

2015 IL App (2d) 150135-U  
No. 2-15-0135  
Order filed July 9, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23(c)(2) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> K.C., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 11-JA-388
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Brittany V., Respondent-	)	Mary Linn Green,
Appellant).	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices Hutchinson and Zenoff concurred in the judgment.

**ORDER**

¶ 1 The trial court found respondent, Brittany V., unfit as to minor K.C. and terminated her parental rights. Respondent timely appealed, and the trial court appointed counsel to represent her.

¶ 2 Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel moves to withdraw. In her motion, counsel states that she has carefully read the record and found no issue of arguable merit. Counsel further states that she advised respondent of her opinion. Counsel supports her motion with a memorandum of law providing a statement of facts, a list of possible issues, and an argument why those issues lack arguable

merit. Respondent was advised that she had 30 days to respond to counsel's motion to withdraw. The 30-day period has passed, and respondent has not filed a response.

¶ 3

#### I. BACKGROUND

¶ 4 The minor boy, K.C., was born October 20, 2009. In November 2011, when K.C. was two years old, the State filed a neglect petition against respondent and K.C.'s father<sup>1</sup> alleging that both had substance abuse issues preventing them from properly parenting the minor. (Count I pertained to respondent and count II pertained to the father.) A hotline report to the Department of Children and Family Services (DCFS) indicated that respondent was abusing pain medication and that the father was abusing heroin and Vicodin.

¶ 5 The following evidence was adduced at the temporary shelter care hearing. DCFS worker Kathy Farrell investigated the hotline call and went to the house of the father's aunt and uncle (Crystal and Rob C.), where respondent, the father, and K.C. had been staying the past few days. The home was located on a farm in Pecatonica. Respondent advised Farrell that she had been taking prescription drugs for pain and anxiety for several years after a car accident. Farrell observed that respondent's prescription bottle contained fewer pills than it should have, even though respondent claimed she was taking only half the recommended dose. K.C. was well-nourished but dirty, and Crystal and Rob were concerned that K.C. was not being fed or receiving proper care. Farrell testified that initially, respondent agreed to a safety plan in which her urine would be tested, and K.C. would stay with Crystal and Rob. After respondent spoke with her mother, Christel V., however, respondent was not willing to sign the plan. As a result, Farrell had no choice but to place K.C. in protective custody.

¶ 6 Farrell further testified that the day after she placed K.C. in protective custody, she contacted the father's mother, Lauren Blacksheer, based on contact information provided by the

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<sup>1</sup> K.C.'s father is not a party on appeal.

father. Blacksheer relayed an incident involving K.C. from July 2010. According to Blacksheer, respondent and the father had told her that they had taken K.C. to a motel with them for a drug deal. The drug deal went bad, and the father was beaten up.

¶ 7 The father testified that he had lived with respondent and K.C. in an apartment in Rochelle until the previous March or May of 2011, when they were evicted. The father went to live with friends while respondent and K.C. went to live with respondent's mother Christel, then respondent's father, and then back with Christel. The father admitted to a heroin addiction.

¶ 8 Respondent testified that she was unaware of the father's heroin addiction but then left with K.C. to live with her father when she discovered it. However, Rob and Crystal had begged her to come to visit them so that they could see K.C. Respondent admitted that her pill bottle had the number 60 written over the typewritten number 90. Respondent testified that Christel paid cash for the pills and must have paid for an amount that was less than the prescription amount.

¶ 9 The court determined that K.C. was neglected and granted temporary guardianship and custody to DCFS. The court noted that respondent did not offer credible testimony regarding the pill bottle. K.C. remained with Rob and Crystal in Pecatonica until December 23, 2011, when he was placed with Christel (the maternal grandmother) in Tinley Park.

¶ 10 Later, on April 23, 2012, the court adjudicated K.C. a neglected minor. The neglect finding was based on father's stipulation to count II, which alleged that substance abuse issues prevented him from properly parenting K.C. Respondent did not object to father's stipulation to count II, and the State agreed to dismiss count I against respondent. Count I was dismissed with the understanding that respondent and the father would receive services based on both counts.

¶ 11 A June 5, 2012, report to the court indicated as follows. Respondent was unemployed and living with a friend in Tinley Park. Respondent had completed a parenting class and was attending counseling and visits.

¶ 12 There were four permanency review hearings, the first of which occurred on January 15, 2013. At this hearing, the court found that respondent had made reasonable efforts, and the goal remained return home.

¶ 13 On February 26, 2013, K.C. was removed from Christel's care based on the minor's physical and emotional safety. Christel had consistently interfered with visits between K.C. and his father over a seven-month period. In addition, she had alleged that the father had sexually abused K.C. during a visit by putting his penis in K.C.'s mouth, despite the fact that the visit was supervised by a caseworker. Without DCFS approval, Christel had then taken K.C. to the Carrie Lynn Center for an interview, and the interviewer found no evidence of sexual abuse. Also, respondent had been living in the same home as K.C. and Christel, even after she was told by DCFS that this living arrangement was prohibited. DCFS placed K.C. back with Crystal and Rob in Pecatonica.

