

NOTICE

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

2015 IL App (4th) 150674-U
NOS. 4-15-0674, 4-15-0675 cons.

FILED
December 18, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| In re: L.H., a Minor, |) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| Petitioner-Appellee, |) | Sangamon County |
| v. No. 4-15-0674 |) | Nos. 13JA52 |
| LEIDEL HERARD, |) | 13JA53 |
| Respondent-Appellant. |) | |
| ----- |) | |
| In re: E.N., a Minor, |) | |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | |
| Petitioner-Appellee, |) | |
| v. No. 4-15-0675 |) | Honorable |
| LEIDEL HERARD, |) | Esteban F. Sanchez, |
| Respondent-Appellant. |) | Judge Presiding. |

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not make findings that were against the manifest weight of the evidence when finding respondent to be an "unfit person" within the meaning of section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)) and when finding it would be in the best interest of the minors to terminate his parental rights.

¶ 2 In these two cases, the trial court granted the State's petitions to terminate the parental rights of respondent, Leidel Herard, to his sons: L.H., born July 31, 2009; and E.N., born April 4, 2013. Respondent appeals. Specifically, he challenges the court's factual findings that he was an "unfit person" and that it was in the children's best interest to terminate his

parental rights. Because we are unable to say those findings are against the manifest weight of the evidence, we affirm the trial court's judgments in the two cases.

¶ 3

I. BACKGROUND

¶ 4

A. The Petitions for Termination of Parental Rights

¶ 5

As to both L.H. and E.N., the State alleged that respondent was an "unfit person" on three grounds: (1) he had failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (see 750 ILCS 50/1(D)(b) (West 2014)); (2) he had failed to make reasonable efforts to correct the conditions that were the basis for removing the minors (see 750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) within nine months after the adjudications of neglect, that is, from August 1, 2013, to May 1, 2014, he failed to make reasonable progress toward the return of the minors to him (see 750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 6

B. Evidence in the Unfit-Person Hearing

¶ 7

The trial court consolidated L.H.'s and E.N.'s cases for hearing. It held the unfit-person hearing and the best-interest hearing one after another, on July 22, 2015. See *In re Davon H.*, 2015 IL App (1st) 150926, ¶¶ 64-65 (discussing the requirement of holding these two hearings, along with the standard of proof applicable to each hearing).

¶ 8

In the unfit-person hearing, two witnesses testified: Kristy Shillings for the State and respondent on his own behalf. They testified essentially as follows.

¶ 9

1. *Kristy Shillings's Testimony*

¶ 10

a. Her Tenure as the Assigned Caseworker

¶ 11

Kristy Shillings testified she was a case manager at Camelot Care Center and that from April 2013 to January 2, 2015, she was the assigned caseworker for L.H. and E.N., whose parents were respondent and Norma Navarro.

¶ 12 b. Why the Children Came Into Care

¶ 13 L.H. and E.N. came into care because when E.N. was born, his meconium tested positive for an illegal narcotic. See *In re Jerome F.*, 325 Ill. App. 3d 812, 818 (2001) (evidence that one child was born with cocaine in his system is evidence of an injurious environment both for that child and for his sibling). The Department of Children and Family Services (DCFS) took custody of both children when E.N. was eight days old.

¶ 14 c. Respondent Comes Forward

¶ 15 In April 2013, when the children came into care, Shillings did not know where to reach respondent. She tried to locate him, without success. When the children's great-grandmother called her, Shillings asked her if she knew respondent's whereabouts. The great-grandmother replied she did not know where respondent was at that time. Shillings gave the great-grandmother her contact information and requested that she tell respondent to please call her.

¶ 16 Shortly after Thanksgiving 2013, respondent called Shillings. He told her he had just found out the children were in care and that he had thought they were at home with their mother.

¶ 17 d. The Mother's Surrender of Her Parental Rights

¶ 18 Shillings was present in court on January 2, 2014, when Norma Navarro surrendered her parental rights to L.H. and E.N. and consented to their adoption.

¶ 19 e. The Service Plans

¶ 20 There were three service plans for respondent. The first service plan covered the period of December 2013 to March 2014, and it set the following goals: a mental-health assessment, a substance-abuse assessment, cooperation with DCFS, parenting classes, domestic-

violence classes, and visitation. (It is unclear whether DCFS had any evidence that respondent, as opposed to Navarro, had ever used narcotics, but there was a history of domestic violence between them, according to Shillings.)

