

**NOTICE**

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**FILED**

December 4, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2015 IL App (4th) 150629-U

NO. 4-15-0629

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.M., M.M., W.M., and R.M., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 13JA66
SAMANTHA SIMMONS,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court.  
Justices Holder White and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's best-interest findings were not against the manifest weight of the evidence.

¶ 2 In July 2014, the State filed a petition to terminate respondent Samantha Simmons' parental rights to M.M. (born October 15, 2005), J.M. (born November 9, 2006), W.M. (born June 4, 2008), and R.M. (born October 21, 2011). In November 2014, the trial court entered an order finding respondent unfit. In July 2015, the court found it was in the minors' best interest to terminate respondent's parental rights. Respondent appeals, arguing the trial court's best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 9, 2013, the State filed a petition for adjudication of wardship with

regard to M.M., J.M., W.M., and R.M. The petition alleged the minors were neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)) because they were residing in an environment injurious to their welfare.

¶ 5 On October 10, 2013, respondent admitted the minors were neglected as they were residing in an environment injurious to their welfare due to her unresolved mental-health issues. As to a factual basis, the trial court found, on September 6, 2013, respondent was transported to a hospital for a psychological evaluation after she chased her husband with a butcher knife. Respondent appeared intoxicated and the home was in deplorable condition. Marijuana and drug paraphernalia were found in the home. After finding the factual basis sufficient and the admission to be knowingly and voluntarily made, the court found the minors to be neglected.

¶ 6 Following a November 21, 2013, dispositional hearing, the trial court found respondent unfit, made the minors wards of the court, and placed custody and guardianship with the Department of Children and Family Services (DCFS) with a permanency goal of the minors being returned to respondent's custody within 12 months.

¶ 7 On April 17, 2014, the trial court held a permanency hearing. The State noted, on January 21, 2014, respondent was arrested and charged with felony retail theft. Respondent acknowledged she remained unfit as she had not completed the required services. The court found respondent remained unfit and entered a permanency goal of the minors being returned to respondent's custody within 12 months.

¶ 8 On July 30, 2014, the State filed a petition to terminate respondent's parental rights, alleging respondent failed (1) to maintain a reasonable degree of interest, concern, or

responsibility as to the minors' welfare; and (2) to make reasonable progress toward the return of the minors to her custody following the adjudication of neglected.

¶ 9 On July 31, 2014, the trial court held a second permanency hearing. The State noted, while on probation for felony retail theft, (1) on June 5, 2014, respondent screened positive for cocaine; and (2) on July 3, 2014, respondent was arrested for manufacture and delivery of methamphetamine. The court found respondent remained unfit and changed the permanency goal to substitute care.

¶ 10 On November 21, 2014, respondent admitted failing to make reasonable progress toward the return of the minors from October 10, 2013, through July 10, 2014. After finding the factual basis sufficient and the admission to be knowingly and voluntarily made, the court entered an order finding respondent unfit.

¶ 11 On February 18, June 10, and July 8, 2015, the trial court held a best-interest hearing. The following is a summary of the evidence adduced at the hearing.

¶ 12 A. Elizabeth Conn

¶ 13 Elizabeth Conn, the principal at the elementary school where M.M., J.M., and W.M. had attended since October 2013, testified she received weekly updates on J.M. and W.M. and saw all three children every day. Conn testified when the children first transferred to the school, each child began working on their unique behaviors. M.M. worked on issues of trust, personal boundaries, and telling the truth. J.M. worked on focusing and staying on task. W.M. worked on not seeking out attention. The school worked collectively with Dorothy and Francis ("Gene") Willis, the children's foster parents and great grandparents, to shape these behaviors. Conn testified the children's behavior and academic performance had improved.

¶ 14 Conn interacted regularly with the Willises. Conn believed they were doing an excellent job caring for the children. The children attended school, arrived on time, were clean, had their book bags and required materials, and showed a happy demeanor. They also attended special events at the school. The children followed all of the school's routines and procedures. The children enjoyed visiting with respondent, but they wanted a home with the Willises and to stay at their new school. In Conn's opinion, it was in the children's best interest to remain with the Willises.