¶ 14 The second permanency review hearing occurred on July 16, 2013. The corresponding report to the court indicated that recommendations for respondent included medication monitoring by a psychiatrist and compliance, a psychological evaluation, individual therapy, stable income, parenting classes, and consistent visits with K.C. According to the report, respondent had moved into an apartment in Alsip in March 2013. Respondent was not employed and was receiving SSD benefits for her artificial hip, chronic pain syndrome, and major depressive disorder. Though respondent had been accepted into Robert Morris College, she had discontinued classes due to her stress level.

¶ 15 The report further indicated that respondent had attended seven out of nine individual counseling appointments, the last of which was in August 2012. After moving to Alsip, respondent did not attend her counseling appointments in Tinley Park. DCFS had approved another counseling agency, Metropolitan, because it was closer to respondent, but respondent went to only one intake appointment at Metropolitan. Respondent started counseling at Catholic Charities, which had not yet been approved by DCFS. Respondent also refused to sign a release for counseling at Catholic Charities, which was required.

¶ 16 According to the report, respondent was offered weekly, two-hour supervised visits with K.C. The travel time between Alsip and Pecatonica made visits more difficult to achieve, so visits alternated between respondent's home (home visits) and the agency (away visits). Respondent missed a June 17, 2013, home visit despite being advised of it. Respondent did not drive but was provided bus passes for the away visits. Though respondent claimed she was unable to travel by bus due to her chronic pain, she provided no documentation from a physician to this effect. Respondent was asked multiple times for such documentation, and the general MRI report that she did provide had nothing to do with physical limitations or travel restrictions. Respondent depended on rides from Christel and missed a June 26, 2013, away visit, claiming she had no transportation. Respondent was also permitted three telephone calls with K.C. per week. However, respondent's voice mail was often full; she would not answer her phone; or she would be very brief when talking to K.C.

¶ 17 Finally, the report stated that respondent had prescription medication for depression and anxiety. Respondent had last seen her psychiatrist, Dr. Zahid, on May 13, 2013. Random urine screens had either negative results or positive results stemming from her medication. Though respondent was taking medication, she had not provided her prescriptions to the caseworker, as required, since February 29, 2013. In addition, a psychological evaluation, dated November 15,

2012, was conducted by Dr. Valerie Bouchard. Dr. Bouchard diagnosed respondent with ADHD (mild), Major Depressive Disorder, Generalized Anxiety Disorder, and Dependent Personality Disorder. Dr. Bouchard concluded that respondent had not made adequate progress towards reunification. Dr. Bouchard noted that respondent “felt it unfair that she be expected to demonstrate herself as an independent adult with the financial and emotional means to care” for K.C.

¶ 18 Based on this evidence, the court determined that respondent had not made reasonable efforts or progress, and the goal remained return home within 12 months.

¶ 19 A third permanency review hearing occurred on January 13, 2014. The corresponding report to the court indicated that respondent had monthly visits with Dr. Zahid from August to December 2013. However, respondent was not compliant with her prescribed medication. During a family meeting on November 7, 2013, respondent admitted that she was not taking medication for depression and stated that she did not need to do so. Despite being diagnosed with depression and prescribed medication (Celexa) for it, respondent claimed that she had never been diagnosed with depression. Respondent admitted that she had run out of her prescriptions for about two months, was having anxiety attacks, and had gotten a new prescription for her anxiety (Xanax). Respondent consistently failed to show the caseworker her prescription medication bottles. Several of respondent’s urine screen tests were positive due to her prescribed medications, but some were negative. Respondent missed four random urine screens, and the one she did take had a negative result. Although respondent showed up for urine screens on her own accord, such screens were not random and therefore not valid per DCFS policy.

¶ 20 The report further stated as follows. Respondent attended weekly counseling in Palos Hills, beginning at the end of October 2013, with two no-shows. She planned to begin schooling in February 2014. Respondent participated in home visits with K.C. but missed eight away visits

at the agency in Rockford. Again, respondent was given bus passes but claimed she could not travel by bus due to her chronic pain. Respondent never provided medical documentation that she could not travel. Beginning in November 2013, the away visits were moved to a halfway point in DeKalb. Respondent missed a November visit and attended a December visit in DeKalb. In addition, on two occasions, either respondent or Christel had contacted the police rather than DCFS regarding K.C.'s care with the foster parents, Rob and Crystal. The police were asked to conduct a welfare check of K.C., and the caseworker had to explain to respondent that "it was not a positive thing" for K.C.'s mental health to be involved with police officers.

