and did, present evidence on her own behalf. L.S. has failed to demonstrate the statute is unconstitutional. See *People v. Greco*, 204 Ill. 2d 400, 406 (all statues are presumed constitutional and it is the burden of the party challenging the validity of the statue to demonstrate a clear constitutional violation).

¶ 71 Because we have found that the trial court's finding of parental unfitness pursuant to subsection (g) was not against the manifest weight of the evidence, we need not consider the trial court's other findings of unfitness. *In re Donald A.G.*, 221 Ill. 2d at 244 (satisfaction of one

statutory ground of unfitness by clear and convincing evidence is sufficient to terminate parental rights).

¶ 72 II. Best Interests Finding

¶ 73 L.S. next contends the trial court's finding that it was in the best interests of J.H. and M.H. to terminate her parental rights was against the manifest weight of the evidence. More specifically, L.S. argues the finding was in error where the evidence demonstrated that she maintained a loving bond with the children and J.H. and M.H. had a strong bond with their biological siblings.

¶ 74 The second step of the two-step process for terminating parental rights considers the best interests of the child. 705 ILCS 405/2-29(2) (West 2010). In assessing the child's best interests, a court must consider factors such as the child's physical safety and welfare; the child's background and ties, including familial, cultural, and religious; the child's sense of attachments, including the child's sense of security, the child's sense of familiarity, continuity of affection for the child, and the least disruptive placement alternative for the child; the child's need for permanence, including her need for stability and continuity with parental figures and other relatives; 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 2010). The State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interests. *In re Katrina,* 364 Ill.App.3d 834, 845 (2006). The trial court's finding that termination is in the child's best interest will not be disturbed unless it is against the manifest weight of the evidence or the court abused its discretion. *In re G.L.,* 329 Ill.App.3d 18, 25 (2002).

¶ 75 We conclude that the trial court's determination to terminate L.S.'s parental rights was not against the manifest weight of the evidence or an abuse of discretion. After considering the

section 1-3(4.05) statutory factors in the Act, the trial court found the State proved by a preponderance of the evidence that it was in J.H.'s and M.H.'s best interests to terminate L.S.'s parental rights. The evidence revealed that the twin boys lived with their foster mother, L.G., for nearly the entirety of their five years of life. In fact, the boys lived with L.S. for only the first three months of their lives. Goolsby and Lewis, whom the trial court found to be credible witnesses, both testified to having observed J.H. and M.H. while at L.G.'s home. Both Goolsby and Lewis separately identified the strong bond L.G. shared with the twin boys and their comfort level and respective bond with her. J.H. and M.H. referred to L.G. as their mother and expressed their love for her, despite also acknowledging L.S. as their mother. The evidence demonstrated L.G. ensured that the twin boys attended school, that their medical needs were met, and that they were involved in church activities. L.G. added that J.H. and M.H. enjoyed relationships with her extended family, referring to her mother as their grandma.

¶ 76 In addition, Goolsby and Lewis observed the strong bond J.H. and M.H. shared with their three adoptive siblings. These siblings helped care for J.H. and M.H. since they began living in the foster home in August 2010. Although J.H. and M.H. also demonstrated bonds with their biological siblings, L.G. testified regarding a continued relationship that she supported with the biological siblings, as well as with L.S. In fact, L.G. had allowed L.S. to attend the twin boys' doctors' appointments and testified that she intended to continue allowing her to be involved in their medical treatment.

¶ 77 The trial court further considered L.S.'s admitted continued relationship with Owens. L.S. stated that she had contact with him as recent as November 2014, which was four years after the twin boys were removed from her custody and well after Owens was indicated for having sexually assaulted her eldest daughter. The trial court expressed concern over the permanency of

the decision regarding J.H. and M.H.'s best interests, in light of L.S.'s decision to maintain contact with Owens.

