

NOTICE

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2015 IL App (4th) 140821-U

NO. 4-14-0821

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 11, 2015
Carla Bender
4th District Appellate
Court, IL

In re: O.K., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 14JA28
THERESA R. KENNEDY,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's adjudicatory and dispositional orders, finding each was supported by the manifest weight of the evidence.

¶ 2 In May 2014, the State filed a petition for adjudication of neglect, alleging O.K. (born February 26, 2011) was a neglected minor. In July 2014, the trial court entered its adjudicatory order, finding O.K. was a neglected minor. In August 2014, the court entered its dispositional order, finding respondent, Theresa R. Kennedy, was unfit and unable to care for the minor and removal from respondent's care was in the minor's best interest.

¶ 3 Respondent appeals, arguing the trial court's findings regarding neglect, unfitness, and removal were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In 2014, respondent and her husband, Patrick Kennedy (not a party to this appeal), lived with their adopted son, O.K., and had two foster children, D.L.-W. and N.K.

¶ 6 A. The Death of O.K.'s Foster Sibling

¶ 7 The shelter-care report prepared by the Department of Children and Family Services (DCFS) in advance of the hearing on the State's petition seeking temporary custody set forth the following information.

¶ 8 On March 8, 2014, O.K.'s foster brother, D.L.-W. (born March 6, 2014), was removed from the care of his biological mother and placed in the care of respondent and Patrick. On April 17, 2014, DCFS received a hotline report, informing DCFS that D.L.-W. was in critical condition at Carle Foundation Hospital (Carle). D.L.-W. had suffered a traumatic brain injury causing subdural hemorrhaging and two posterior broken ribs.

¶ 9 On April 23, 2014, D.L.-W. died as a result of the injuries he suffered on April 17. Patrick was the only adult present in the home at the time D.L.-W. suffered his injuries. The next day, Patrick was arrested and charged with the murder of D.L.-W. The death of D.L.-W. led the State to file its petition for adjudication of neglect and seek temporary custody of O.K.

¶ 10 Patrick had reported several possible causes of D.L.-W.'s injuries, all of which were accidental. The shelter-care report indicated Dr. Brent Reifsteck, a hospital pediatrician and head of the Child Abuse Safety Team at Carle, had ruled out any accidental cause of D.L.-W.'s injuries as reported by Patrick. In other words, D.L.-W.'s injuries were inflicted by an adult and they occurred no more than two hours before D.L.-W.'s admission at Carle.

¶ 11 The shelter-care report further indicated respondent was at work at the time D.L.-W. sustained his fatal injuries. Respondent stated she supported Patrick but understood the need to protect O.K. and ensure his safety. The report indicated DCFS did not find an immediate

safety concern in allowing O.K. to be in respondent's care and was willing to modify its safety plan to allow O.K. to reside with respondent. DCFS's position was based on respondent's level of cooperation in the investigation and her being ruled out as an offender in the death of D.L.-W. Despite DCFS's recommendation, the trial court ordered O.K. placed in shelter care pending adjudication.

¶ 12 B. Adjudicatory Phase

¶ 13 In May 2014, the State filed a petition for adjudication of neglect. Therein, the State alleged respondent's minor child, O.K., was neglected in that his environment was injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the State alleged respondent and Patrick exposed O.K. to the risk of harm due to the death of a foster sibling, who died as a result of inflicted head injuries caused by blunt-force trauma.

¶ 14 In July 2014, the trial court held a two-day hearing on the State's petition, at which the following evidence was presented.

¶ 15 Dr. Shiping Bao, a forensic pathologist working for the Champaign County coroner's office, testified he performed the autopsy on D.L.-W. Dr. Bao opined blunt-force trauma caused subdural hemorrhaging in D.L.-W.'s brain, which was the ultimate cause of his death.

¶ 16 Dr. Brent Reifsteck testified D.L.-W.'s injuries were indicative of abuse. Dr. Reifsteck opined D.L.-W.'s injuries were caused by inflicted trauma, basing his opinion on the location and severity of the injuries. Dr. Reifsteck further opined D.L.-W.'s injuries were inflicted no more than two or three hours prior to his admission at Carle.