¶ 21 Based on this evidence, the court determined that respondent had not made reasonable efforts or progress.

¶ 22 The final (fourth) permanency review hearing occurred on June 30, 2014. The corresponding report to the court stated that respondent had been compliant with her medication and with monthly visits to Dr. Zahid. Respondent was compliant in attending counseling but refused an in-depth mental health evaluation. In addition, respondent's counselor noted that DCFS's reports of respondent's visits with K.C. were not consistent with respondent's version of events. When the counselor addressed DCFS's concerns with respondent, respondent denied everything that DCFS had reported.

¶ 23 The report to the court further stated that respondent was still receiving disability and was seeking employment. She was living in housing that was owned by Christel, and Christel had a key. Christel tried to attend respondent's home visits with K.C., even though she was allowed to attend only away visits in DeKalb.

¶ 24 The report contained the following summary of 2014 visits. Christel appeared at the January 17 home visit. On January 24, 2014, respondent was 48 minutes late to the visit in DeKalb. At a February 14 away visit, respondent was 20 minutes late. In addition, Christel was

present at that visit and told respondent that she, not respondent, was the boss of K.C. because it was “her visit.” The caseworker had to tell Christel that it was respondent’s visit. At a February 28 away visit, K.C. did not listen to either respondent or Christel but only the caseworker. At that visit, K.C. had a cough, and Christel kept asking him if his ear hurt, which frustrated K.C. Respondent was 40 minutes late and 35 minutes late to March and April away visits, and she canceled the other April away visit, claiming she did not have a ride. At a May home visit, Christel appeared, and respondent was not able to tell her to leave. At a May away visit, respondent was 70 minutes late. At that visit, K.C. had a cut and explained that he had scraped himself on a window in the barn on the farm. After respondent and Christel continued to insist that K.C. was sick, K.C. screamed so loud that he could not hear them, and he refused to stop screaming until the caseworker intervened. At another May away visit, respondent was late, and Christel tried to coach the caseworker into saying that K.C. was abused. A tape recorder then fell out of Christel’s purse. At a June home visit, Christel appeared at the end of the visit, after respondent, K.C., and the caseworker returned from lunch. As a result, the caseworker had to tell respondent and Christel to step away from the car and that the visit was over. At a June away visit, respondent and Christel brought a recording device. Respondent asked K.C. how he was treated in the foster home and recorded his answers. Respondent and Christel also recorded K.C. saying that he loved them and missed them.

¶ 25 The report indicated that overall, respondent was consistently late to the away visits in DeKalb. In addition, respondent spent more time interrogating K.C. rather than parenting and interacting with him. Also, respondent was not able to control Christel or ask her to leave, and Christel prevented bonding time between K.C. and respondent by focusing all of the attention on herself. Respondent and Christel would express their disapproval of K.C. living on a farm



around animals, which was confusing for K.C. K.C. would then become anxious and have anger outbursts upon return to the foster home.

¶ 26 Based on this evidence, the court determined that respondent had not made reasonable efforts or progress and the goal changed to substitute care pending determination of parental rights.<sup>2</sup> At this point, respondent's attorney was allowed to withdraw, and new counsel was appointed.

¶ 27 In a September 12, 2014, report to the court, it was noted that respondent had attended eight counseling sessions since May 2014 but had missed seven appointments. In addition, respondent had not secured employment or housing that she was able to maintain.

¶ 28 Regarding visitation, DCFS reduced visits to every other week based on concerns that respondent was interrogating K.C. rather than interacting with him. Respondent's questions about the foster parents and living on a farm caused K.C. to get upset. Also, DCFS prohibited Christel from attending further visits. DCFS made this decision because Christel was showing up for visits that she was not allowed to attend; respondent was not telling her to leave; and Christel was "taking over" the visits she was allowed to attend. The report indicated that since the last June 2014 court date, respondent had either shown up late to visits or missed them entirely. For example, respondent was late to her July 17, 2014, visit, at which Christel demanded a court order showing that she could visit K.C.; the July 31, 2014, visit did not occur

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<sup>2</sup> At the second and third permanency hearings, the father had made reasonable efforts and progress, and the goal had been for K.C. to return to him. However, the father was arrested in January 2014 for domestic violence and did not appear at the fourth permanency hearing. As a result, the court found that the father failed to make reasonable efforts or progress and changed the goal to substitute care pending termination of parental rights.

because respondent was two hours late and did not call to confirm the visit; respondent missed the August 14, 2014, visit; and respondent cancelled the August 28, 2014, visit because she was unable to get a ride.

¶ 29 On September 26, 2014, the State filed a petition to terminate respondent's parental rights. The State alleged that respondent was unfit on four grounds: (1) the failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare; (2) the failure to make reasonable efforts to correct the conditions that were the basis for the child's removal within nine months of the date he was adjudicated neglected; (3) the failure to make reasonable progress toward the minor's return within the nine-month period following the date he was adjudicated neglected; and (4) the failure to make reasonable progress toward the return of the child within any nine-month period after the initial nine-month period.

