

NOTICE

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FILED

October 22, 2015
Carla Bender
4th District Appellate
Court, IL

2015 IL App (4th) 150468-U

NOS. 4-15-0468, 4-15-0469, 4-15-0470, 4-15-0487 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-15-0468)	)	No. 13JA19
LACRYA HYDER,)	
Respondent-Appellant.)	
_____)	
	)	No. 13JA20
In re: J.H., a Minor)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-15-0469))	
LACRYA HYDER,)	
Respondent-Appellant.)	
_____)	
	)	No. 13JA21
In re: D.H., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-15-0470))	
LACRYA HYDER,)	
Respondent-Appellant,)	
_____)	
	)	No. 13JA20
In re: J.H., a Minor,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee)	
v. (No. 4-15-0487)	)	Honorable
JOSEPH McGEE,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's termination of the respondents' parental rights is affirmed as it was not against the manifest weight of the evidence.

¶ 2 In February 2013, the State filed petitions for adjudication of neglect as to D.J. (born May 20, 2004), D.H. (born November 3, 2005), and J.H. (born February 19, 2013).

Respondent Lacrya Hyder is the mother of all three minors. Respondent Joseph McGee is the father of J.H. only. The petitions alleged the minors' environment was injurious to their welfare as a result of respondent Hyder's use of cocaine during her pregnancy with J.H. The petition alleged J.H. and Hyder tested positive for cocaine and tetrahydrocannabinol (THC) at the time of J.H.'s birth. See 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 3 The appeal in No. 4-15-0468 relates to the minor D.J., the appeal in No. 4-15-0469 relates to the minor J.H., the appeal in No. 4-15-0470 relates to the minor D.H. Hyder is the named respondent in these three cases. The appeal in No. 4-15-0487 relates to the minor J.H. McGee is an additional respondent in that case. All four appeals have been consolidated for purposes of this decision.

¶ 4 In April 2013, respondent Hyder stipulated the minors were neglected. The trial court entered a dispositional order making the minors wards of the court that same day. Respondent McGee appeared in the case for the first time on September 18, 2013, following genetic testing.

¶ 5 In December 2014, the State filed motions seeking to terminate respondents' parental rights. On May 15, 2015, the trial court terminated respondents' parental rights.

¶ 6 We affirm.

¶ 7 I. BACKGROUND

¶ 8 On April 17, 2013, respondent Hyder stipulated the minors were neglected minors

as a result of her consumption of cocaine on at least three occasions during her pregnancy with J.H., with respondent Hyder and J.H. both testing positive for cocaine at the time of J.H.'s birth, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/203(1)(b) (West 2012)). The trial court proceeded immediately to a dispositional hearing, making the minors wards of the court and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 9 At the time the adjudicatory and dispositional orders were entered, McGee had not been named the father of J.H. On June 18, 2013, an order for genetic testing was issued. At a permanency hearing on September 18, 2013, McGee appeared. Genetic test results were filed on November 6, 2013. The circuit clerk's docket sheet does not reflect the results of the genetic testing. The record on appeal is incomplete and does not contain the actual results. However, the reports filed by the social service agencies reflect respondent McGee proved to be the father of J.H.

¶ 10 On December 30, 2014, the State filed a motion seeking a finding of unfitness and termination of the parental rights of respondent Hyder as to all three children and respondent McGee as to J.H. As to both respondents in J.H.'s case, the petition alleged they failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor from the parent during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) make reasonable progress toward the return of the minor to the parent during the nine-month period from April 18, 2013, through January 18, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2012)); (4) make reasonable progress toward the return of the minor to the parent during the nine-month period from January 18, 2014,

through October 18, 2014 (750 ILCS 50/1(D)(m)(iii) (West 2012)); and (5) make reasonable progress toward the return of the minor to the parent during the nine-month period from March 22, 2014, through December 22, 2014 (750 ILCS 50/1(D)(m)(iii) (West 2012)). The petition also alleged, as to respondent Hyder only, she was depraved in that she had been convicted of Macon County case Nos. 2014-CF-550, aggravated driving under the influence (DUI); 2014-CF-24, retail theft with a prior; 2013-CF-1340, retail theft with a prior (2 counts); 2006-CF-677, retail theft over \$150; 2004-CF-287, obstructing justice; and Douglas County case No. 2004-CF-67, obstructing justice (750 ILCS 50/1(D)(i) (West 2012)). The allegations of unfitness as to respondent Hyder were the same in the cases of D.H. and D.J.