¶ 78 Ultimately, we conclude that, as Lewis opined, removing J.H. and M.H. from L.G.'s care would "do more harm than good." The evidence supported the termination of L.S.'s parental rights and the appointment of the guardianship administrator with power to consent to adoption where the twin boys' safety and welfare were best supported by L.G., their background, ties, sense of attachment, and need for permanence were all supported by L.G. and had been nearly since birth, and the low level of risk for their substitute care supported the court's finding.

¶ 79 CONCLUSION

¶ 80 We affirm the judgment of the trial court in terminating L.S.'s parental rights.

¶ 81 Affirmed.

¶ 82 PRESIDING JUSTICE GORDON, specially concurring.

¶ 83 In the case at bar, our supreme court issued a supervisory order directing this court "to reconsider its judgment in light of *In re Detention of New*, 2014 IL 116306, and to address the appellant's argument that the trial court erred by admitting evidence concerning the Child Abuse Potential Inventory [(CAPI) test] without holding a Frye hearing."

¶ 84 Although I concur with the majority's conclusion that reconsideration still requires us to affirm, I write separately in order to more fully set forth: (1) the parties' arguments on this particular issue; and (2) the case law governing the application of the plain error doctrine in civil cases like the one before us, and the reason why the criminal plain error doctrine is not applicable here.

¶ 85 I. The Parties' Arguments

¶ 86 After the supreme court's supervisory order, we permitted supplemental briefing. In their supplemental briefs, both the Cook County Public Guardian and the State's Attorney argued: (1) that this court should again affirm the trial court's finding of unfitness because the ground under which the mother was found unfit was not dependent on, or related to, the test for which she failed to request a *Frye* hearing; and (2) that the mother had forfeited any right to a *Frye* hearing by failing to request a *Frye* hearing from the trial court and by failing to object to testimony about the CAPI test in the trial court.[5]

¶ 87 Neither supplemental brief addressed the issue of whether this type of test necessitated a *Frye* hearing or whether, if a hearing was held, the CAPI test would pass muster under the *Frye* rule. In their original appellate briefs, the State's Attorney also did not address these issues. The Public Guardian argued that the trial court did not err in admitting it because there was other corroborating evidence and the CAPI test was "only a small piece of everything the trial court weighed in making its decision."

¶ 88 As for the mother, the *Frye* issue was the first issue which she raised in her original appellate brief. She argued that the State had failed to lay an adequate foundation for the admission of the results of a CAPI test, where no Illinois court has addressed whether the CAPI test is valid under the *Frye* rule and where the CAPI test is not valid under *Frye*. In her supplemental brief, one of her first observations is that neither the State's Attorney nor the Public Guardian "makes any argument" that the "CAPI test would satisfy the well-settled criteria set forth in *Frye*."

[5] Both the Public Guardian and the State's Attorney also raised the forfeiture argument in their original briefs to the appellate court.

¶ 89 In response to the primary argument of the State's Attorney and the Public Guardian, namely, forfeiture, the mother responded, that plain error review applied. Thus, I address below the parties' arguments about forfeiture and whether plain error review applies.

¶ 90 II. Forfeiture

¶ 91 The mother does not dispute that she failed, in the court below, either to request a *Frye* hearing or to object to the testimony about the test's results. Thus, the issue would normally be forfeited for our review. *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 8 (2007) (plaintiff failed to preserve this issue for our review "by failing to object to the statement at the time it was made"); *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 627 (2007) ("Since the father failed to object in the court below, he has waived consideration of these issues on appeal."). However, she asks this court to review the issue under the plain error doctrine.

¶ 92 In criminal cases, to preserve an issue for appeal, a defendant is required to raise the issue by objecting both (1) at trial and (2) in a posttrial motion. *People v. Ware*, 407 Ill. App. 3d 315, 350 (2011). When a criminal defendant has forfeited appellate review of an issue, the reviewing court will review only for plain error. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010).