¶ 30 A. Fitness Hearing

¶ 31 A fitness hearing commenced on November 20, 2014. Respondent did not appear at the start of the hearing, and her counsel asked for a continuance. The court denied the motion for a continuance, and respondent eventually appeared at the hearing.

¶ 32 Caseworker Linda Fultz testified first. Fultz had been the caseworker from the initial November 2011 shelter care hearing until October 2013. During that period, respondent attended all but one administrative case review meeting. For the meeting she missed, she participated by phone.

¶ 33 Regarding visitation, Fultz testified that respondent was kind, loving, and gentle to K.C. and would bring snacks, gifts, and drawing supplies. However, despite completing a parenting class, there were still "problems" during visitation, such as respondent not being aware of safety issues. For example, respondent gave K.C. too much freedom when near water or when walking

over a bridge. Fultz testified that K.C. loved respondent but struggled seeing her as an authority figure when she said “no.”

¶ 34 Fultz further testified that the time allotted for visitation was two to three hours, but respondent was not punctual. Sometimes, because respondent was late, visits lasted only 30 minutes. Respondent’s lateness was the “norm,” even after visits were moved to a location that was closer to respondent’s residence. In addition, home visits were a four-hour commute for K.C., and there were times that respondent missed even home visits.

¶ 35 Fultz testified that when K.C. was living with Christel, Christel sabotaged respondent’s reunification with K.C. by interfering with visits between K.C. and the father. Although Christel alleged that the father had sexually abused K.C. during a visit, that visit was supervised by a case aid who denied the allegation. In fact, three witnesses vouched that no abuse occurred. In addition, Christel would say mean things about the father and not encourage respondent to parent K.C. Though respondent would try to stop Christel’s behavior, many times respondent would become emotional and “just kind of throw her hands up.” Also, when K.C. was living with Christel, Christel and respondent had an altercation on August 24, 2012, that resulted in police involvement. The dispute arose when respondent accused Christel of taking her cell phone, and Christel accused respondent of texting the father.

¶ 36 Fultz testified that when K.C. was living with Christel, respondent said that she was living on a lower level of the home. However, respondent had immediate access to the home, which DCFS prohibited. According to Fultz, respondent was “almost robotic” when it came to Christel’s influence, and she fed off of Christel’s opinions. Christel always placed her own needs over the needs of respondent and K.C., and she would “overstep her bounds.” As a result, DCFS encouraged respondent to find outside support. When DCFS decided to remove K.C. from Christel’s care, Fultz had to call the police because Christel refused access to K.C., and

Christel and respondent were screaming. Fultz tried to diffuse the situation, which was very upsetting for K.C.

¶ 37 When K.C. was removed from Christel's care and placed with the paternal aunt and uncle (Crystal and Rob), respondent was allowed telephone contact with K.C. every other night before bedtime. However, on many occasions, respondent was either unavailable or did not answer the telephone. Missed telephone conversations caused various behaviors in K.C., such as not wanting to go to bed, developing "an attitude" towards Crystal and Rob, and not wanting to be redirected, even the next morning.

¶ 38 In addition, during visits that Christel was allowed to attend, Christel would make slanderous comments about K.C. Christel would complain that K.C. was not dressed appropriately or looked "dingy," and respondent would "chime in." Much of the visitation time was spent interrogating K.C. rather than interacting with him.

¶ 39 Visits never progressed from being supervised to unsupervised. Fultz explained that this progression never occurred because respondent was "resistant" from the beginning. In particular, respondent was in denial about her mental health issues, major depression, and anxiety. Respondent would stop and start medication. Although respondent was asked to provide her prescription bottles at nearly every visit, she failed to do so "most of the time." In addition, respondent began counseling in June 2012 but stopped consistently attending in September 2012. Respondent changed counseling agencies without the permission of DCFS, and though she claimed to receive counseling at a church with Catholic Charities, she did not sign a consent form so that DCFS could verify the counseling. Throughout the case, respondent was never employed, and she dropped out of her college classes. According to Fultz, respondent was not generally consistent in maintaining contact with DCFS and not consistent with the urine screens. Sometimes, respondent would appear, and sometimes she would not.

¶ 40 After Fultz's testimony, the fitness hearing was continued to January 15, 2015. On that date, respondent failed to appear, and her counsel requested a continuance based on respondent being ill. The State objected to the continuance. The court allowed the fitness hearing to proceed but also ruled that respondent would be allowed to testify at the next court date as long as she provided medical documentation of her illness. Otherwise, respondent would subject herself to being held in contempt.