¶ 11 The trial court heard evidence of unfitness on March 26, 2015. The court found respondent Hyder unfit on the basis of grounds one and five above and also found her unfit due to depravity. The court further found respondent McGee unfit on all grounds applicable to him. On May 13, 2015, the court held a best-interests hearing and terminated respondents' parental rights.

¶ 12 A. The Fitness Hearing

¶ 13 At the fitness hearing on March 26, 2015, Amanda Beasley-Ricks, a foster-care supervisor with Webster-Cantrell Hall, testified Webster-Cantrell Hall had been involved with the family since February 2013, when the children came into foster care following a shelter-care hearing. Respondent Hyder was provided with a service plan that included the following goals: parenting, stable housing and finances, mental-health assessment, therapy, substance-abuse assessment and treatment, and visitation with the children.

¶ 14 Respondent Hyder completed her parenting class in February 2014. She obtained a substance-abuse assessment and completed treatment in March 2014. Hyder also obtained a

mental-health assessment. No further mental-health treatment was recommended. Hyder visited the children regularly. Hyder was getting close to having the children returned. However, having just completed substance-abuse treatment in March 2014, Hyder was arrested on April 10, 2014, for DUI, and as a result, had been incarcerated since that time in either the Macon County jail or the Illinois Department of Corrections (DOC). (Actually, the State's information charged Hyder with aggravated DUI because her driver's license had been revoked or suspended. The charge in Macon County case No. 2014-CF-550 reflects the offense occurred on May 11, 2014. The record is insufficient to determine whether another offense occurred on April 10, 2014, but it appears this witness misstated the date of the offense.)

¶ 15 As a result of Hyder's arrest for aggravated DUI, she was informed she would have to have another substance-abuse assessment. Hyder had been unable to obtain a reassessment as a result of her incarceration.

¶ 16 Back in November 2013, Hyder was referred for individual therapy. She never initiated or completed therapy. She was rereferred for individual therapy in February 2014, but she never initiated or completed it.

¶ 17 Respondent Hyder's overall compliance with her service plan between April 2, 2013, and August 2013 was rated satisfactory because she was engaging in services at the time. The February 25, 2014, service plan rated Hyder satisfactory overall, but she was rated unsatisfactory in part with respect to her substance-abuse-treatment goals. Although Hyder was attending treatment, she had been inconsistent with drug drops from September 2013 through January 2014. Hyder had four positive drug drops. In addition, she missed 52 drops and those were all considered positive drops.

¶ 18 The service plan noted Hyder had moved several times and needed to find

permanent housing. Housing was a problem throughout the case for Hyder.

¶ 19 The August 24, 2014, service plan rated Hyder's overall progress as unsatisfactory. According to Beasley-Ricks, Hyder had been incarcerated since April 10, 2014, and thus was not able to engage in services. (Again, the docket sheet in the criminal cases reflects Hyder was not arrested until May 11, 2014.)

¶ 20 With respect to respondent McGee, Beasley-Ricks testified paternity testing in July 2013 showed McGee to be J.H.'s father. Webster-Cantrell Hall workers tried to initiate services and an integrated assessment with McGee from July 2013 through December 2013. McGee completed no services during that time. Although he had some visits through the foster parent, Beasley-Ricks testified, to her knowledge, his last visit with J.H. was December 2013. From December 2013 until the termination proceeding was started in December 2014, Webster-Cantrell Hall had no contact with McGee.