¶ 93 "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 94 However, the rules for preserving an error in civil cases are different than those for preserving an error in criminal cases. In a criminal case, a criminal defendant is always required

to file a posttrial motion to preserve an issue. *Ware*, 407 Ill. App. 3d at 350. By contrast, in a civil case, a posttrial motion is not always required. While the failure to file a posttrial motion in a civil *jury* case results in forfeiture, the failure to file a posttrial motion in a civil *nonjury* case has no effect on the scope of an appellate court's review. *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶ 33. Since this is a civil *nonjury* case, the lack of a posttrial motion raising this issue has no effect on our consideration. However, the mother still forfeited the issue by failing to raise the issue at any time during the proceedings below. See *e.g. Matthews*, 375 Ill. App. 3d at 8; *In re Marriage of Saheb*, 377 Ill. App. 3d at 627.

¶ 95 In addition to different rules governing what constitutes forfeiture in civil cases, there are also different rules governing the application of the plain error doctrine in civil cases, including a question of whether it applies at all.

¶ 96 There is case law permitting a reviewing court to consider a forfeiture under the plain error doctrine in civil cases. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855-56 (2010) (citing *Palanti v. Dillon Enterprises, Ltd.*, 303 Ill. App. 3d 58, 66 (1999), citing *Belfield v. Coop*, 8 Ill. 2d 293, 313 (1956)); *Matthews*, 375 Ill. App. 3d at 8; *In re Marriage of Saheb*, 377 Ill. App. 3d at 627. Although the doctrine may be applied in civil cases, it finds much greater application in criminal cases. *Arient*, 2015 IL App (1st) 133969, ¶ 37; *Wilbourn*, 398 Ill. App. 3d at 856 (citing *Gillespie v. Chrysler Motors Corp.*, 135 Ill. 2d 363, 375 (1990)).

¶ 97 The cases that have applied it have held that the plain error doctrine may be applied in civil cases only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself. *Arient*, 2015 IL App (1st) 133969, ¶ 37; *Wilbourn*, 398 Ill. App. 3d at 856; *Matthews*, 375 Ill. App. 3d at 8; *In re Marriage of Saheb*, 377 Ill. App. 3d at 627. This court has

observed that the application of the plain error doctrine to civil cases should be "exceedingly rare." *Arient*, 2015 IL App (1st) 133969, ¶ 37; *Wilbourn*, 398 Ill. App. 3d at 856 (citing *Palanti v. Dillon Enterprises, Ltd.*, 303 Ill. App. 3d 58, 66 (1999)).

¶ 98 The question, then, is the case before us the "exceedingly rare" civil case which requires application of the plain error doctrine. *Arient*, 2015 IL App (1st) 133969, ¶ 37.

¶ 99 III. Application

¶ 100 Our supreme court's supervisory order asked us to reconsider the mother's *Frye* argument in light of its *New* decision. *New*, 2014 IL 116306. The *New* case involved the admission of a mental health diagnosis in a civil commitment proceeding pursuant to the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq*. (West 2004)). *New*, 2014 IL 116306, ¶ 3. Unlike the case at bar, the respondent in *New* filed a motion *in limine* to bar the expert testimony from the State's evaluators regarding their diagnosis. *New*, 2014 IL 116306, ¶ 4. Thus, unlike the mother in the case at bar, the respondent in *New* preserved the issue for appellate review, and there was no issue of forfeiture. As a result, the *New* case is significantly different from the case at bar.

¶ 101 Since the issue in *New* was preserved, the parties presented their legal arguments with supporting factual documentation to the court below, which provided the relevant information for the appellate court and the supreme court to review. *New*, 2014 IL 116306, ¶ 4. "In support of his motion [*in limine*], [the respondent] attached several exhibits, including numerous articles criticizing a proposal to include the diagnosis as a qualifying mental disorder in the next edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM)." *New*, 2014 IL 116306, ¶ 4. In response, the State argued that the diagnosis had gained general acceptance and provided the factual information to support this argument. *New*, 2014 IL

116306, ¶ 5. The trial court reviewed the exhibits and the parties' arguments on this point and made its ruling.