¶ 41 Anna McMahon, the caseworker since October 2013, testified as follows. Regarding visitation, which was weekly, respondent participated in home visits but did not show up or was late to the away visits. In June 2014, the visitation plan changed to every other week. Respondent missed half of those visits and was late to the ones she did attend. Though McMahon discussed the importance of the visits and of being on time for K.C.'s sake, respondent's attendance did not improve. Respondent was aware that being late to a visit reduced her visitation time. Respondent's last visit was on December 23, 2014, and her last visit before that was one month prior.

¶ 42 During visits, respondent brought gifts, such as toys or clothes, as well as lunch for K.C. However, respondent interrogated K.C. rather than interacting with him. She also made negative comments about Crystal and Rob and about living on a farm. McMahon discussed this concern with respondent many times; it was an ongoing concern that had to be addressed at each visit. In addition, respondent would not intervene when Christel interrogated K.C. during a visit. Visits never progressed from supervised to unsupervised.

¶ 43 Respondent currently lived in a home owned by Christel despite DCFS recommendations that she secure independent housing. In addition, she never successfully completed individual counseling. Respondent attended counseling from December 2013 to April 2014 but then stopped attending regularly. In September 2014, respondent stopped attending counseling

altogether. Finally, respondent failed to show the case aid documentation of the prescription medication she was taking. Though she was asked to provide her pill bottles so that the pills could be counted at every visit, respondent complied with this request only once or twice.

¶ 44 Respondent was advised that K.C. was receiving counseling based on his behavior of acting out with Crystal and Rob. Despite being advised, respondent never inquired as to how the counseling was progressing. In addition, respondent never contacted McMahon regarding K.C.'s preschool.

¶ 45 At this point, the State introduced five six-month service plans into evidence. The plans began in May 2012 and ended in December 2014.

¶ 46 The fitness hearing was continued to January 29, 2015. On that date, respondent failed to appear, and her counsel advised the court regarding respondent's availability. Respondent had informed counsel that she could not appear in court until 5 p.m. that day but was available by telephone. Respondent's counsel had wanted respondent to testify and advised respondent that she would not be able to testify via telephone. The parties noted that the last court date had been continued to allow respondent to testify, and the State objected to respondent's appearance at the hearing via telephone. The court denied respondent's motion to appear via telephone. No more evidence was presented, and the parties presented arguments regarding whether respondent was unfit. The case was continued to February 4, 2015, for the court's decision.

¶ 47 Respondent appeared in court on February 4, 2015, and the court rendered its decision. The State reminded the court that respondent was to be held in contempt unless she provided medical documentation that justified her failure to appear on January 15, 2015. Respondent produced a note from a Walgreens pharmacist but not a doctor. The court stated that although this was not the type of medical documentation it had requested, the court would not hold respondent in contempt.

¶ 48 The court then rendered its decision as to respondent's fitness, finding respondent unfit on counts I, III, and IV of the State's petition to terminate parental rights. The court made the following findings of fact. Regarding the five service plans, the first plan, dated May 2012, did not give a rating; the second service plan, dated November 2012, rated respondent's performance as unsatisfactory; the third plan, dated May 2013, indicated that respondent made some efforts but not progress toward return home; the fourth service plan, dated November 2013, rated respondent as not having made reasonable efforts or progress; and the fifth plan, dated May 2014, rated respondent as having made reasonable efforts but not reasonable progress. Respondent never completed all of her services, and there was a notation that she had attended approximately 50% of the visits. While the court recognized that respondent was traveling "from far away" for visits, it also noted that DCFS had tried to accommodate her. Regarding count I, which was whether respondent had maintained a reasonable degree of interest, concern or responsibility as to K.C.'s welfare, the court found that "there were continued incidences of violation of the visitation rules" by Christel, and respondent "did not stop it." Christel recorded visitations and interrogated K.C., and respondent "did not stop this behavior," which pertained to respondent's inability to protect K.C.

¶ 49 The case proceeded immediately to a best interests hearing. Caseworker McMahon testified that K.C. was living with Rob and Crystal Christen. Also living in the home was Zachary, Crystal's son, who was 18 years old, and a girl named Devin, age 17, of whom Rob and Crystal were legal guardians. The house was on a farm.

¶ 50 McMahon testified that she observed K.C. in his foster home on a monthly basis. According to McMahon, K.C. had a strong bond with Crystal. When K.C. spontaneously hugged Crystal, she would hug him back. K.C. would ask Crystal for whatever he needed, and she would meet his needs. The two liked to cook meals together. In addition, K.C. would show

McMahon around the house and was very familiar with where everything was; he would show McMahon his own room and his bed. Overall, their interaction was very positive; they were “very happy together”; and they would tell each other “I love you.”

¶ 51 McMahon further testified that K.C.’s relationship with Rob was very loving and caring. When K.C. hugged Rob and told him he loved him, Rob showed the same affection. In addition, Devin and Zachary loved K.C. and treated him like a younger brother.