¶ 17 Christina Burton, a case aide with the Center for Youth and Family Solutions (CYFS), testified she observed a visit between D.L.-W. and his biological mother on the day

D.L.-W. sustained his injuries. On that day, Burton picked D.L.-W. up from respondent and Patrick's residence in Rantoul, Illinois, and transported him to the CYFS office in Champaign, Illinois, for the visit. Burton reported nothing unusual or remarkable happened during the biological mother's visit or the transportation to and from the visit. Burton returned D.L.-W. to Patrick's care at 11:30 a.m.

¶ 18 Officer Jeremy Heath testified, on April 17, 2014, he received a dispatch indicating there was an unresponsive child at respondent and Patrick's residence. When Officer Heath arrived shortly after 5 p.m., Patrick was "distraught," meaning he was frantically trying to call somebody to ask them for help. Officer Heath noted Patrick "just would not listen when we were trying to talk to him."

¶ 19 Detective Justin Bouse spoke with respondent following the incident. Respondent was not able to provide Detective Bouse with an explanation as to how D.L.-W. sustained his injuries. Detective Bouse was able to verify respondent's statement she was working at the Champaign Public Library on the date and time in question.

¶ 20 Demetria Candler testified she was currently employed by DCFS as a child-protection specialist. Candler spoke with respondent after Patrick was arrested and charged in the death of D.L.-W. At that time, respondent indicated she was attempting to raise the funds to bail Patrick out of jail. Respondent told Candler that she would be making arrangements for Patrick to reside elsewhere after his release. Respondent understood Patrick would not be permitted to be around O.K. after his release from jail. Respondent told Candler "she would like to believe her husband," but she was willing to cooperate with DCFS and its safety plan. Further, respondent told Candler that O.K. "was her priority, and that she would do what she

needed to do to make sure that [O.K.] was safe." At some point, respondent posted a \$25,000 cash bond on Patrick's behalf, and he was released from jail.

¶ 21 Respondent reported to Candler that Patrick was the primary caregiver of the children in the home. Patrick acted as the primary caregiver because respondent worked full-time outside the home, while Patrick was a stay-at-home father who "worked a business online at night." Respondent also reported her mother would occasionally come to her house in the evenings to help with the children.

¶ 22 Candler also testified she had observed three visits between respondent and O.K. Candler testified respondent showed love and affection toward O.K. during these visits. Respondent showed interest in making sure O.K. ate during lunchtime. Candler observed O.K. display "oppositional behavior from defiance" during these visits. O.K. resisted respondent's direction to eat his lunch and her attempts to place him in time-out. Respondent consistently and appropriately redirected O.K. but expressed frustration because her efforts to redirect O.K. were not effective. Candler had to suggest respondent allow O.K. to play, then eat, because Candler "did not want [respondent] to have to spend her entire visit trying to redirect him."

¶ 23 Respondent testified she is currently employed as a team supervisor at the Champaign Public Library. Respondent testified she is a licensed and certified foster parent. To become licensed, respondent and Patrick passed in-home classes, which included group as well as one-on-one instruction. The process also included one-on-one interviews and recurring home checks and safety visits. The last such visit occurred in early April 2014, about two weeks before the incident. Respondent further testified the police had never been called to her home on suspicion of a crime before the incident occurred.

¶ 24 Respondent testified she disciplines her children by placing them in time-out or taking something away from them. Neither parent used corporal punishment to discipline their children and respondent never observed any adult in her family striking a child.

¶ 25 Respondent testified she was at work when D.L.-W. sustained his injuries. Respondent bonded Patrick out of jail but did not allow him to return to the family home. Since Patrick's release, respondent has not permitted any contact between O.K. and Patrick "because of the potential risk [Patrick] would give to [O.K.]"

¶ 26 Prior to April 17, 2014, respondent had no concerns regarding Patrick's ability to care for the three children. Additionally, she had no concerns about Patrick being harmful or abusive toward the children.

¶ 27 Mary Roney, respondent's mother, testified she had seen respondent, Patrick, and O.K. nearly every day for the past three years. Before that, Roney saw the parents about three times per week. Roney had never witnessed anything relating to respondent's and Patrick's parenting that caused her concern. Roney described respondent's attitude toward her children as "very loving."