¶ 102 Nothing like this happened in the case at bar. Since the mother never raised the issue in the court below, neither the trial court nor our appellate record provides either factual information or fleshed-out legal arguments on whether a *Frye* hearing is even necessary.

¶ 103 In light of the fact that this court previously affirmed on a ground completely unrelated to the test at issue, I cannot find that this is one of those "exceedingly rare" cases requiring application of the plain error doctrine in a civil case. *Arient*, 2015 IL App (1st) 133969, ¶ 37.

¶ 104 To rise to the level of plain error in a civil case, we would have to find that the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself. *Arient*, 2015 IL App (1st) 133969, ¶ 37; *Wilbourn*, 398 Ill. App. 3d at 856; *Matthews*, 375 Ill. App. 3d at 8; *In re Marriage of Saheb*, 377 Ill. App. 3d at 627. This is, in essence, a restatement of the second prong of the plain error doctrine. The second prong of the plain error doctrine requires that: "(2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 105 I cannot find that the alleged error substantially impaired the integrity of the judicial process itself, where this court upheld the trial court on a ground wholly unrelated to the test at issue.

¶ 106 I realize that this court has stated repeatedly, in countless cases, that "[forfeiture] is a limitation on only the parties, and despite [forfeiture], this court may address an issue in order to carry out its responsibility to reach a just result." *E.g.*, *People v. Carmichael*, 343 Ill. App. 3d

855, 859 (2002) (citing *In re C.R.H.*, 163 Ill. 2d 263, 274 (1994)). See also *People v. Normand*, 215 Ill. 2d 539, 544 (2005) ("the rule of [forfeiture] is an admonition to the parties and not a limitation on the jurisdiction of this court"); *People v. Donoho*, 204 Ill. 2d 159, 169 (2003) (forfeiture "limits the parties' ability to raise an issue, not this court's ability to consider an issue"); *Landmark American Insurance Co. v. NIP Group, Inc.* 2011 IL App (1st) 101155, ¶ 75; *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941, 948 (2010) ("the principles of waiver and forfeiture are binding on the parties but do not limit this court's jurisdiction"); *Luss v. Village of Forest Park*, 377 Ill. App. 3d 318, 333 (2007) (the forfeiture rule is an admonition to the litigants not the court); *Niles Township High School District 219 v. Illinois Educational Labor Relations Board*, 369 Ill. App. 3d 128, 137 (2006) (forfeiture operates as a limitation on the parties not the court).

¶ 107 Courts have exercised this discretion to overlook forfeiture if necessary "to reach a just result" in the case at hand (*Carmichael*, 343 Ill. App. 3d at 859) or to provide guidance to litigants in future cases (*Normand*, 215 Ill. 2d at 544 (overlooking forfeiture to discuss a recently decided case)). However, neither concern justifies reaching the *Frye* issue in this case.

¶ 108 First, as I already observed above, reaching the *Frye* issue is not necessary for reaching a just result in this case, where the test at issue had nothing to do with the ground upon which we affirmed the trial court. Second, even if we wanted to provide guidance to future litigants about the validity of the CAPI test, this is not the case to do it. Since the mother—unlike the respondent in the *New* case—failed to raise the issue below, we have no material to review. In *New*—unlike in our case—the parties supported their positions about whether the test was generally accepted in the legal community with exhibits and factual support. *New*, 2014 IL 116306, ¶¶ 4-5. By contrast, our appellate record is devoid of such material.

¶ 109 In sum, I conclude (1) that the issue is forfeited for our review; (2) that this is not one of those exceedingly rare cases which requires the application of the plain error doctrine in a civil case; (3) that our case is readily distinguishable from the *New* case which our supreme court directed us to consider; and (3) that our discretion to overlook forfeiture is not compelled by either the need to reach a just result in this case or to provide guidance to future litigants. For the foregoing reasons, I specially concur.