



(1967),<sup>1</sup> and has filed a memorandum of law in support. Counsel provided respondent with a copy of his motion and brief, and respondent did not file a response. For the following reasons, we grant the motion to withdraw and affirm.

¶ 3

### I. BACKGROUND

¶ 4 Counsel avers he has thoroughly reviewed the record, and we detail the record as follows. On February 4, 2014, the Department of Children and Family Services (DCFS) reported that the police had taken limited protective custody of respondent's four minor children for the night. That night, respondent was found standing in the road, holding a baby who was wearing only a t-shirt and a very soiled diaper. The baby, Jaylen, was cold to the touch, and it was "very cold" outside. Respondent's three other children were inside her home. When respondent was asked for her name, she rambled about "demons and heaven."

¶ 5 Officer Presley responded to the February 4 hotline call with respect to respondent. Upon entering respondent's home, he found the three children huddled on one end of a couch, sleeping. He reported that respondent at this time was "screaming about demons and yelling that everyone was going to burn." There was no edible food in the home, only some dry oatmeal and dry moldy food in the refrigerator. The house was a mess with dirty clothes everywhere, soiled diapers lying about, and the house smelled of urine. He further reported that Jateis, the eldest child at 11 years old, had not gone to school the day before, and the last time he ate was the last time he was at school. Jaylen was taken to the hospital, where he was found to be hypothermic,

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<sup>1</sup> The *Anders* procedure for withdrawal of appellate counsel applies to findings of parental unfitness and termination of parental rights. *In re S.M.*, 314 Ill. App. 3d 682, 685 (2000).

with a temperature of 95.6 degrees, and was found to have low blood sugar. Respondent also went to the hospital.

¶ 6 A DCFS worker contacted respondent on February 5, 2014, at Swedish American Hospital. Respondent had been in the emergency room since the night before. At the ER, she was accompanied by her mother and sister. Respondent went in and out of reality, but her sister would help her “get back on track” at times. A toxicology screen at the ER showed that respondent tested positive for marijuana, and she also reported a history of alcohol abuse. Respondent was admitted to the inpatient psychiatric ward at the hospital, where she remained for ten days of treatment.

¶ 7 On February 11, 2014, a DCFS worker met with respondent and her therapist at the hospital. Respondent reported that she had five children—the four at her home on February 4, 2014, and Carlos, who was 17 years old and who had run away from her home, presumably to his father’s house in Milwaukee, Wisconsin. She said that on the night of February 4, she was watching television while the children were sleeping. She thought she heard someone walking up the basement stairs and so she ran outside. Outside, she said that she saw her uncle driving a yellow truck. Her uncle lived in Madison, Wisconsin. She said that he looked back at her but “kept on going.” She did not understand why he would just keep going. When asked why she did not leave with all the children or call the police after hearing sounds inside, she did not answer.

¶ 8 Respondent continued that when she returned to her home to check on her children, there was a black man in the house who told her to get down on the floor. She said that she told him no, but he put her on the floor and took his penis out. Later in the interview, respondent’s story changed from involving one man sexually assaulting her to three and then later changed to that it

was the police. Also, when asked again about leaving the house with her son after hearing sounds, she reported that as far as she knew, she never took Jaylen outside.

¶ 9 When asked about food in her home, respondent reported that she went grocery shopping on February 1st. She said she bought two pizzas, buffalo wings, soda, juice, ramen noodles, beans, rice, and cornbread at Walgreens. She further stated that she had been receiving supplemental security income for the past six years and that she had been diagnosed with schizophrenia and bipolar disorder. She reported that she came to Rockford, Illinois, approximately five years ago in order to get away from her husband in Wisconsin, who would hit her in front of the children. Her husband had visited Rockford and physically abused her while there.