¶ 28 At the conclusion of this evidence, the trial court found the State had proved the allegation contained in its petition for adjudication of neglect. In fact, the court found the testimony of Drs. Bao and Reifsteck alone proved the State's petition by clear and convincing evidence. The court stated:

"The medical testimony in this case is also uncontroverted.

Until it is in any way controverted, the only conclusion that the

Court can reach is that Mr. Kennedy inflicted that blunt[-]force

trauma. That, *in and of itself*, is enough to establish a finding of neglect by the court." (Emphasis added.)

¶ 29 C. Dispositional Phase

¶ 30 In August 2014, the trial court held a dispositional hearing. Prior to this hearing, DCFS and the court-appointed special advocate (CASA) prepared reports to aid the court in its decision.

¶ 31 The DCFS report indicated respondent had no criminal history. Respondent had been employed by the Champaign Public Library since 2003 and was promoted to her current position in 2013. Respondent described her relationship with Patrick as good and denied any substance-abuse, domestic-violence, or mental-health issues in their relationship. Respondent reported she did not know where her and Patrick's relationship currently stood. Additionally, respondent reported her focus was on reunification with O.K., but she continued to have occasional phone contact with Patrick.

¶ 32 The DCFS report further indicated respondent currently lived in a five-bedroom home located in Rantoul. Prior to DCFS's involvement, respondent lived with Patrick, O.K., N.K., and D.L.-W. She has lived alone since DCFS became involved. Respondent reported she had residential and financial stability and cited no safety concerns with the home or neighborhood.

¶ 33 In regard to respondent's parenting abilities, the DCFS report stated respondent found parenting more challenging after O.K. turned three years old, as he had become more stubborn. Respondent and Patrick had learned new disciplinary techniques by watching "Super Nanny" on television. One of these techniques—the "time out track"—had been successful leading up to the date D.L.-W. sustained his injuries. Since then, respondent reported this and

other strategies had become ineffective. Further, respondent reported that O.K. did not respond to her redirection and discipline, but she was committed to learning how to be the disciplinarian. Additionally, respondent described a structured and routine home life for O.K. and denied having concern over her ability to provide appropriate supervision or nutrition.

¶ 34 The DCFS report also indicated, prior to DCFS's involvement, respondent had reported her mood as "stressed" due to her balancing work and financial pressures with parenting three small children. Respondent described her stress as "normal." Immediately after DCFS's involvement, however, respondent experienced much anxiety and difficulty sleeping "due to racing thoughts, decreased appetite, psychosomatic symptoms, and constant worry." These symptoms had decreased since respondent began mental-health treatment and psychotropic medication.

¶ 35 DCFS recommended respondent continue in her mental-health treatment. The DCFS report indicated respondent had requested parenting classes, was referred to the Crisis Nursery, and had enrolled in parenting classes set to begin later in August 2014.

¶ 36 The DCFS report indicated respondent had participated in all eight of her scheduled visits with O.K. A DCFS caseworker supervised the first three visits and found the interaction between O.K. and respondent to be "overall positive" but also noted respondent struggled with O.K.'s defiant behavior. Respondent was calm and consistent when dealing with O.K.'s defiance, but her strategies were not effective and her expectations were too high. The caseworker made suggestions to respondent, who displayed a willingness to implement them. The report explained, "most of the struggles are centered on when it is time for [O.K.] to leave" the visit. O.K. would run away from both respondent and his foster parent, hit them, and refuse

to get into the car. Additionally, the report noted respondent had difficulty controlling O.K. but understood the vast changes O.K. had gone through in the past few months.

¶ 37 The CASA report elaborated on respondent's struggles during visits and provided a narrative as to how the visits proceeded. O.K. displayed extreme defiance and aggression toward his mother during the four visits detailed in the CASA report. Respondent always struggled with redirecting O.K. and keeping him in time-out when he acted out. O.K. would often laugh at her attempts to discipline him. Further, O.K. would hit his mother when he became angry. O.K. frequently yelled at, forcefully struck with his hand or an object, and attempted to bite respondent.

¶ 38 A common theme of the visits was that O.K. "always wants to go to [grandma's]" house. The CASA reported O.K. requires constant supervision, is "very physically aggressive," and becomes angry quickly. Further, the CASA noted O.K. "does not respect [respondent] and responds negatively and aggressively to her." As a result of her observations, the CASA did not believe respondent currently had the skills to safely and effectively parent O.K.