¶ 21 Shewanda Green, the foster-care caseworker in these cases, testified her first contact with respondent McGee was January 7, 2015, at a court hearing. No one at Webster-Cantrell Hall, to her knowledge, had received any phone calls, letters, or contact from McGee from December 2013 until January 2015. McGee had completed no services as of December 30, 2014, the date the termination petition was filed.

¶ 22 The State introduced the following certified convictions as to respondent Hyder: Douglas County case No. 2004-CF-67, obstructing justice, committed August 20, 2004 (two years in DOC); Macon County case No. 2004-CF-287, obstructing justice, committed on February 13, 2004 (18 months' probation later revoked and sentenced to one year in DOC on March 8, 2015); Macon County case No. 2006-CF-677, retail theft in excess of \$150, committed May 2, 2006 (two years in DOC); Macon County case No. 13-CF-1340, retail theft with a prior

retail theft conviction, committed June 3, 2013 (24 months' probation); Macon County case No. 14-CF-24, retail theft with a prior retail theft conviction, committed November 25, 2013 (one year in DOC on September 17, 2014); Macon County case No. 2014-CF-550, aggravated DUI, committed May 11, 2014 (sentenced to one year in DOC on September 17, 2014, to be served consecutively to the sentence imposed in case No. 14-CF-24).

¶ 23 Respondent Hyder testified the three children who are the subject of this proceeding were ages 10, 9, and 2 at the time of her testimony. Hyder also referred to a one-year-old child she was able to "bring home," where she and that child's father had a place together. She had cooperated with her services. With respect to the counseling referral, she went to Decatur Psychological for one visit and was told she did not need to engage in any further services. She was arrested for DUI on May 11, 2014, Mother's Day. Hyder testified she had completed substance-abuse treatment in January 2014. She had not seen J.H. since September 17, 2014, but had been visited every three months by the other two children during her incarceration. Hyder testified the children knew they were coming home soon, and then she "caught this case [(DUI)] and everything just was all hell." Hyder's projected parole date was May 11, 2015. She testified she had been attending Alcoholics Anonymous and Narcotics Anonymous classes in prison, she had a job lined up answering phones at her great uncle's car shop, she had inherited some money from her grandmother, and she would be able to find a place to live when she was released from DOC.

¶ 24 Respondent McGee testified he was 48 years old, the father of J.H., and worked as a utility driver for Nortrack, a manufacturer of railroad parts, for 2 1/2 years. McGee testified he was determined to be the father of J.H. by paternity testing in July 2013. According to McGee, he was given a service plan from Webster-Cantrell Hall around August 2013, which

required him to take parenting classes and engage in visitation with J.H. He had visitation with J.H. for two or three months (two hours per week) at Webster-Cantrell Hall until December 2013. Between Christmas 2013 and Christmas 2014, he believed he "maybe" had a couple of visits he arranged with the foster parent. He took parenting classes at Webster-Cantrell Hall once a week for two months starting in late August 2013, but he did not successfully complete them. He began taking parenting classes again about six weeks prior to the fitness hearing. He also began visiting J.H. six weeks prior to the fitness hearing. McGee contacted "the department" in December 2013 and told them he "was basically gonna step aside 'cuz I feel like the mama wasn't doing anything she was suppose to do to get the kids back" and he did not want to get into a "custody thing" with her.

¶ 25 The trial court found respondent Hyder unfit by clear and convincing evidence for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare, found her to be depraved, and found she failed to make reasonable progress toward the return of the minors during the nine-month period of March 22, 2014, through December 22, 2014.

¶ 26 As to respondent McGee, the trial court found him unfit by clear and convincing evidence for failing to (1) maintain a reasonable degree of interest, concern, or responsibility as to J.H.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor during any nine-month period following the adjudication of neglect; and (3) make reasonable progress during any of the three following nine-month periods: April 18, 2013, through January 18, 2014; January 18, 2014, through October 18, 2014; and March 22, 2014, through December 22, 2014.