¶ 10 On February 6, 2014, the State filed four neglect petitions, one for each of respondent's four minor children. Each petition alleged two counts of neglect: one count for an environment injurious to the child's welfare, in that the parents engage in domestic violence in the presence of the minor, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)); and one count for not receiving the proper or necessary support, education, or medical care, or not receiving other care including food, clothing and shelter, in that the minor was not being provided with an adequate amount of food and there was an inadequate amount of food in the home, pursuant to section 2-3(1)(a) of the Juvenile Act (705 ILCS 405/2-3(1)(a) (West 2012)). The trial court entered a temporary custody order for the children on the same day.

¶ 11 Jateis was placed with his father in Detroit, Michigan. Tanasia, Jeremiah, and Jaylen were placed with a relative foster parent residing in Streamwood, Illinois. Subsequently, on April 23, 2014, the three children were moved together to a traditional foster home. Tanasia was

going to school and adjusting well, and Jaylen and Jeremiah were in daycare. Jeremiah had a dental cavity and a fungus on the bottom of his left foot. A DCFS integrated assessment determined that he was developmentally behind in most areas, and he was referred to early intervention services. Jaylen's integrated assessment likewise showed he was developmentally delayed, and he was referred for services.

¶ 12 Respondent completed a mental health assessment on February 17, 2014. Her principal diagnoses were: paranoid schizophrenia, alcohol dependence, and cannabis dependence. She reported daily marijuana use since the age of 13. She was on prescribed medications but denied needing substance abuse treatment.

¶ 13 On February 19, 2014, respondent spoke by phone with a DCFS investigator and asked that she have her children back. She told the investigator that she was released from the mental institution and therefore had no issues, and that she was out of jail and that meant she was not a felon. She also denied that she stood in the middle of the street in the cold with Jaylen on the night of February 4, instead claiming that the only ones reporting that were cops.

¶ 14 Also on February 19, 2014, respondent met with an investigator at the DCFS office. She told the investigator that she was not a resident of Illinois but of Wisconsin. She thought she was currently in Beloit, Wisconsin. She also now claimed that she moved to Illinois because she had a lot of evictions in Wisconsin, whereas she had previously stated it was to avoid abuse from her husband. She reported that she could not get her medications filled. She claimed this was because she had a Wisconsin medical card but an Illinois prescription. She was on Paxil and Zyprexa. She was released from jail the previous Friday and on Saturday she heard noises in her house. Her home had two broken windows. The noises scared her, and so she called the police. When the police came, she stayed outside because she was afraid they would rape her again. She

claimed she had been raped by a “dark officer” on February 4. The noises turned out to be a raccoon in the basement.

¶ 15 Continuing the meeting, the investigator explained again why the children were in protective custody. Respondent replied that if she had not taken a child out into the cold since she had a child at 17, why would she wait until she was 34 to do it? The investigator told her she should air her concerns with the judge on March 5. Respondent then reported that her husband was an alcoholic and that she liked to “drink wine coolers.” She had been drinking since age 3 when her father would give her hottie totties. She also said her father sexually abused her and her sister when they were young. She interjected that Rockford was not a city but was a town and “that they make you pay to get in the water when it is scalding hot out,” and then she laughed.

¶ 16 Finally, the investigator attempted to schedule a visit with the children for 9:30 a.m. the following day. Respondent said she would not attend, and she refused to put her refusal in writing but instead laughed. The meeting ended with her uncommitted to the visit, and the investigator left the name and number for a DCFS supervisor.

¶ 17 Later, respondent left a voicemail for the DCFS investigator stating that she was not a morning person and the scheduled time was too early for her. When the investigator called her back, she got voicemail. That evening, respondent left another voicemail saying she would not be able to attend the visit because she had a physical the next day. Finally, at 2:30 a.m. the next morning, respondent left a message in which she was crying and reported that she would be at the visit and “to be patient with her.”

¶ 18 Respondent attended the supervised visitation the next morning, February 20, with Tanasia, Jaylen, and Jeremiah at the DCFS office in Rockford. At the meeting, she was asked

about a pediatrician for her children, and she reported that they were seeing a Dr. Naiomi in Wisconsin. However, she then reported that the doctor had lost her license and that Dr. Naiomi was not ever her real name. She then said she would say nothing more and that her children had already been treated like animals.