¶ 39 With regard to O.K., the DCFS report indicated he was currently in relative foster placement with Roney. O.K. struggled with adjusting to Roney's home and seeing her as a parental figure. Likewise, Roney reported "she struggled to manage [O.K.'s] defiance and disregard for rules and boundaries[;] however[,] over the past few months this has improved." Roney also reported O.K. initially cried in his sleep and frequently woke up. O.K. frequently asked where his father was and why he could not see him or live with his mother. However, Roney noted O.K. is beginning to settle into her home and his sleeping habits have improved.

¶ 40 The CASA report elaborated on O.K.'s current placement with Roney. The CASA was "pleasantly surprised" by the change in O.K.'s behavior at Roney's home. The CASA

noted the environment was calmer than it was at respondent's home but was no less cluttered. Roney told the CASA that O.K. would hit her and throw things when she asked him to transition into a new activity. Roney reported she tries to place O.K. in time-out but it does not always work. Finally, the CASA noted O.K. did not act out at all during her visit at Roney's home.

¶ 41 The DCFS report indicated O.K. enrolled in preschool after DCFS became involved and has adjusted well. The preschool did not note any significant concern with O.K.'s behavior and respondent reported she noticed improvement in O.K.'s speech and toileting behaviors. Additionally, O.K. was developing appropriately for his age and was exhibiting strong social skills. Since O.K.'s third birthday and DCFS's involvement, O.K. became increasingly emotional and aggressive toward his mother when he was angry but was predominantly "positive and happy."

¶ 42 In closing, the DCFS report noted respondent was not the primary caregiver of O.K. before D.L.-W.'s death and was currently struggling with managing O.K.'s behavior during visits. As a result, DCFS was concerned about respondent's current ability to parent O.K. full-time. The report noted DCFS had received "several anonymous letters alleging incidents of abuse against the children while in the respondent parents' care." As the allegations in these letters had not been verified, DCFS sought more time to determine the safety of O.K. while in respondent's care. DCFS therefore recommended custody and guardianship be placed with DCFS.

¶ 43 In addition to the DCFS and CASA reports, the trial court received nine letters written by respondent's friends and members of the community on her behalf. The letters noted how much respondent loved O.K. and how she was committed to raising a family. The letters stated respondent had displayed capability as it related to parenting O.K. and recommended O.K.

be placed with respondent. Further, the letters indicated respondent would have the support and help of her friends and family if O.K. was returned to her care.

¶ 44 Following the hearing, in which the trial court heard argument from the parties, the court entered its dispositional order. The court found respondent was currently unfit and unable to act as O.K.'s custodial parent. The court adopted its findings rendered orally and in writing at all prior hearings. The court noted that respondent was currently receiving psychotherapy and was prescribed psychotropic medication. Additionally, the court noted respondent's struggles with O.K. during her visits and O.K.'s physical aggression toward her. The court found it was in the best interest of O.K. and the public that O.K. be (1) made a ward of the court and adjudged neglected and (2) removed from respondent and placed in the custody and guardianship of DCFS.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 On appeal, respondent argues the trial court's findings of neglect, unfitness, and removal were against the manifest weight of the evidence.

¶ 48 A. Adjudication of Neglect

¶ 49 Respondent argues the trial court's adjudicatory order, finding O.K. to be neglected, was contrary to the manifest weight of the evidence. Specifically, respondent contends the court's finding that Patrick caused D.L.-W.'s death is insufficient to adjudicate O.K. neglected. While we agree D.L.-W.'s death is insufficient, standing alone, to establish the neglect of O.K., we disagree the court's finding that O.K. was neglected was against the manifest weight of the evidence.