¶ 15 Conn testified respondent attended an individualized-education-plan meeting for M.M. and J.M. Conn testified her only contact with respondent was at one of these meetings. Conn acknowledged she never attended a visit with respondent and the children, went to respondent's home, or had an understanding or relationship with the children at their previous school.

¶ 16 B. Jodi Wallace

¶ 17 Jodi Wallace, the children's great aunt, testified she became concerned for the children's safety in late spring or early summer 2010, when her son reported respondent was threatening suicide and respondent's home was scattered with drugs and alcohol. Wallace went to respondent's home, talked to respondent to emotionally stabilize her, cleaned the house, and prepared a meal for the children.

¶ 18 The Willises are Wallace's mother and stepfather. Since September 2013, when the children were placed with the Willises, Wallace had seen the children every day. Wallace observed noticeable behavioral improvements. The children seemed more secure, happy, and better mannered. Wallace had no concerns regarding the Willises' ability to care for the children.

The Willises were active and interacted well with the children.

¶ 19 Wallace testified, in the event the Willises were unable to care for the children, she was willing to adopt the children. Wallace was 45 years old, had no health concerns, had the financial ability to care for the children, and had adequate housing.

¶ 20 Wallace believed it was not in the children's best interest to return to respondent. Since the children were removed, respondent was arrested, had continuously made mistakes, and had been verbally abusive to the Willises. Wallace believed if the children were returned to respondent, they would be removed a third time.

¶ 21 Wallace was the foster parent for M.M., J.M., and W.M. from October 2008 through February 2009. (In January 2010, the children were returned to respondent.) Wallace acknowledged in February 2009, the children were removed from her care as she was on the verge of a nervous breakdown.

¶ 22 C. Jeff Engle

¶ 23 Jeff Engle, a detective with the Bloomington police department, testified he interviewed respondent on May 26, 2015, regarding an incident on May 24, 2015, where respondent's brother abused her nephew in her home. During the interview, respondent indicated she was unemployed and stayed in the home. Her brother had been living with her for approximately two weeks and her nephew came to stay for the weekend. Respondent knew her brother had a substance-abuse problem and he was possibly under the influence of "spice" during the altercation. Detective Engle testified respondent came into the station voluntarily and provided information helpful to the investigation.

¶ 24 D. Pam Farnham

¶ 25 Pam Farnham, a licensed clinical social worker and respondent's counselor, testified she authored a clinical-treatment report dated June 3, 2015. The report indicated on May 19, 2015, respondent successfully completed her individual therapy. Farnham testified she was under the impression respondent had a sponsor and attended Alcoholics Anonymous meetings. She suggested respondent obtain documentation of attendance of the meetings and sponsorship, which respondent never provided. Farnham acknowledged it was possible respondent was not attending the meetings.

¶ 26 In her June 3, 2015, report, Farnham indicated she was unaware of any bad decisions made by respondent after the January 2014 shoplifting incident. However, during the hearing, Farnham indicated she was aware of respondent's June 2014 arrest for transporting something that was supposed to be drugs, which she acknowledged was a bad decision. Farnham indicated she was also aware of the May 2015 incident where respondent's brother was arrested for abusing respondent's nephew at respondent's home. Farnham acknowledged it was a bad decision for respondent to (1) not call the police immediately after the incident; (2) allow her brother, who she knew was abusing mind-altering substances, into the home; (3) allow her brother to live at her home; and (4) allow her brother to be around her nephew. Farnham testified respondent indicated she would not allow a similar situation to occur again.

¶ 27 As for employment, Farnham understood respondent was employed as a caretaker of her father, but no proof of employment existed as the money could not go directly to respondent due to her felony charges. Farnham believed the incomes from both respondent and her husband were sufficient to support the children. Farnham was aware respondent did not have any furnishings in her house from September 2013 through March 2015.

¶ 28 Farnham described the relationship between respondent and her husband as "very ambivalent." She believed they cared for each other but needed work on communicating and working out their issues in a problem-solving manner. Farnham believed respondent's relationship with her husband should not restrict the children from returning to respondent's custody. Later, following the testimony of the State's witnesses, the State called attention to a September 2014 permanency report indicating respondent and her husband received couple's counseling for a while but then choose to discontinue counseling.