¶ 21 In March 2014, Shillings rated respondent's progress as unsatisfactory on all those goals. He never provided her documentation that he had completed any of the recommended assessments or classes—and she had told him repeatedly she could not take his word for it but had to receive documentation—and his visitation of the children was sporadic. She explained to him the danger of noncompliance with the service plan, and he always promised to do the tasks in the service plan. But he never followed through.

¶ 22 The agency tried again with a second service plan, this one covering the period of March to September 2014. It set the same goals as before, and all the necessary referrals were still in effect. Again, respondent failed to complete any of the assessments or classes, or at least he failed to provide documentation of having done so. After April 23, 2014, he even stopped calling in to arrange for visits.

¶ 23 By agreement with respondent, visitation was supposed to happen every week in Springfield, at the agency. Respondent, who lived in Chicago, visited the children now and then, but not every week. Initially, he would call in to cancel, and afterward he stopped doing even that. The children would be in the office, awaiting his arrival, and he just did not show up. So, to prevent the children from being transported to the office needlessly, Shilling began requiring respondent to call ahead of time and confirm he really intended to visit the children that week. After April 23, 2014, he stopped calling in to arrange for visits. After May 2014, Shillings never heard from him again—for any purpose—even though, as part of the goal of cooperating with DCFS, he was supposed to keep in regular contact with her. In view of all this noncompliance,

she gave him an overall unsatisfactory rating again, in September 2014, at the end of the second service plan.

¶ 24 In one respect, though, respondent did cooperate with the second service plan: he underwent a paternity test, which confirmed he was indeed the biological father of L.H. and E.N.

¶ 25 The third service plan covered the period of September 2014 to March 2015. It had the same goals, which, as of the time of the unfit-person hearing, remained unmet.

¶ 26 f. The Agreement as to Visitations

¶ 27 The agency proposed supervised visitation in Springfield for two hours each week, but respondent did not think he could afford a trip from Chicago to Springfield every week. The agency therefore offered to cover the cost of his transportation every other week. On that understanding, he agreed to weekly visitation.

¶ 28 g. The Amount of Visitation Respondent Actually Used

¶ 29 Out of 45 visitations the agency offered to respondent, he attended only 7. His visits were on January 16, March 5, March 26, April 9, April 22, April 23, and May 20, 2014.

¶ 30 h. The Quality of Visitation

¶ 31 Shillings attended five of these seven visits. As far as she knew, respondent never had seen E.N. before. The assistant State's Attorney asked her:

"Q. What was the quality of the interaction between the two children and their father?

A. With the baby, [E.N.], [respondent] would hold [E.N.] at times. I believe he fed him occasionally, even changed him.

With [L.H.], [L.H.] would usually play by himself. [Respondent] was on his phone or listening to music a lot of the

time. If [L.H.] would go up to [him], you know, he would acknowledge him, but other than that, there wasn't too much interaction.

Q. Did [respondent] ever send cards, gifts[,] or letters to either of the minors?

A. No."

¶ 32 *2. Respondent's Testimony*

¶ 33 a. His Discovery That His Children Were in the Custody of DCFS

¶ 34 "Sometime after Thanksgiving" 2013, respondent "got a call from [his] grandmother," who told him that "[his] oldest son and the newborn [were] in custody."

¶ 35 As for "the newborn" (E.N.), respondent had known that Norma Navarro was pregnant, but he had not known, as of yet, that "it was by [him]."

¶ 36 As for L.H., respondent "knew [he] was [his] son."

¶ 37 Just as soon as he received the call from his grandmother, respondent called DCFS and provided the numbers to both of his cell phones.

¶ 38 On cross-examination, the assistant State's Attorney asked respondent:

"Q. You indicated in your direct testimony that you didn't know when [E.N.] was born and that he was yours, correct?

A. Yes.

Q. But [L.H.] you knew was your son?

A. Yes.

Q. But you didn't maintain any contact with him between April of 2013 or after Thanksgiving of of 2013 when you contacted the agency?

A. I talked to my son through Norma.

Q. Okay. So when did he go into DCFS care?

A. I guess when my youngest son was born.

Q. Okay, and so you didn't have any contact with him between April of 2013 when they went into care and after Thanksgiving of 2013 when you contacted the agency, is that correct?

A. No, I didn't know anything about it."

¶ 39

b. His Recent Incarcerations

¶ 40

Around the beginning of May 2014, respondent went to jail in St. Louis on a probation violation, and he remained in the St. Louis jail for "[a]t least three months." The alleged violation was an attempted theft of a car, an allegation respondent dismissed as ridiculous because he did not even know how to steal a car. Nevertheless, he had admitted the allegation so that the matter would be expunged instead of being the basis of a criminal prosecution.