¶ 52 According to McMahon, K.C. liked to help with chores on the farm, and he had his own horse. K.C. was involved with 4H and did well in school. When McMahon spoke to K.C.’s teacher, she said that K.C. was doing very well, made friends easily, was helpful, and showed no developmental delays. Rob and Crystal attended parent/teacher conferences and would take K.C. to the doctor when necessary. K.C. had no special medical needs.

¶ 53 When K.C. was placed with Rob and Crystal in February 2013, he had some difficulty adjusting and would act out after visits with respondent or if visits were missed. Rob and Crystal obtained counseling for K.C., and his behavior improved. McMahon had no concerns over Rob and Crystal meeting his needs.

¶ 54 McMahon also observed monthly visits between K.C. and respondent. During the visits, K.C. was always excited to see respondent. He would hug her, call her “mom,” and tell her he loved her. However, K.C. did not listen as well to respondent as he did Rob and Crystal. With Rob and Crystal, K.C. knew that there were consequences for his behavior.

¶ 55 Respondent was allowed three telephone calls per week with K.C. Respondent was not consistent with the calls, however, which upset K.C. Rob and Crystal would place the calls on speaker phone, and if Christel got on the call, Rob and Crystal were instructed to hang up. When Rob and Crystal would end the call for this reason, it would upset K.C.



¶ 56 McMahon agreed that given the bond between K.C. and respondent, it was important for K.C. to maintain contact with respondent. However, respondent was not able to provide a safe and stable living environment for K.C., and Rob and Crystal were willing to allow visits and telephone calls between K.C. and respondent. McMahon opined that it was in K.C.'s best interest to remain with Rob and Crystal and be adopted by them. In addition, K.C. was excited about the prospect of adoption.

¶ 57 Rob testified as follows. He was the uncle of K.C.'s father and K.C.'s great uncle. K.C. had initially lived with Rob and Crystal for two months before he was placed with Christel. Because respondent and Christel were not following DCFS rules, K.C. had returned to live with Rob and Crystal February 2013. K.C. had lived with them approximately two years and was now five years old.

¶ 58 Rob was currently on leave from his job due to back surgery. He had changed jobs and shifts so that he could spend more time with K.C.

¶ 59 Rob testified regarding K.C.'s relationship with the other family members. K.C. shared common interests with Zachary, such as the computer. K.C. was really interested in computers, and Zachary was a "computer nerd." Zachary would show K.C. how to play computer games. In addition, Zachary and K.C. would do farm chores together, such as haying the horses, or they would work on vehicles together. K.C. also shared common interests with Devin. They did art projects together, such as origami, and they played card games together. K.C. also liked spending time with Rob's father (K.C.'s great grandfather) once or twice a month, and Rob's father would buy presents for K.C. Finally, K.C. had great relationships with Crystal's two grown children, Alex and Kayla, who lived in their own homes.

¶ 60 Rob testified that K.C. also loved living on the farm with the horses, goats, calves, cats, and dogs. They had nine horses, and K.C. had two favorites. K.C. liked to ride horses and saw a

horse being born. Crystal worked part-time as a horse trainer on the farm, and K.C. would participate in the training. Crystal was also the superintendent of goats at 4H, and K.C. was able to hold a newborn goat. Crystal was also teaching K.C. how to be in charge of a four-month-old calf for 4H. K.C. loved riding tractors, finding tree frogs, hunting bugs, bonfires, and Tinker the dog.

¶ 61 Rob further testified that K.C. went to preschool at Antzy Pants. The schedule was two hours, three times per week. K.C. had lots of friends there. The teacher, Ms. Mary, said that K.C. was doing wonderfully and was developmentally on track.

¶ 62 When K.C. was taken from Christel and placed with Rob and Crystal, he had “little temper tantrums,” trouble listening, and he would spit, bite, kick, and hit. Rob and Crystal obtained counseling, and the counselor would come to the house once a week and meet with the three of them. Through counseling, Rob and Crystal learned to redirect K.C.’s behavior. In addition, Rob and Crystal participated in trauma counseling, a 16-hour training program. The trauma counseling was very helpful, and Rob and Crystal learned to deescalate a situation. K.C. was discharged from counseling in December 2013.

¶ 63 Later, K.C. reentered counseling because he was upset when respondent or the father would miss visits. K.C. would take out his anger on Rob and Crystal by acting destructively and by refusing to listen. As a result, Rob and Crystal began sitting down with K.C. before bedtime for “little discussions.” During these discussions, K.C. would disclose that it hurt him when his parents did not show up for visits. Rob testified that K.C. would also be upset after visits in which Christel was present. Respondent and Christel would ask him questions over and over and degrade the farmhouse where he lived.