¶ 19 Also on February 20, respondent was scheduled to perform a drug drop, but she never took one after she was verbally abusive to the DCFS officer. She tested positive for marijuana on subsequent February 24 and March 17 drug drops.

¶ 20 Respondent could not attend scheduled visitation on February 27. On March 3, DCFS received a call from respondent's mother that respondent was in jail. Respondent called DCFS on March 10 to let them know her mother posted bail for her on March 7.

¶ 21 Respondent continued with three hours of supervised visitation each week. As of May 20, 2014, she had not missed another visit. The visitation supervisor noted that she provided adequate parental supervision and was verbally and physically affectionate with the children—she would hug them and tell them she loved them.

¶ 22 On June 17, 2014, respondent told DCFS she had definite plans to relocate to Wisconsin. Despite being informed that relocation would make services more difficult to complete, she “still seemed adamant” about the move. By August 2014, respondent was participating in parenting classes and staying current on her medications. She would see a mental health clinician every two weeks to address her mental health. She was not having any substance abuse treatment, however, because she reported no history of substance abuse.

¶ 23 An adjudication hearing regarding the four neglect petitions took place on August 5, 2014. The DCFS worker, Sarah Meyer, testified consistently with the reports stemming from the February 4, 2014, hotline call, chronicled *supra*. Heidi Kuhls, formerly an officer at the

Rockford police department, testified that she responded to a call on February 4, 2014, that a woman was carrying a small child around in the cold. She entered the respondent's residence, and she described the home as in "disarray." She testified that there were dirty clothes everywhere, the sink had dirty, molding dishes, and the refrigerator contained only molding food. The refrigerator door was also broken. She further testified that there was no toilet paper in the bathroom but that there was a sock covered in feces lying on the floor, which led her to believe that the sock was being used as toilet paper. Finally, both Jateis and Tanasia told her that the last time they had eaten had been the day before at school. She only observed one baby bottle in the home, and it was moldy.

¶ 24 The hearing continued to August 20, 2014. At the hearing, respondent stipulated to count I of the neglect petitions, that is, to the domestic violence count. The State then called Officer Nicholas Weber of the Rockford police department. He testified as follows. On August 5, 2013, he was dispatched to respondent's home in Rockford. The police had received a call from a child stating that his mother was being punched in the face. Upon arriving at the home, he met with respondent. She was bleeding from an ear and had scratches on her neck. Respondent told him that she had been in an argument with her husband and that he had punched her in the head several times. He then knocked her to the ground and choked her. Jateis told the officer that he observed respondent's husband punching and choking her and that he had made the 911 call. Respondent's husband was arrested for aggravated domestic battery.

¶ 25 The matter was continued several times, eventually set for a November 20, 2014, hearing. During the intervening time, on August 28, 2014, respondent relocated to Milwaukee, Wisconsin. She had successfully completed her parenting classes before relocating, and she self-enrolled in a domestic violence program in Milwaukee upon her relocation there. However, she

was no longer attending the mental health clinic in Illinois and had not identified a new service to address her mental health needs in Wisconsin. She continued with supervised visitation for three hours per week, not missing any planned visits, although she did have to cancel two visits due to transportation issues. The supervisors reported she was engaged, affectionate, and interactive with her children, providing adequate supervision. However, she did talk with Jateis over the phone about the case, which she was prohibited from doing.

¶ 26 At the dispositional hearing on November 20, the trial court took judicial notice of the DCFS reports detailing the events and aftermath surrounding the February 4, 2014, hotline call. Respondent then called her mother as a witness. She testified that respondent had completed parenting classes and had reengaged in domestic violence counseling in Milwaukee. She also testified that respondent had “recently” told her that she was seeing a mental health provider in Milwaukee.