¶ 29 In February 2015, respondent indicated the children seemed distant. Farnham sought family counseling for respondent, which was denied. Farnham acknowledged this was the second time respondent had been through these services, and she had failed to successfully detach from all toxic relationships.

¶ 30 Farnham believed respondent had made enough progress in therapy to have the children returned to her custody.

¶ 31 E. Kelly Petrovics

¶ 32 Kelly Petrovics, the author of the best-interest report, testified she did not receive any documentation from respondent indicating she attended Alcoholics Anonymous meetings or obtained a sponsor.

¶ 33 Petrovics understood respondent occasionally did odd jobs, such as cleaning houses. Petrovics gave respondent a receipt to fill out to have documentation of her employment; respondent did not return the receipt to Petrovics. Petrovics also understood respondent was taking care of her disabled father and receiving out-of-pocket payments.

¶ 34 In January and February 2015, Petrovics visited respondent's house and observed

it was untidy. In March 2015, Petrovics visited the house and observed it was clean. Petrovics was concerned with respondent's ability to keep her house clean for five when she could not keep it clean for herself.

¶ 35 Petrovics indicated it was standard for a parent to inform the caseworker if additional persons were living in the residence, which respondent did not do when her brother was living in her home. Petrovics had concerns about whether respondent had the ability to protect the children because of the incident between her brother and nephew.

¶ 36 Petrovics was concerned with respondent abusing substances. Petrovics indicated a major concern was respondent's inability to take responsibility for her actions as evident by respondent being arrested on drug charges while in substance-abuse treatment.

¶ 37 Petrovics indicated family therapy was not approved because individual therapy had not been completed and, given the uncertainty of the case, they did not want to confuse the children.

¶ 38 Petrovics made monthly visits to the foster home, which was clean. Petrovics indicated when the children first came into care, there was no discipline and they did not respect authority. Since living with the Willises, they gained a sense of respect for the Willises. Petrovics testified the relationship in the family was extremely toxic, but no major concerns existed, such as the children being abused or neglected.

¶ 39 Petrovics acknowledged it was a concern the Willises were older. However, in the event the Willises were no longer able to provide care for the children, Wallace acknowledged she would be the back-up caregiver. As such, Petrovics believed it was in the children's best interest to terminate respondent's parental rights and allow the Willises to adopt

the children.

¶ 40

F. Dorothy Willis

¶ 41

Dorothy Willis, the foster mother of the children since September 2013, testified when the children first arrived, their language was terrible, their sexual knowledge was beyond that of little boys, they had problems in school, and they were destructive. Since moving in, the children had made a complete turnaround. They cleaned their bedrooms and made their beds. They were polite, respected property, and did well in school.

¶ 42

Dorothy testified, in 2009, when she first had custody of M.M., J.M., and W.M., she supported a return-home goal. In fact, she wrote a letter to the trial court, asking for the children to be returned to respondent. When she took custody of the children in September 2013, she supported a return-home goal. Over time her opinion changed because of respondent's stealing, lying, and drug use. Dorothy believed respondent had not changed.

¶ 43

Dorothy testified regarding a recent occasion when respondent bought a video-game system for the children, let them play with it, and then took it back and stated they could not have it until they returned home with her. M.M. indicated he wanted to go with respondent to play his video-game system, but he also wanted to live with Dorothy. After this incident, M.M. had problems with wetting the bed.

¶ 44

In December 2014, respondent told Dorothy she did not want her husband around the children because he had been arrested for drugs, alcohol, and a "pipe." By Christmas, however, respondent had changed her mind.

¶ 45

On another occasion, Dorothy was on the phone with respondent and the children overheard respondent curse at Dorothy over the speaker phone.

¶ 46 Dorothy testified on a few weekly visits, respondent acted tired and, for most of the visit, laid her head on the table. On one visit during fall 2014, respondent was short of breath and went into the bathroom. After she left the bathroom, Dorothy discovered powder on the floor and called an ambulance.