¶ 41

In October 2014, soon after his release from jail in St. Louis, respondent was jailed in Cook County on a charge of burglary, a charge he was confident he would beat because the police were lying, or so he claimed. Cook County had released him for four months on house arrest, but on February 3, 2015, he went back to the Cook County jail on a violation of his house arrest. He was still in jail, awaiting trial, which was scheduled for September 2015.

¶ 42 c. His Normal Place of Residence and His Occupations

¶ 43 Before going to the Cook County jail on the charge of burglary, respondent resided with his grandmother, in a house she owned in Chicago. She lived on the first floor, and he had a three-bedroom apartment upstairs. He took care of her, and his father paid him to do so. Also, his father owned some rental properties, which he paid respondent to help him keep in repair. He also did temporary jobs through Labor Ready.

¶ 44 d. His Explanations for Not Visiting the Children More Often

¶ 45 When asked why he had exercised only 7 out of the 45 visitations offered to him, respondent answered:

"A. A lot of times I would be working with my dad, and I don't know, I can't really recall the exact dates or anything. But it was different things, plus taking care of my grandmother. He has me watch over her, you know, because she can't walk. So I, you know, bathe her, change her diaper, feed her, you know, stuff like that."

¶ 46 The assistant State's Attorney asked respondent:

"Q. And your last visit was May 20th of 2014?"

A. Yes. At that time they were promising me to pay me the—you know, recompensate [*sic*] me for the ticket, and they didn't give me the money at that time.

Q. Okay. If your last visit was May 20th of—

A. So I had to pay to get there twice on my own, and they never returned the money, and I was kind of stuck at that point too."

¶ 47 e. What He and the Children Did During Visitations

¶ 48 On redirect examination, respondent's attorney asked him:

"Q. During visitation, we have heard testimony that your oldest son would sort of be in a corner, and when he would come up to you, you would acknowledge him, but you were more concerned with the youngest son who sat on your lap. Did that occur?

A. Yes, but I gathered them together, and we would watch movies on my phone, because I have Netflix. But I was more tending to bond with the youngest son.

Q. Do you have affection for your children?

A. Yes."

¶ 49 f. His Explanation for Not Taking a Parenting Class

¶ 50 Respondent testified: "They had promised me that I was going to do the parenting class while—after I do my visit."

¶ 51 g. His Explanation for Not Taking a Domestic Violence Class

¶ 52 The assistant State's Attorney asked respondent:

"Q. You were requested to participate in PAR [(Preventing Abusive Relationships)], other domestic violence services. Did

you ever do that during the time periods of January 2014 through September of 2014?

A. I was never directed where to go or where to start the program.

* * *

Q. Okay. And when you met with your caseworker to discuss your[] service plan, did you have the opportunity to ask her questions?

A. I didn't ask her any questions."

¶ 53 Besides, he testified, he had no anger problem. It was Norma Navarro who had been violent and abusive toward him, not he toward her. He had never hit a woman in his life.

¶ 54 h. His Explanation for Not Undergoing a Mental-Health Assessment

¶ 55 The place in downtown Chicago where he was supposed to undergo a mental-health assessment required him to be there at 7 a.m. sharp and warned him he would be turned away if he were late. It was a two-hour commute from south Chicago, where he lived, to downtown Chicago. He "had different things and working with [his father] in the morning, taking care of his [grandmother]," and he "had no time to make it up there in time."

¶ 56 i. The Alcohol and Substance-Abuse Assessment

¶ 57 Respondent testified he had undergone an alcohol and substance-abuse assessment, including a drug test, at some firm in the vicinity of "86th and South Chicago," although he could not "remember the specific date or anything." The assessment revealed he had no drug problem, and someone there, named Valerie Pitts, informed him he was in no need of classes.

¶ 58 He admitted, however, that he had provided Shillings no documentation of having undergone the alcohol and substance-abuse assessment. Pitts, however, had promised to send the documentation to DCFS in Springfield. Respondent was unaware Shillings had never received the documentation.

¶ 59 C. The Trial Court's Decision at the
Conclusion of the Unfit-Person Hearing

¶ 60 After the close of the evidence, counsel made their closing arguments, and the guardian *ad litem*, Jacqueline Harmon, recommended a finding that respondent was an "unfit person" on the grounds of his "inability to finish services" and his general "lack of preparation to be a parent."

¶ 61 The trial court found, by clear and convincing evidence, that the State had proved all the allegations in its petitions for the termination of parental rights (750 ILCS 50/1(D)(b), (D)(m)(i), (D)(m)(ii) (West 2014)). The court cited the failure to complete services, but in the court's thinking, the "most compelling" reason for a finding of unfitness was the minimal amount of visitation.