¶ 27 Respondent testified on her own behalf as follows. She moved to Milwaukee because she had family in Milwaukee, and she contacted a psychiatrist after moving to Milwaukee. She had been seeing her since September. She denied currently using marijuana and had appropriate furniture for the children upon their return, including bunk beds, a refrigerator, stove, and kitchen table.

¶ 28 The trial court ruled as follows. It accepted respondent’s stipulation as to count I. It further found respondent “unwilling or unable to properly care for or parent the four minors.” It assigned guardianship and custody of Tanasia, Jeremiah, and Jaylen to DCFS, and guardianship and custody of Jateis was awarded to his father. It found that respondent had well-documented, diagnosed psychological or psychiatric conditions, including schizophrenia. It found that there was no evidence that respondent had her mental health issues under control and could manage

them in order to properly care for her children. Next, it found she specifically had substance abuse issues in that she had alcohol and cannabis dependencies, noting her failed drug drops, her prior statements of using marijuana since age 13, and finding incredible her self-report that she did not need substance abuse treatment. It ordered that DCFS create a new service plan to address respondent's substance abuse.

¶ 29 That same day, the trial court entered a written order finding the minors neglected and respondent unfit or unable to care for the minors.

¶ 30 Respondent timely appealed.

¶ 31 II. ANALYSIS

¶ 32 Counsel has determined that respondent's appeal contains no issues of arguable merit. He has identified, however, three potential issues for appeal. We agree with counsel that no potential issue possesses arguable merit.

¶ 33 The first potential issue counsel presents is whether the trial court violated respondent's due process rights by adjudicating the children neglected as to count I (domestic violence). A parent is entitled to due process protections in responding to a neglect petition. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 14. In determining what due process requires, we are to consider three factors: (1) the private interest affected, (2) the risk of erroneous deprivation of the interest and the probable value of additional procedural safeguards, and (3) the government's interest, including financial and administrative burdens in providing procedural safeguards. *Id.*

¶ 34 Here, respondent's private interest was in the care and custody of her children. This interest is fundamental and will not be terminated lightly. *In re M.H.*, 196 Ill. 2d 356, 365 (2001). At the adjudicatory stage, however, the risk of erroneous deprivation of the interest is not as great as the risk involved in a permanent termination proceeding. *In re A.A.*, 324 Ill. App.

3d 227, 239 (2001). There are numerous opportunities to regain custody, and the State need only prove neglect by a preponderance of the evidence, whereas unfitness need be proved by clear and convincing evidence. *Id.* Finally, the government's interest in fiscal and administrative efficiency is greater at the adjudicatory stage than the termination stage for similar reasons. *Id.* The government also has a *parens patriae* interest in preserving and promoting the minor children's welfare. *Id.*

¶ 35 Here, respondent stipulated to count I of the neglect petitions. We find that any argument constructed around her stipulation violating due process would be frivolous. The record contains the testimony of Officer Weber, who responded to a 911 call by one of respondent's minor children that respondent's husband was hitting and choking her. He found respondent at her home in Rockford with blood coming from her ear and scratch marks on her neck. Respondent's husband was arrested for domestic violence. Moreover, respondent initially stated her reason for moving to Rockford was to escape physical abuse from her husband, which he would commit in front of the children. She later enrolled in domestic abuse counseling. Based on the uncontroverted evidence in the record—and, in fact, the trial court was about to adjudicate the children neglected on count I based on the facts brought out at the hearings before being reminded of respondent's stipulation—there was no deprivation of due process in respondent's stipulation. Further safeguards were unnecessary to protect her interest, the risk of erroneous deprivation was negligible, and further safeguards would run contrary to the government's interest in efficiency.

¶ 36 Next, counsel posits whether the adjudication of neglect was against the manifest weight of the evidence. The State's burden was to establish neglect by a preponderance of the evidence. See *In re M.H.*, 196 Ill. 2d at 365. Neglect rulings are fact-driven in nature and thus will only be

reversed if the finding is against the manifest weight of the evidence. *In re N.B.*, 191 Ill. 2d 338, 346 (2000). A ruling is against the manifest weight of the evidence only if the opposite conclusion is readily evident. *In re A.L.*, 2012 IL App (2d) 110992, ¶ 13.