¶ 50 The best interest of the child is the paramount concern when a petition for adjudication of wardship is brought under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 to 7-1 (West 2012)). *In re M.W.*, 386 Ill. App. 3d 186, 196, 897 N.E.2d 409, 417 (2008). "At the adjudicatory phase, the [trial] court must focus solely on whether the child has been abused or neglected, not upon whether the parents were neglectful or abusive." *Id.* The court's finding of neglect is entitled to great deference, and we will not disturb the court's finding unless it is against the manifest weight of the evidence. *In re A.D.W.*, 278 Ill. App. 3d 476, 482, 663 N.E.2d 58, 62 (1996). A decision is against the manifest weight of the evidence when review of the record reveals the opposite conclusion was clearly the proper one. *M.W.*, 386 Ill. App. 3d at 196, 897 N.E.2d at 418. The deference given to the court's determination is warranted by the court's superior position to observe the witnesses, assess credibility, and weigh the evidence. *Id.*

¶ 51 Section 2-3(1)(b) of the Act provides a neglected minor is any minor under the age of 18 whose environment is injurious to his or her welfare. 705 ILCS 405/2-3(1)(b) (West 2012). "Neglect is defined as the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty." *M.W.*, 386 Ill. App. 3d at 197, 897 N.E.2d at 418. The term "neglect" is not limited to a narrow definition, however, as it, by necessity, has a fluid meaning. *In re Arthur H.*, 212 Ill. 2d 441, 463, 819 N.E.2d 734, 746 (2004). Likewise, the term "injurious environment" is "an amorphous concept that cannot be defined with particularity," but has been interpreted to include one in which a parent has breached his or her duty to provide a safe and nurturing home for his or her children. *Id.*, 819 N.E.2d at 746-47. Because the term "injurious environment" is an amorphous concept, each case is *sui generis* and our review focuses solely on the specific circumstances of each case. *In re S.D.*, 220 Ill. App. 3d 498, 502, 581 N.E.2d 158, 161 (1991).

¶ 52 In this case, the evidence establishes Patrick inflicted the injuries that ultimately caused D.L.-W.'s death. Drs. Bao and Reifsteck had no doubt the injuries were caused by an adult and were not accidental, and respondent father was the only adult present in the respondent parents' home when D.L.-W. sustained his fatal injuries.

¶ 53 Section 2-18(3) of the Act provides "proof of the abuse, neglect or dependency of one minor shall be admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible." 705 ILCS 405/2-18(3) (West 2012). In *Arthur H.*, the supreme court emphasized, although proof of abuse of one child is admissible evidence of the neglect of another, "the mere admissibility of such evidence *does not constitute conclusive proof* of the neglect of another minor." (Emphasis added.) *Arthur H.*, 212 Ill. 2d at 478, 819 N.E.2d at 755. However, evidence indicating a minor witnessed the abuse of his or her sibling is *prima facie* evidence of neglect of the witnessing minor based on an injurious environment. See *S.D.*, 220 Ill. App. 3d at 502-03, 581 N.E.2d at 161.

¶ 54 In this case, the trial court found the death of D.L.-W. while in Patrick's care was sufficient, in and of itself, to support its finding O.K. was a neglected minor. While it was proper for the court to consider the circumstances surrounding the death of D.L.-W., the death of D.L.-W. was not conclusive proof of the neglect of O.K. However, we conclude the court's finding of neglect was not contrary to the manifest weight of the evidence. See *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387, 457 N.E.2d 9, 12 (1983) (A reviewing court assesses the correctness of a judgment and not the reasons on which it is based.).

¶ 55 Here, the record shows O.K. was present in the household on the day D.L.-W. sustained his fatal injuries at the hands of Patrick. Additionally, the record establishes that respondent bailed Patrick out of jail and stated she would like to believe him, despite the strong

medical evidence showing Patrick inflicted D.L.-W.'s fatal injuries. Although respondent stated O.K.'s safety was her priority and that she would not allow any contact between O.K. and Patrick, we decline to reweigh the evidence presented to the trial court. Accordingly, we conclude the trial court's adjudicatory order was not contrary to the manifest weight of the evidence.