¶ 62 D. The Best-Interest Hearing

¶ 63 After finding respondent to be an "unfit person," the trial court proceeded immediately to a best-interest hearing. The State called two caseworkers. Respondent called several of his relatives, and he testified on his own behalf.

¶ 64 1. *The State's Case*

¶ 65 a. Shannon Keleher's Testimony

¶ 66 Shannon Kelleher was a caseworker at Camelot Care Center, and in that capacity, she visited foster homes. Since March 2015, she had seen L.H. and E.N. with their foster parents three times a month and sometimes more often than that.

¶ 67

(i) *L.H.*

¶ 68 L.H. was about to turn six years old, and since April 2013, he had resided in Springfield, in a three-bedroom house, with a foster parent, Angela H., who was unrelated to him. Besides L.H. and the foster parent, the other residents of the house were L.H.'s half-brother, Kevon; another foster son, James; and the foster parent's biological son, who was 17. L.H. shared a bedroom with Kevon and James.

¶ 69 L.H. was attending elementary school, and he had friends. He played a lot with the foster parent's grandsons, who were close in age to him.

¶ 70 The assistant State's Attorney asked Keleher:

"Q. And is that placement an adoptive resource?

A. It is.

Q. How do you know that?

A. Because I've spoken with [the foster parent] many times, and she's actually planning on adopting Kevon as well and waiting for if a seat becomes available to adopt him.

Q. Is there an attachment between [L.H.] and his [foster] mother?

A. Yes.

Q. Have you witnessed this?

A. He calls her ['M]om,['] and he likes to sit on her lap, and he just gets really excited when she comes in through the door [and] clearly is very happy."

¶ 71

(ii) *E.N.*

¶ 72 E.N. was two years old, and since April 2013, he had resided in Middleton, in a four-bedroom house, with his foster parents, David and Linda M., who were unrelated to him. Two foster sisters, 7 and 16 years old, also lived there. E.N. had his own bedroom.

¶ 73 E.N. was "making progress" in this placement. He went to speech therapy every week in Bloomington. Because he was not yet speaking, it was thought that he had a developmental delay.

¶ 74 The assistant State's Attorney asked Keleher:

"Q. Is that placement an adoptive resource?

A. Yes.

Q. How do you know that?

A. Dave and Linda M[,] have both vocalized that they would like to adopt [E.N.]

Q. Is there an attachment between [E.N.] and the mothers [sic]?

A. Absolutely.

Q. Have you observed or witnessed this?

A. Yes. [E.N.] loves to crawl on their laps, and he calls Linda[] [']Mama,[] and he's working on [']Dada,[] but the speech therapy is still working to get him some speech. But he laughs a lot with them, and he likes to give them hugs and kisses.

Q. Have you also observed [E.N.] with the foster siblings in the home?

A. I have. It's very similar with the foster parents as well."

¶ 75 Respondent's attorney asked Keleher:

"Q. Why are they willing to adopt the children?

* * *

[A.] To my knowledge, they have expressed to me that they love the kids like they are their own. Both families have said this. They said they are as though they are [']our own blood.[']"

¶ 76 b. Kristy Shillings's Testimony

¶ 77 Kristy Shillings was L.H.'s and E.N.'s caseworker from April 2013 to January 2, 2015, and she observed five visitations between respondent and the children. The assistant State's Attorney asked Shillings:

"Q. And what were the interactions that you've observed between them?

A. For [L.H.] and [respondent], there was little interaction. [Respondent] is usually on his phone or listening to music. [L.H.] would usually just play by himself."

Although L.H. would go up to respondent on his own during the visitation, L.H. did not appear to be sad or upset when the visitation ended. On the basis of her observations, Shillings did not believe any harm would come to L.H. from the termination of respondent's parental rights.

¶ 78 The assistant State's Attorney then asked Keleher:

"Q. And what were the observations that you made at those same visitations between [E.N.] and [respondent]?

A. He would hold [E.N. and] feed him occasionally[,] and also he changed his diaper a few times.

Q. At the end of the visitations, would [E.N.] cry when you took him away from [respondent]?

A. No.

Q. And when was the last time [E.N.] saw [respondent]?

A. May 20th of 2014."

On the basis of her observations, Keleher did not believe any harm would come to E.N., either, from the termination of respondent's parental rights.

¶ 79 *2. Respondent's Case*

¶ 80 a. Juhana Velez Steen's Testimony

¶ 81 Juhana Velez Steen is respondent's aunt, and according to her testimony, she had "fairly good contact with him for the last [10] years." She lives on West Farwell Street in Chicago. When respondent initially met Norma Navarro, they, too, lived in Chicago. Then they moved to Springfield, where Navarro had the second child, E.N.