¶ 64 Rob testified that the telephone schedule was three calls with respondent per week. In the last two months, however, K.C. had only talked to respondent once a week. Prior to that,

Christel would try to participate in the calls, and the caseworker had instructed Rob and Crystal to end the call when that happened. Rob and Crystal had had to end calls for this reason about five times in the last six months.

¶ 65 Rob further testified that he had had five or six short conversations with K.C. about adoption. Rob had asked K.C. if he wanted to stay with them, and K.C. replied that he did. K.C. understood the conversation and even wanted Rob to repaint his room a different color. Rob and Crystal were committed to adopting K.C.

¶ 66 Rob testified that he and Crystal were willing to have ongoing visits with respondent and even Christel “at some point.” The visits would be conditioned on no “mental games” that could harm K.C.

¶ 67 Multiple photographs of K.C. with horses, family members, and friends on the farm were submitted to the court.

¶ 68 The court terminated the parental rights of respondent and the father. In particular, the court found that K.C. was in a safe and stable placement, and he had multiple community ties with school, friends, and extended family. In addition, it was a benefit that K.C. was placed with biological family, in that Rob and Crystal were open to a relationship with respondent and even Christel, as long as it was safe and appropriate. The court noted that although K.C. was very well-loved by respondent and Christel, his interests in animals, nature, and farming were being fostered on the farm. K.C. was well-loved and well-cared for by Rob and Crystal, and they never wavered during the most difficult times. The court agreed that the permanency goal should be changed to adoption.

¶ 69 **II. ANALYSIS**

¶ 70 Counsel identifies two possible issues and then explains why they have no arguable merit. We agree and discuss each issue in turn.

¶ 71 The first issue is unfitness. The termination of parental rights is a two-step process: first, the trial court must find that the parent is unfit, and second, the court must find that termination is in the minor's best interests. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63. Because the termination of parental rights constitutes a complete severance of the relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *Id.* ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010).

¶ 72 As stated, the trial court found respondent unfit on three grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) sets forth several grounds under which a parent may be deemed unfit, any one ground, properly proven, is sufficient to enter a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89.

¶ 73 One of the grounds under which respondent was found unfit was section 1(D)(b) of the Adoption Act, which defines an unfit person as any person who fails to "maintain a reasonable degree of interest or concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2014). "Because the language of 1(D)(b) is in the disjunctive, any of the three elements may be considered on its own basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare." *In re C.E.*, 406 Ill. App. 3d at 108. When a parent is alleged unfit on that particular ground, the trial court is to examine the parent's efforts to communicate with or show interest in the child, not the success of those efforts. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 68 (2005). Factors to be applied toward an analysis of these elements include consideration of a parent's efforts to visit and maintain contact with the child,

as well as other indicia of interest, such as inquiries into the child's welfare. *In re C.E.*, 406 Ill. App. 3d at 108. Evidence of noncompliance with an imposed service plan or infrequent or irregular visitation with the child all have been held sufficient to support a finding of unfitness under section 1(D)(b). *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 90. A court must also examine the parent's conduct in the context of the parent's circumstances, such as difficulty in obtaining transportation, the parent's poverty, statements made by others to discourage visitation, and 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 C.E.*, 406 Ill. App. 3d at 108-09.

¶ 74 Counsel is correct that respondent would not be able to show that the trial court's finding that she was unfit under section 1(D)(b) was against the manifest weight of the evidence. As stated, infrequent or irregular visitation is sufficient to support a finding of unfitness under this section of the Adoption Act.

¶ 75 The record shows that throughout the pendency of the case, which spanned from the shelter hearing in November 2011 to respondent's last visit in December 2014, respondent missed half of her visits. Although DCFS tried to cater to respondent's lack of a driver's license and to the location of her residence by scheduling home visits, meeting her half way, and providing bus passes, her attendance did not improve. Not only did respondent miss some home visits, which resulted in a four-hour commute for K.C., she was habitually late to the away visits, meaning two-hour visits were as short as 30 minutes. This was true even after caseworker McMahon stressed the importance of attending the visits and being on time. Moreover, respondent's claim that her health issues prevented her from riding the bus was never substantiated. Rather than comply with DCFS recommendations that she become more self-sufficient, respondent continued to rely on Christel for transportation to visits.

¶ 76 In addition, the visits respondent did attend were problematic, primarily due to Christel's influence over respondent. In the beginning, when K.C. was placed with Christel, respondent continued to live in the same house despite DCFS's policy that this living situation was prohibited. Respondent's refusal to maintain independent housing, coupled with Christel's interference in K.C.'s visitation with the father, resulted in K.C. being placed back with Rob and Crystal. However, when DCFS allowed Christel to attend visits between respondent and K.C., Christel and respondent exhibited inappropriate behavior with K.C. Rather than interacting with K.C. and parenting him, visits became a vehicle for respondent and Christel to interrogate K.C. and make disparaging comments about his farm life with Rob and Crystal. Respondent and Christel engaged in tactics such as tape recording visits, calling the police to do welfare checks at the foster home, and trying to persuade the case aid to say that K.C. was abused. As both caseworkers testified, visits never progressed from supervised to unsupervised. In fact, the visitation schedule changed from weekly visits to every other week, and Christel's visitation was suspended indefinitely.