¶ 27 B. The Best-Interests Hearing

¶ 28 The matter proceeded to a best-interests hearing on May 13, 2015. Shewanda Green, the assigned foster-care caseworker, testified D.H. was living with his father. J.H. and D.J. were in traditional foster homes. Because D.J. was having behavioral issues, her placement was not an adoptive placement. J.H. was doing very well in his placement and was bonded with his foster parent and living in a safe environment. He had been in this home since he was a few months old.

¶ 29 Green did not feel J.H. had any ties with respondent Hyder. Respondent McGee began to visit J.H. in February 2015, at first once a week and then once a month. Those visits went well. However, J.H. had been in care since February 2013 and respondent McGee only became involved in February 2015. The foster home is the only home J.H. has known. Green observed a sense of love and attachment between J.H. and his foster mother and her children. J.H. attends church on a regular basis with his foster family. In Green's opinion, it was in J.H.'s best interests to remain in his foster home. D.H.'s placement with his father was going well and D.H. considered that his home. D.J. appeared confused about where she wanted to be. Sometimes she was fine being in foster care and other times she wanted to be with her family.

¶ 30 Green did not feel respondent Hyder would be able to parent successfully in the next six to nine months. The children had been in care for over two years and Green felt respondent Hyder's actions were harmful to her children and her parental rights should be terminated. She also felt respondent McGee did not have a strong attachment to J.H., due to his lack of involvement in services and his failure to regularly visit J.H. Green believed it was in J.H.'s best interests to terminate McGee's parental rights also.

¶ 31 Green had never observed J.H. and Hyder together. Green observed a visit between Hyder and the two other children while Hyder was incarcerated. D.H. seemed more

bonded to Hyder than D.J. D.J. had been excited at the thought of her foster mother adopting her but would get confused when she learned her mother would be getting out of DOC. D.J.'s behavior at school was greatly improved while Hyder was in DOC, and D.J. had been attending church regularly with her foster mother and had ties to her community.

¶ 32 Amanda Beasley-Ricks, the foster-care supervisor, testified the only parenting classes in which McGee participated started in February 2015. In September 2013, McGee told the Webster-Cantrell Hall worker he wanted to back out of services so Hyder could get her children back. Webster-Cantrell Hall had contact with McGee in December 2013, but he did not make further contact with the agency until January 2015.

¶ 33 The State also offered two reports for the trial court's consideration, dated April 8, 2015, and March 20, 2015. The court accepted those reports, except a certain portion to which a hearsay objection had been made and sustained.

¶ 34 Respondent McGee testified he bought J.H. birthday presents. He also bought him diapers, clothes, and shoes, but admitted he had done this infrequently. He visited with J.H. between four and six times through the foster mother for an hour or two. In the summer and fall of 2013, McGee visited with J.H. at Webster-Cantrell Hall once a week for two hours. In February and March 2015, he visited J.H. once a week at Webster-Cantrell Hall and then was reduced to once a month because the case was heading toward termination. McGee had four other children in addition to J.H. His other children were mostly grown already. McGee thought terminating his parental rights would be detrimental to J.H. because J.H. would not have a father figure in his life. In addition, McGee had a large extended family J.H. could enjoy. McGee acknowledged J.H.'s foster mother was cooperative in allowing McGee to visit and indicated she would continue to allow visits even if McGee's parental rights were terminated.

¶ 35 The trial court, in considering the best-interests factors under the guiding statute (705 ILCS 405/1-3(4.05)(a) to (j) (West 2012)), found the most important factor was the children's need for permanence, including their need for stability and continuity of relationships with parental figures and with siblings and other relatives. The children had been in foster care for over two years and the court found the State had proved by a preponderance of the evidence it was in the children's best interests to terminate respondents' parental rights to J.H.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 On appeal, respondents argue the State failed to prove them unfit by clear and convincing evidence and the trial court's order terminating their parental rights was not in the best interests of the minors.