¶ 82 Juhana Velez Steen was confident of respondent's ability to take care of L.H. and E.N., because when respondent lived in Chicago with Norma Navarro, he not only took care of their son, L.H., but he also took care of Norma Navarro's invalid husband and her children by that husband—even though they were not his, respondent's, children. Norma Navarro was of little assistance, because she was an alcoholic and a drug addict. Consequently, respondent was the primary caretaker in that household for three or four years.

¶ 83 Although respondent currently was in no position to take care of L.H. and E.N., given that he was in the Cook County jail, Juhana Velez Steen was willing to step up and be the substitute caretaker until respondent was released. The children would be perfectly safe living

with her, and they would be amply provided for. She owned her own condominium on West Farwell Street; she was retired; and she had "substantial savings."

¶ 84 In Juhana Velez Steen's opinion, it was in the best interest of L.H. and E.N. that they be returned to their family. She alone had over 200 relatives in the Chicago area, and respondent's father, Lionel Herard, likewise had several generations of family in the Chicago area. She was a member of the New Life Covenant Southeast Church, located on the south side of Chicago, not far from where Lionel Herard lived, and when taking the children to church with her, she could take them to visit him and other relatives.

¶ 85 The last time Juhana Velez Steen saw L.H. was at the funeral of her sister (respondent's mother), in July 2012.

¶ 86 b. Rita G. Steen's Testimony

*(i) Her Immediate Notification of Respondent
That the Children Had Been Taken into Custody*

¶ 87 Rita G. Steen was respondent's maternal grandmother, and she lived on North Magnolia Avenue in Chicago.

¶ 88 According to her testimony at the best-interest hearing, L.H. first was taken into the custody of DCFS four or five years ago (presumably because of domestic violence), but he was returned home after Norma Navarro completed services, and then "[e]verything was fine" for a while.

¶ 89 Rita G. Steen continued:

"[A]nd then when she had the last baby, [E.N.], it seemed to have been a problem. She called me right away to tell me that they came out to the house to take the baby. I said, 'What's wrong?' And she said, 'I don't know. I've got to find out.' So I never got a

chance to see [E.N.] because I was going to come down here and spend the weekend with her or a week to help her out since she had a new baby and all, but she called me back crying and upset, and she said they found drugs in her system, or whatever. So they ordered her to do the parenting classes, anger management.

Q. Okay, I'm going to stop you right there. So you knew when [E.N.] was born he went into the care of DCFS shortly after, correct?

A. Right.

Q. And so were you still in contact with [respondent] at that time?

A. Yes, I was.

Q. And so did you call him and let him know that his children went into the care of DCFS when you found out?

A. Yes, I did."

¶ 90 This testimony by Rita G. Steen appears to contradict respondent's testimony earlier, in the unfit-person hearing, that he did not find out until sometime after Thanksgiving 2013 that the children had been taken into custody. According to Rita G. Steen's testimony, quoted above, Norma Navarro called her "right away" when DCFS came to the house to take the baby, and then Rita G. Steen called respondent "when [she, Rita G. Steen,] found out"—which, apparently, was "right away," in April 2013, not sometime after Thanksgiving 2013. It would seem, then, that if Rita G. Steen were to be believed, respondent immediately learned of DCFS's

taking custody of the children but he nevertheless waited seven months before calling the caseworker, Shillings.

¶ 91

(ii) *Why She Believed Respondent
Was Up to the Task of Raising L.H. and E.N.*

¶ 92 Respondent's attorney asked Rita G. Steen if respondent would be able to provide for the children's physical safety and welfare. She answered:

"A. Yes, he would. And the only reason I say that is, he took care of his children's mother's invalid, I should say, husband that was paralyzed on the left side. He bathed him. He shaved him. He cooked for him, and he took care of him for a number of years, maybe three, four, five years, and he also took care of the three children that were in the home that wasn't even his before he even had his children."

¶ 93

(iii) *Family Identity*

¶ 94 Rita G. Steen believed that the children "need[ed] to stay with their family," "a very large family": she had 11 grandchildren, 2 great-grandchildren (namely, L.H. and E.N.), and 2 more great-grandchildren on the way. She testified: "[L.H.] knows me. He knows I'm great grandma, okay. He knows me. He knows my face. He knows his deceased grandmother. My daughter's face, he has her pictures. He knows her, okay." There were plenty of relatives in the Chicago area who, like her, were retired and were able to help—college-educated people like her, not "bumpkins." Respondent had "a very good support system" in north and south Chicago and in the suburbs; the children would lack nothing.