¶ 56 Respondent argues O.K. should not have been found neglected under that term's general meaning, which in this context means the breach of a parent's duty to ensure a safe and nurturing shelter for his or her children. Respondent focuses on the fact "no one ever suggested that Respondent Mother ignored warning signs or otherwise should have seen the danger presented by [Patrick]." Further, respondent contends this incident was an unexpected, isolated incident and not the product of ongoing neglect. Essentially, respondent requests we find she did not neglect her child. However, that is not the trial court's inquiry at the adjudicatory stage or the proper inquiry on review; rather, the focus is on the child and whether he or she was a neglected minor. See *Arthur H.*, 221 Ill. 2d at 465-67, 819 N.E.2d at 748-49; *In re A.P.*, 2012 IL 113875, ¶¶ 19-20, 981 N.E.2d 336; *In re L.S.*, 2014 IL App (4th) 131119, ¶ 62, 11 N.E.3d 349. Here, despite respondent's lack of involvement in D.L.-W.'s death and apparent inability to prevent it, the court's finding that O.K. was a neglected minor was not against the manifest weight of the evidence.

¶ 57 B. The Trial Court's Dispositional Order

¶ 58 Respondent argues the trial court erred in finding she is unfit to care for O.K. and placing O.K. in the custody and guardianship of DCFS. Specifically, respondent asserts the State was required to prove her unfitness by clear and convincing evidence and failed to meet that burden. Further, respondent contends, the court (1) did not have sufficient grounds, under

section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)), to support a finding of unfitness; and (2) improperly shifted the burden of proof and "seemed to be requiring [respondent] to affirmatively prove her fitness, or lose custody of her child." Finally, respondent contends the court's decision to place O.K. in the custody and guardianship of DCFS was not in O.K.'s best interest and was error where (1) no evidence established O.K. was at risk when in respondent's custody; and (2) Patrick, the one responsible for the abuse of D.L.-W. is no longer in the environment. We address respondent's contentions in turn.

¶ 59 *1. Applicable Law and the Standard of Review*

¶ 60 The purpose of the dispositional hearing is to allow the trial court to decide what further actions are in the best interest of the neglected minor. *In re April C.*, 326 Ill. App. 3d 225, 237, 760 N.E.2d 85, 95 (2001). Section 2-22(1) of the Act governs dispositional hearings and provides, in pertinent part:

"At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2012).

¶ 61 Section 2-23 of the Act provides the trial court with several options at the dispositional stage, one of which is placement of the minor in accordance with section 2-27 of the Act. 705 ILCS 405/2-23(1)(a) (West 2012). Section 2-27 of the Act provides, in pertinent part:

"(1) If the court determines and puts in writing the factual basis supporting the determination of whether the parents *** of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train[,] or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents ***, the court may at this hearing and at any later point:

* * *

(d) commit the minor to [DCFS] for care and service[.]" 705 ILCS 405/2-27(1)(d) (West 2012).

A court's dispositional order will be reversed only if the findings of fact are against the manifest weight of the evidence or the court abused its discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008).

¶ 62 2. *The Trial Court's Finding That Respondent Was Unfit*

¶ 63 In this case, the trial court found respondent was currently unfit *and* unable to effectively and safely parent O.K. To affirm the court's order, we need only find one of these two bases for O.K.'s placement with DCFS was supported by the weight of the evidence. See *In re Lakita B.*, 297 Ill. App. 3d 985, 992, 697 N.E.2d 830, 835 (1998).

¶ 64 In *Lakita B.*, the trial court found the respondent was both unfit *and* unable to parent the minor children. *Id.* at 991, 697 N.E.2d at 834. During the dispositional hearing, the respondent's attorney arguably conceded the respondent was "unable" to care for the minors. *Id.* at 990, 697 N.E.2d at 833-34. On appeal, the respondent failed to challenge the court's finding

she was "unable" and therefore forfeited review of the issue. *Id.* at 991-92, 697 N.E.2d at 834-35. The appellate court determined "the legislature intended that custody of a minor can be taken away from a natural parent if that parent is adjudged to be *either* unfit *or* unable *or* unwilling." (Emphasis in original.) *Id.* at 992, 697 N.E.2d at 835. The respondent's concession she was unable to parent the minor and her forfeiture of the issue on appeal rendered her contention regarding her unfitness moot. *Id.* at 992-93, 697 N.E.2d at 835.