¶ 47 Dorothy indicated she was willing to adopt the children. Dorothy was 73 years old and a type 2 diabetic. Her husband was 79 years old and had a pacemaker. Dorothy indicated, in the event she or her husband were no longer able to care for the children, Wallace was willing to care for the children. If Wallace was unable to care for the children, Dorothy's other daughter, Debbie Kaneeler, indicated she would be willing to care for the children. Dorothy testified if she was allowed to adopt the children, she would allow respondent to visit so long as it was productive.

¶ 48 Dorothy and her husband provided the children with two sets of bunk beds, a double closet, a small clothes rack, and dresser drawers. Her husband drove the children to and from school. Dorothy cooked the meals. On occasion, the Willises would take the children to restaurants. The Willises had a swimming pool in the backyard and a membership to an indoor pool for the winter.

¶ 49 G. Gene Willis

¶ 50 Gene Willis, the foster father of the children since September 2013, testified he was supportive of adopting the children.

¶ 51 H. Michael Zogg

¶ 52 Michael Zogg, respondent's father, testified respondent cared for him, and she received \$250 every two weeks for her services. Zogg indicated respondent had been providing

these services for four months.

¶ 53

#### I. Respondent

¶ 54

Respondent testified therapy had been very helpful over the previous two years. Respondent agreed it was a bad decision to allow her brother to stay with her, but she found it was difficult to say "no" and, if she had said no, he would have been homeless. Respondent knew her brother was smoking "spice." Respondent knew he was unpredictable but still allowed him to be in charge of children in her house. Respondent testified she did not call the police after the incident because police contact would get her in trouble with DCFS, even if she was a victim. Respondent testified since the incident, she had not allowed her brother back to her house.

¶ 55

Respondent testified the last time she used illegal substances was June 3, 2014. She also testified she was attending Alcoholics Anonymous and Narcotics Anonymous meetings and had a sponsor. She never gave sign-in sheets to the caseworker because the caseworker did not ask for them. Respondent indicated she told probation about the meetings.

¶ 56

Respondent testified she used the \$250 she earned every two weeks from her father to pay for rent and utilities. Respondent used a Link card to eat.

¶ 57

Respondent testified, in November 2014, her husband was arrested for having an open bottle of alcohol and drug paraphernalia. Respondent and her husband had been separated since December 2014, up until two to three weeks prior to the hearing. Respondent testified her husband left because he needed to work on himself and find a job, which he later secured. Since being back together, respondent had not seen him use any illegal substances or alcohol.

¶ 58

After hearing the evidence and considering the statutory best-interest factors found in section 1-3(4.05) of the Juvenile Act (705 ILCS 405/1-3(4.05) (West 2012)), the trial

court found it was in the minors' best interest to terminate respondent's parental rights.

¶ 59 This appeal followed.

¶ 60 II. ANALYSIS

¶ 61 "The termination of parental rights is a two-step process under which the best interests of the child is considered only after a court finds the parent unfit." *In re E.B.*, 231 Ill. 2d 459, 472, 899 N.E.2d 218, 226 (2008). Respondent does not contest the trial court's finding she was unfit for termination purposes, but rather, only appeals the trial court's finding termination of her parental rights was in the minors' best interests. Specifically, respondent asserts the trial court's best-interest findings were against the manifest weight of the evidence.

¶ 62 At the best-interests stage of termination proceedings, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence termination is in the child's best interests. *Id.* at 366, 818 N.E.2d at 1228.

¶ 63 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in a child's best interest:

- "(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 \*\*\*[;]

\* \* \*

(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; and

(j) the preferences of the persons available to care for the  
child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 64 On review, this court will not reverse a trial court's best-interest findings 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 only if the facts clearly demonstrate the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 65 The children had been living with the Willises since September 2013. The children exhibited a strong bond with the Willises. They seemed more secure, happy, and better mannered. The Willises provided for the children's educational, medical, and social needs. Since being placed with the Willises, J.M.'s, M.M.'s, and W.M.'s behavior and academic performance had improved. The Willises intended to adopt the children. Although the Willises