¶ 95

The last time Rita G. Steen saw L.H. was three years ago, at her daughter's funeral.

¶ 96

c. Markeela Looney's Testimony

¶ 97 Markeela Looney testified she was respondent's aunt and that she lived on North Sheridan Road in Chicago. She characterized respondent as "a very good father," "very attentive and caring and loving." He was "very responsible" and freely did favors for people. She believed that, "[a]s far as the kids go, he would do everything in his will to take care of them."

¶ 98 When asked, on cross-examination, when she last saw L.H. with respondent, she answered:

"A. It was last year during my niece's funeral, which is his mom who passed away.

Q. When was that?

A. Last year, 2014, I believe."

(Juhala Velez Steen and Rita G. Steen had testified the funeral was in 2012.)

¶ 99

d. Princess Kizer's Testimony

¶ 100 Princess Kizer testified she lived on East Spruce Street in Springfield and that she was respondent's aunt. In her experience, he "had always been a good father to his children and [to] [Norma Navarro's] children." If the trial court "gave substitute care again to the children with ultimate placement with [respondent]," the children would have "food, health, shelter, and clothing," along with a sense of their "own identity." She promised: "I mean, everybody would help out as far as pertaining to the kids, because that's why we are here, because we don't want to see the kids without them being with their father."

¶ 101 On cross-examination, Princess Kizer testified that the last time she saw L.H. with his father was "2012, at his [(L.H.'s)] grandmother's funeral."

¶ 102

e. Respondent's Testimony

¶ 103 Respondent testified that "when [he] finished up [his] current predicament with Cook County"—and he was certain he would "beat [his] trial," because the police "[were] lying against [him]" and he had "a paid lawyer"—he would "be able to provide for the food, shelter, health[,] and clothing of the children" and to "help [them] develop an identity." They would have a sense of stability and security with him.

¶ 104 Respondent's attorney asked him:

"Q. The Court has determined that you failed to comply with the service agreements instituted by the agency. What assurances can you give me now that if the court should see fit to give you substitute care of the children, substitute care, that you will complete any new service plan?

A. Well, I'll be free when I beat this situation I'm in, and I'll finish my parenting classes and anger management. Actually, I had put in a request form at the Cook County Jail that they can do the anger management program there, and I also put in the request to get a mental health assessment at the Cook County Jail.

Q. All right, you didn't do that before. Why would you do it now?

A. Because I want my kids. I love them."

¶ 105 On cross-examination, the assistant State's Attorney asked respondent:

"Q. And you had an opportunity at visitation weekly with these two children from January of 2014 until your incarceration, correct?

A. Yes.

Q. And you only took advantage of that seven times, isn't that correct?

A. I mean, the situations came up, you know."

¶ 106 E. The Trial Court's Decision in the Best-Interest Hearing

¶ 107 After all these witnesses testified, the trial court heard arguments by counsel, and the guardian *ad litem*, Harmon, suggested it would be in the best interest of the children to terminate respondent's parental rights.

¶ 108 The trial court began by observing that the best interest of the children was the only consideration that counted in this hearing—not the best interest of respondent, the Herard family, or the Navarro family. It was clear to the court that respondent had "a very supportive family, a very extended family, well-educated, well-spoken, caring[,] and loving." These family members had "expressed their desire here to assume the role of substitute parent to these children until [respondent was] able to care for his children. In other words, they [were] asking that the children be uprooted from where they [were] now, sent to Chicago to start forming a bond and a relationship with family members [whom] they barely [knew]."

¶ 109 The trial court was unconvinced that such a course of action would be in the children's best interest. For one thing, the court was "not as confident as [respondent was] that his problems with the justice system [were] behind him." Waiting until he "[got] himself together enough to care for his children" could have meant that "the issue of these children's permanency [would] never be resolved."

¶ 110 For another thing, for the past two years, the children had continuously been in the same happy, loving homes, and the important factor of stability militated against uprooting

them. The trial court could see the logic of the argument that the children should be with their extended family, "[b]ut the truth [was that L.H. and E.N.], for the past two years[,] had had a family, because their father and mother weren't able to care for them. And for those two years, they developed bonds that [had] been described here and that [had] been so important in their lives."

¶ 111 This was not "about having the family intact"; rather, this was "about the children." The trial court summed up:

"These children have a happy life. They are in two homes that care for them. One of them is with his brother, half brother. I think that to undo all of that for the benefit of the extended Herard family would be a disservice to the children and not in their best interest."