¶ 65 Similarly, here, respondent challenges only the trial court's finding she was unfit to parent O.K. Respondent has not asserted error in the court's finding she was currently unable to parent O.K. and has therefore forfeited review of that issue. *Id.* at 991-92, 697 N.E.2d at 834-35. Because the court's finding of inability is alone sufficient to support its judgment, we find respondent's contention she was not unfit to parent O.K. is moot. *Id.* at 992-93, 697 N.E.2d at 835; see also *In re M.B.*, 332 Ill. App. 3d 996, 1004, 773 N.E.2d 1204, 1210 (2002) (failure to assert error in the court's finding the respondent was "unable" rendered the issue of the respondent's fitness moot).

¶ 66 Even if the issue of respondent's fitness was not moot, we would reject her argument the trial court's finding of unfitness was against the manifest weight of the evidence. Respondent contends the court's finding of unfitness was erroneous because (1) the State failed to meet its burden of proving unfitness by clear and convincing evidence; (2) the court did not have sufficient grounds to support its finding; and (3) the court improperly shifted the burden of proof onto respondent.

¶ 67 Respondent argues the State failed to meet its burden of proving her unfit by clear and convincing evidence. It is well settled the State, at the dispositional stage of proceedings under the Act, must prove a parent unfit by a preponderance of the evidence, not clear and

convincing evidence. *Lakita B.*, 297 Ill. App. 3d at 993-94, 697 N.E.2d at 836. This is so "[b]ecause a determination of unfitness pursuant to section 2-27 does not result in a termination of parental rights." *M.B.*, 332 Ill. App. 3d at 1004, 773 N.E.2d at 1210.

¶ 68 Respondent also contends the trial court "did not have sufficient grounds to support a finding of unfitness." Respondent's argument is based on the premise that the State must prove one of the grounds for a finding of unfitness included in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) before a parent can be found "unfit" for purposes of a dispositional order following a finding of neglect under section 2-27 of the Act. Respondent's initial premise is incorrect.

¶ 69 At the dispositional stage of proceedings under the Act, the proper inquiry is not whether the respondent parent fits within the definition of "unfit" contained in section 1(D) of the Adoption Act; that inquiry is reserved until the State seeks a termination of parental rights. See *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005) (When seeking to terminate a parent's rights toward a child, the State must prove at least one ground of unfitness contained in section 1(D) of the Adoption Act.); *In re T.B.*, 215 Ill. App. 3d 1059, 1061, 574 N.E.2d 893, 895 (1991) (Unfitness at the dispositional stage differs in meaning from the unfitness required to be found for termination of parental rights.). Instead, the State need only prove the parent unfit under the ordinary meaning of that term. See *Garcia v. Nelson*, 326 Ill. App. 3d 33, 38, 759 N.E.2d 601, 606 (2001) ("Words that the statute does not define should receive their plain and ordinary meanings, and the dictionary is one guide to these meanings."). "Unfit" generally means: "not adapted to a purpose: UNSUITABLE" or "not qualified: INCAPABLE, INCOMPETENT." Merriam-Webster's Collegiate Dictionary 1286 (10th ed. 2000).

¶ 70 In this case, the trial court based its finding of unfitness on (1) respondent being engaged in psychotherapy and prescribed psychotropic medication, and (2) the fact the visits between respondent and O.K. were not going well. In challenging the finding of unfitness, respondent focuses on the ample evidence showing she cared about O.K.'s well-being and loved him very much. She also points to her understanding of age-appropriate discipline even though she was unable to effectively implement those techniques with O.K.

¶ 71 After DCFS became involved with the family, respondent understandably began experiencing anxiety and difficulty sleeping due to racing thoughts, decreased appetite, psychosomatic symptoms, and constant worry. Although respondent began mental-health treatment and taking psychotropic medication to ease these symptoms, more therapy was necessary to fully address respondent's issues surrounding D.L.-W.'s death and DCFS's involvement with her family.

¶ 72 Additionally, the record shows O.K. had become increasingly defiant as a result of turning three years old and the drastic change he underwent following D.L.-W.'s death. Although some of respondent's difficulties with O.K. could be attributed to his age, the evidence shows respondent had great difficulty in acting as a disciplinarian and managing O.K.'s defiant behavior, to the point O.K. was hitting respondent and laughing at her attempts to discipline him. While the DCFS report stated most of respondent's difficulty with O.K. centered on when it was time to leave visits, the CASA report showed the difficulty was constant throughout the visits. The record also shows respondent was in need of parenting classes to better develop her skills. Though respondent actively sought parenting classes after DCFS became involved and without any direction to do so, those classes had yet to begin as of the date of the dispositional hearing.