¶ 39 A. The Unfitness Determination

¶ 40 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 41 In this case, respondent Hyder was found unfit on three grounds listed in section 1(D): (1) failure to maintain a reasonable degree of interest, concern, or responsibility for the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) depravity (750 ILCS 50/1(D)(i) (West 2012)); and (3) failure to make reasonable progress toward the return of the minors during the

nine-month period of March 22, 2014, through December 22, 2014 (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 42 Respondent McGee was found unfit on the following grounds: failing to (1) maintain a reasonable degree of interest, concern, or responsibility as to J.H.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) make reasonable progress during any of the three following nine-month periods, April 18, 2013, through January 18, 2014; January 18, 2014, through October 18, 2014; and March 22, 2014, through December 22, 2014 (750 ILCS 50/1(D)(m)(ii), (iii) (West 2012)).

¶ 43 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondents' argument the trial court's finding they failed to make reasonable progress toward the return of the minors was against the manifest weight of the evidence.

¶ 44 A trial court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 45 As to respondent Hyder, her children had been in foster care for over two years. She was incarcerated for aggravated DUI and retail theft for approximately one year during that time. Although she had engaged in services when she was not incarcerated, she failed her drug drops 52 times, either by testing positive or failing to drop. Further, shortly after completing her substance-abuse treatment, she committed aggravated DUI by driving drunk without a license. Considering she lost custody of her children due to substance abuse while pregnant, it is clear her children are no closer to being returned to her care and custody than they were when this case started. In addition to the DUI, Hyder committed two additional felonies while the children were in substitute care, all of which interfered with her progress in getting her children back. Clearly, respondent Hyder is not in a position to have the children returned to her in the foreseeable future. Accordingly, we hold the trial court's finding of unfitness as to respondent Hyder was not against the manifest weight of the evidence.

¶ 46 As to respondent McGee, he withdrew from services in September 2013 and was not seen or heard from by Webster-Cantrell Hall until January or February 2015. He saw J.H. only a handful of times through J.H.'s foster parent from September 2013 through February 2015. There is no question he failed to make reasonable progress in obtaining custody of J.H. It is also unassailable he failed to demonstrate and maintain a reasonable degree of interest, concern, or responsibility as to J.H.'s welfare. He was mostly absent from J.H.'s life and made a conscious decision not to be involved. The trial court's finding of unfitness is not against the manifest weight of the evidence.

¶ 47 B. The Best-Interests Determination

¶ 48 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227

(2004). At the best-interests stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interests those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228.

¶ 49 When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-] disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

Daphnie E., 368 Ill. App. 3d at 1072, 859 N.E.2d at 141; 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 50 The trial court's finding termination of parental rights is in a child's best interests will not be reversed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against

the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 51 Here, all three minors had been in foster care for over two years. J.H. was a newborn when he entered foster care and had been with his foster mother for over two years. For all intents and purposes, she is J.H.'s mother. She is an adoptive placement and J.H. considers her other children to be his siblings. His needs, both emotional and physical, are being met in this stable placement. In addition, she has allowed McGee to visit with J.H., and assuming McGee wants to maintain his limited involvement with J.H. and acts appropriately, J.H.'s foster mother may well allow their relationship to continue. However, J.H. is safe, secure, and loved in a stable home environment, the only home he has really known since birth.

¶ 52 As to D.H., he is living with his biological father, who is capable of caring for him. This provides permanence and security for D.H.

¶ 53 As to D.J., her behavioral issues seemed to be related to the uncertainty she feels about where she will live, *i.e.*, with her mother, in her foster placement, or with other relatives. The instability of any placement with her mother is not in D.J.'s best interests. Terminating respondent Hyder's parental rights will allow D.J. to move on and foreclose the possible return to that instability. Her foster parent has offered long-term placement for D.J. Hopefully, as her behavior continues to improve, this may develop into an adoptive placement.

¶ 54 The trial court's finding it was in the minors' best interests to terminate respondents' parental rights was supported by more than a preponderance of the evidence. Accordingly, we affirm the court's decision to terminate respondent Hyder's parental rights to D.H., D.J., and J.H., and its decision to terminate respondent McGee's parental rights to J.H.

¶ 55 III. CONCLUSION

¶ 56 We affirm the trial court's orders finding respondents unfit and terminating their parental rights.

¶ 57 Affirmed.