¶ 112 The trial court found, by a preponderance of the evidence, that it would be in the best interest of L.H. and E.N. to terminate respondent's parental rights, and, accordingly, that is what the court did.

¶ 113 These appeals followed.

¶ 114 II. ANALYSIS

¶ 115 A. The Finding That Respondent Was an "Unfit Person"

¶ 116 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a

preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2-29(2) (West 2014); *In re D.T.*, 212 Ill. 2d 347, 366 (2004); *In re M.M.*, 226 Ill. App. 3d 202, 209 (1992).

¶ 117 In the present case, the mother surrendered her parental rights to L.H. and E.N. and consented to their adoption, but respondent has not surrendered his parental rights. Therefore, the first prerequisite to the termination of his parental rights was a finding, by clear and convincing evidence, that he was an "unfit person" within the meaning of any section of the Adoption Act the State invoked in its petitions (750 ILCS 50/1(D)(b), (D)(m)(i), (D)(m)(ii) (West 2014)).

¶ 118 The trial court found it had been proved, by clear and convincing evidence, that respondent conformed to all three of the cited definitions of an "unfit person," *i.e.*, he had "[f]ail[ed] to maintain a reasonable degree of interest, concern or responsibility as to the child[ren's] welfare" (750 ILCS 50/1(D)(b) (West 2014)); he had "[f]ail[ed] *** to make reasonable efforts to correct the conditions that were the basis for the removal of the child[ren] from the parent during any 9-month period following the adjudication of [neglect]" (750 ILCS 50/1(D)(m)(i) (West 2014)); and he had "[f]ail[ed] *** to make reasonable progress toward the return of the child[ren] to [himself] during any 9-month period following the adjudication of [neglect]," specifically, during the period of August 1, 2013, to May 1, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 119 If respondent conformed to only one of these statutory definitions, he was an "unfit person." See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 83. It is not our place to decide whether he is an "unfit person." Instead, our place is to decide whether the trial court made a

finding that was against the manifest weight of the evidence when it found him to be an "unfit person" within the meaning of section 1(D)(b), (D)(m)(i), or (D)(m)(ii), the sections the State invoked in its petitions to terminate parental rights. See *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence only if it is "clearly evident," from the evidence in the record, that respondent's conformance to the statutory definition in question was unproved. *Id.* If reasonable minds could disagree whether a given statutory definition was proven by clear and convincing evidence, we will uphold the trial court's finding. See *Kaloo v. Zoning Board of Appeals*, 274 Ill. App. 3d 927, 934 (1995).

¶ 120 With that deferential standard of review in mind (see *In re Diamond M.*, 2011 IL App (1st) 111184, ¶ 31), we will compare the evidence in the unfit-person hearing to one of the three cited statutory definitions, that in section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)).

¶ 121 Section 1(D)(b) provides as follows:

"D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following *** :

* * *

(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare."

750 ILCS 50/1(D)(b) (West 2014).

¶ 122 As the appellate court has observed, section 1(D)(b) is phrased disjunctively: the failure to maintain a reasonable degree of interest *or* concern *or* responsibility makes a parent an

"unfit person." *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31. A reasonable degree of interest, concern, or responsibility would entail keeping track of where one's children live and who has ongoing physical custody of them. From April 2013, when the children were removed from their mother, to sometime after Thanksgiving—a period of seven months if "sometime after Thanksgiving" means late November 2013—respondent was unaware his children were in protective custody (we are confining ourselves, here, to the evidence in the unfit-person hearing). Seven months seems a long time for a reasonably interested, concerned, and responsible parent to be unaware that his or her child has been taken into the custody of DCFS.

¶ 123 Likewise, respondent showed a less than reasonable degree of interest in visiting his children after learning they were in the custody of DCFS. See *id.* ¶ 32 ("sporadic visitation"); *In re N.H.*, 175 Ill. App. 3d 343, 346 (1988) ("The subsequent failure to make visitations, when arranged by DCFS, further added to the evidence establishing the failure to maintain a reasonable degree of interest."). Out of 45 visitations that DCFS offered to him, he attended only 7. At first, he called and canceled, and subsequently, he just failed to show up after the children had been transported to the social service agency's office in Springfield, where the visitation was to take place.