¶ 37 The record clearly supports the adjudication of neglect. Not only did respondent stipulate to count I, but as we have mentioned, count I was supported by the testimony of Officer Weber and by respondent's admission that her husband abused her in front of the children and her action to seek domestic violence counseling.

¶ 38 Finally, counsel posits whether the court's additional finding that respondent was unfit or unwilling to parent the children and that it was in the children's best interest to be removed from her custody was against the manifest weight of the evidence. Pursuant to section 2-27(1) of the Juvenile Act (705 ILCS 405/2-27(1) (West 2012)), a court may place a minor in the custody of a suitable relative or guardian if it finds, and puts in writing, that the parent of the minor adjudged neglected is unfit or unable to care for the minor, and the health and best interests of the minor will be jeopardized if she remains with the parent. The health, safety, and interests of the minor are the paramount concerns regarding any order for custody and guardianship of the minor. *In re Austin W.*, 214 Ill. 2d 31, 46 (2005). We will reverse a dispositional order as to the custodial placement of a minor child under the Juvenile Act only if it is against the manifest weight of the evidence. *In re Kelvion V.*, 2014 IL App (1st) 140965, ¶ 23.

¶ 39 The primary bases for the court's finding respondent unfit and subsequently placing the minor children with family and foster care were respondent's mental health and substance abuse issues. First, the trial court found that respondent did not have her mental health issues under control. She was diagnosed with paranoid schizophrenia and reported a prior diagnosis of bipolar disorder. She was on medication and seeking counseling, but the trial court did not find

sufficient evidence of improvement. Rather, the evidence on record showed erratic and delusional behavior, including her repeated denials of taking Jaylen outside in the cold on February 4, 2014; her changing stories about being attacked that same night by first one man, then some men, and finally that she was raped by the police; and her confusion that she was in Wisconsin when in fact she was in Rockford, Illinois. The children in her care did not have access to edible food and were developmentally delayed. The pictures of the inside of respondent's home were, in the words of the trial court, "shocking." Officer Presley documented respondent's home after responding to a hotline call on February 4, 2014, and provided testimony that there was no edible found food in the house, the home was in disarray, dishes in the sink were moldy, the refrigerator was broken, there was only one dirty mattress for four children to sleep on, and there was no toilet paper in the bathroom. Rather, there was a sock covered in feces lying in the bathroom. Jateis and Tanasia reported they had not eaten food since the prior day at school. Jeremiah and Jaylen were found developmentally delayed and required intervention services, and Jeremiah required treatment for a dental cavity and fungus on his foot.

¶ 40 As to respondent's substance abuse issues, she admitted to alcohol use from a young age and daily marijuana use since age 13. She failed all her drug drops. She was admitted for psychiatric treatment after February 4, 2014, and she was diagnosed with both cannabis dependence and alcohol dependence. Yet, she self-reported no history of substance abuse and therefore was never referred to substance abuse treatment. The trial court ordered DCFS to develop a new plan to address her substance abuse issues.

¶ 41 Based on these circumstances, it was not against the manifest weight of the evidence to find the mother unfit and place the children in custody of family and foster care. The record shows that respondent had serious, unresolved impediments to her ability to effectively parent,

which risked the children's health, safety, and development. Before DCFS intervened, the children were living in a home without adequate food and experiencing developmental delays. Therefore, it was in the best interests of the four minor children to be taken from respondent's custody. An appeal on this issue would be without merit.

¶ 42

### III. CONCLUSION

¶ 43 Upon our examination of the record, counsel's motion to withdraw, and his memorandum of law, we hold that respondent's appeal lacks any issue of arguable merit. Accordingly, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 44 Affirmed.