¶ 73 While we commend respondent's efforts to improve her parenting skills and mental health, we cannot say the court's finding that respondent was unfit was against the manifest weight of the evidence.

¶ 74 Additionally, respondent argues the trial court, by giving weight to the evidence of respondent's mental-health treatment and her interactions with O.K. during visits but "overlooking" the ample evidence demonstrating respondent's fitness to parent O.K., "seemed to be" improperly shifting the burden of proof onto her. The record provides no support for respondent's argument the court overlooked the evidence favorable to her or required her to affirmatively prove her fitness. We presume the court considered the evidence presented to it absent an indication to the contrary. *People v. Newbill*, 374 Ill. App. 3d 847, 854, 873 N.E.2d 408, 414 (2007). Thus, we reject this argument.

¶ 75 3. *Placement of O.K. in the Custody and Guardianship of DCFS*

¶ 76 Finally, respondent contends the trial court erred in finding placement in the custody and guardianship of DCFS was in O.K.'s best interest. Specifically, respondent contends the court erred where (1) she was not at fault in creating the injurious environment and Patrick was no longer living with her, and (2) no evidence showed she would be unable to ensure O.K.'s safety or welfare.

¶ 77 In this case, the trial court did not abuse its discretion in finding placement in the custody and guardianship of DCFS was in O.K.'s best interest. The record shows at the outset of this case, DCFS was not concerned with respondent's parenting abilities, to the point it recommended O.K. be placed with her after the adjudicatory hearing pending the dispositional hearing. In fact, two weeks before the incident, DCFS came to respondent parents' house as part of the licensing and certification requirements related to respondent's status as a foster parent and

found no significant issues with the home. Further, respondent had no role in the death of D.L.-W.—she was working at the Champaign Public Library when he suffered his fatal injuries at the hands of Patrick. Additionally, the record shows Patrick no longer lives at the family's home in Rantoul, Illinois, which eliminates some of the danger of O.K. living there.

¶ 78 However, the record shows, prior to D.L.-W.'s death, Patrick provided the bulk of the child care for the family and was the primary disciplinarian, as respondent was the family's primary breadwinner. Further, the DCFS report indicates respondent "has acknowledged some difficulty" with parenting O.K. While respondent actively sought help with her parenting skills through parenting classes, those classes were not set to begin until after the dispositional hearing. The visits were of enough concern to DCFS that it recommended custody and guardianship of O.K. be placed with it so it could further assess respondent's parenting ability.

¶ 79 Additionally, the CASA noted O.K. required constant supervision during visits and was physically aggressive toward his mother. Contrary to the DCFS report, which stated most of the difficulty came at the end of visits, the CASA report indicated the difficulties persisted throughout the entire visit and respondent did not currently have the skills to handle O.K.'s behavior. In fact, the CASA volunteer suggested placing O.K. in the care of his mother "could lead to serious injury to him or others."

¶ 80 Moreover, throughout the pendency of this case, O.K. was placed with his maternal grandmother, Roney. While Roney reported difficulties with O.K.'s behavior similar to that of respondent, the CASA reported O.K. was more comfortable and relaxed with his grandmother and that O.K.'s behavior was markedly better during the visit she observed at Roney's as opposed to respondent's. Additionally, Roney reported O.K. struggled with the drastic changes he was experiencing but was beginning to settle into her home and his sleeping

habits had improved. Not only was O.K. generally happy and doing well in his current placement, he had adjusted well at preschool and there were no significant concerns about his behavior.

¶ 81 Given this evidence, we cannot say the trial court's finding that placement in the custody and guardianship of DCFS was in O.K.'s best interest was against the manifest weight of the evidence.

¶ 82 Finally, we note during oral argument, respondent questioned the propriety of the court's decision to impose supervised visits between O.K. and respondent. Considering respondent failed to argue this point in her opening brief, the issue is waived. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Therefore, we decline to address the order for supervised visitation.

83 III. CONCLUSION

¶ 84 For the reasons stated, we affirm the trial court's judgment.

¶ 85 Affirmed.