¶ 77 Besides visitation, respondent failed to take advantage of the scheduled telephone conversations with K.C. Respondent either was not available during the scheduled times or would not answer her telephone.

¶ 78 Finally, respondent failed to comply with the other requirements of the service plan. As caseworker Fultz testified, respondent was in denial about her mental health issues, would stop and start medication, and failed to provide her prescription bottles so that the caseworker could verify how many pills she was taking. In addition, respondent was not consistent with urine screens and would receive negative results when the tests should have been positive for medication. Likewise, respondent was not consistent with counseling and would change counselors without DCFS approval. Respondent never secured employment or independent

housing that was not owned by Christel, and she never reenrolled in school. Then, after the State filed a petition to terminate her parental rights, respondent missed two of the fitness hearings.

¶ 79 For all of these reasons, respondent would not be able to show that the trial court's finding that she failed to maintain a reasonable degree of interest, concern, or responsibility as to K.C.'s welfare was against the manifest weight of the evidence. And given that one ground is sufficient for a finding of unfitness, we need not address the trial court's findings as to the other two counts.

¶ 80 The second issue is whether it was in K.C.'s best interest to terminate respondent's parental rights. A reviewing court will not disturb the trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The reason for this deferential standard is that the trial court is in a superior position to assess the witnesses' credibility and weigh the evidence. *Id.* ¶ 66. A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011).

¶ 81 Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-2 *et seq.* (West 2014)), the best interests of the minor is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). A child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interest of the minor involved. *Id.* at 50.

¶ 82 The Act sets forth the factors to be considered whenever a best interest determination is required, and they are to be considered in the context of the minor's age and developmental needs:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child’s identity;

(c) the child’s background and ties, including familial, cultural, and religious;

(d) the child’s sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child’s sense of security;

(iii) the child’s sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child’s wishes and long-term goals;

(f) the child’s community ties, including church, school, and friends;

(g) the child’s need for permanence which includes the child’s need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care;

(j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2014).

¶ 83 In addition to the above factors, also relevant in a best interest determination is the nature and length of the minor’s relationship with his present caretaker, and the effect that a change in placement would have upon his emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d at 871.



¶ 84 Respondent cannot meet the burden of showing that the court's decision to terminate her parental rights was against the manifest weight of the evidence. By the time of the February 2015 hearing, K.C. was five years old and had lived with Rob and Crystal for two years. Both the caseworker McMahon and Rob testified that K.C. was very bonded to the foster care family, which included Zachary and Devin. K.C. showed love and affection for Rob and Crystal, which they reciprocated, and Zachary and Devin treated K.C. like their little brother. K.C. was also thriving on the farm; he enjoyed the animals, the chores, and nature in general. In preschool, K.C. was doing very well and had lots of friends.

¶ 85 Regarding K.C.'s bond with respondent, McMahon admitted that the two had a strong bond, and that it was important for contact between them to continue. Significantly, Rob and Crystal were K.C.'s biological family and open to a continued relationship with respondent via visits and telephone. As long as the interaction was safe and appropriate, Rob and Crystal were even open to a continued relationship between K.C. and Christel.

¶ 86 Despite the bond between K.C. and respondent, McMahon testified that respondent was not able to provide a safe and stable environment for K.C. K.C. had not lived with respondent since November 2011, when he was two years old, and respondent's and Christel's behavior was often upsetting for K.C. Respondent was not consistent with visitation or telephone contact, which also caused K.C. to act out. To this end, Rob and Crystal took steps to ease K.C.'s transition into their home and to help with his frustration over visits with respondent and Christel. Not only did they arrange counseling for K.C., they attended a two-day trauma seminar and made it a routine to have "little discussions" with K.C. so that he could share his feelings.

¶ 87 Both Rob and Crystal were committed to adopting K.C., and McMahon testified that K.C. was excited about that prospect. K.C. had told Rob that he wanted to remain with them, even to the point of wanting Rob to repaint his bedroom. Given the evidence that K.C. is

flourishing in Rob and Crystal's care, and their desire to provide love, stability and permanence, respondent would not be able to show that the trial court's decision to terminate his parental rights was against the manifest weight of the evidence.

¶ 88

### III. CONCLUSION

¶ 89 After examining the record, the motion to withdraw, and the memorandum of law, we agree with counsel that her appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw and affirm the judgment of the Winnebago County circuit court.

¶ 90 Affirmed.