¶ 124 It is true that, in the unfit-person hearing, respondent offered explanations for attending only 7 out of 45 visitations: he had to help his father, he had to take care of his grandmother, and the agency failed to reimburse him twice. But a reasonable trier of fact would not have to find these explanations to be satisfactory or convincing. Evidently, respondent had enough time on his hands to violate his probation in St. Louis. And the agency never agreed to reimburse him his cost of transportation for every visitation but only for every other visitation, on the understanding that he would visit the children every week. In other words, he was to pay

for his own transportation one week, and the agency would pay for his transportation the next week. Thus, to receive reimbursement, he had to attend visitation for two successive weeks—something he never did. He attended visitation on January 16, March 5, March 26, April 9, April 22, April 23, and May 20, 2014. Respondent cannot convincingly complain that traveling from Chicago to Springfield every week was too burdensome if he agreed to weekly visitation in Springfield and if the agency was willing to cover the cost of his transportation every other week. So, even when we "examine the parent's conduct concerning the child[ren] in the context of the circumstances in which that conduct occurred" (as we are supposed to do), the scarcity of visitation arguably shows a less than reasonable degree of interest or concern as to the children's welfare. *B'yata*, 2014 IL App (2d) 130558-B, ¶ 31.

¶ 125 Not only the scarcity of visitation, but what respondent actually did during visitation, evinces a less than reasonable degree of interest. It is true that, according to Shillings's testimony, he sometimes held E.N., fed him, and changed his diaper, but mostly, according to her testimony, he spent the two hours on his telephone or listening to music. If L.H. came up to him, he acknowledged him, but that was all.

¶ 126 Finally, respondent's almost complete noncompliance with the service plans evinces a less than reasonable degree of interest, concern, or responsibility as to the children's welfare. See *id.*

¶ 127 In sum, we are unable to say that the trial court made a finding that was against the manifest weight of the evidence when it found respondent to be an "unfit person" within the meaning of section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). See *C.N.*, 196 Ill. 2d at 208.

¶ 128 B. The Finding That It Was in the Children's Best Interest
To Terminate Respondent's Parental Rights

¶ 129 The question in the unfit-person hearing was whether respondent's parental rights *could* be terminated. See *D.T.*, 212 Ill. 2d at 364. The trial court effectively answered yes to that question by finding, by clear and convincing evidence, that respondent was an "unfit person" (see 705 ILCS 405/2-29(2), (4) (West 2014))—a finding we uphold.

¶ 130 Just because a parent is an "unfit person," however, whose parental rights, for that reason, *could* be terminated, it does not necessarily follow that his or her parental rights *should* be terminated. See *D.T.*, 212 Ill. 2d at 364. The question in the best-interest hearing is whether the parent's parental rights *should* be terminated (*id.*), and the answer to that question depends solely on whether it would be in the child's best interest to terminate that parent's parental rights—a proposition that has to be proved by a preponderance of the evidence (*In re O.S.*, 364 Ill. App. 3d 628, 633 (2006)). As the trial court correctly observed, no one else's interest counts in the best-interest hearing; the court is, at that point, concerned only with the child's best interest. See *id.* "[A]t a best-interests hearing, the 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.

¶ 131 The legislature has said that "[w]hen a 'best interest' determination is required, the following factors shall be considered in the context of the child'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; and

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

¶ 132 It is important to understand that we do not apply these factors *de novo* any more than we decide *de novo* whether respondent is an "unfit person." The same deferential standard

of review governs our analysis: we decide whether the trial court made a finding that was "contrary to the manifest weight of the evidence" when it found that terminating respondent's parental rights would be in L.H.'s and E.N.'s best interest. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). In other words, we will defer to the trial court on the question of the children's best interest unless it is "clearly evident" from the record of the best-interest hearing—not merely arguable but "clearly evident"—that the State actually *failed* to prove it would be in the children's best interest to terminate respondent's parental rights. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 133 We are unconvinced it is "clearly evident" that the State failed to carry its burden of proof in the best-interest hearing. For the preceding two years, L.H. and E.N. had been with foster parents who have taken care of their "physical safety and welfare" (705 ILCS 405/1-3(4.05)(a) (West 2014)), who have made them feel loved and valued (see 705 ILCS 405/1-3(4.05)(d)(i) (West 2014)), and who want to give them "permanence" by adopting them (705 ILCS 405/1-3(4.05)(g) (West 2014)). With respondent, on the other hand, the children would have impermanence and a lack of security. As the trial court said, it was far from clear that his troubles with the criminal justice system were over, and after he was released, he still would have to complete a service plan—which, to be realistic, he was unlikely ever to do, considering that he had pretty much disregarded the previous three service plans. Respondent's idea is that the children would be uprooted from these apparently exemplary foster homes and transplanted to the residence of their great-aunt in Chicago, whom E.N. has never laid eyes on and whom L.H. has not seen in three years, to await some indefinite time in the future when respondent would be prepared to be a parent. The main argument in support of this idea is, as respondent's attorney put it, that "blood is thicker than water"—which is another way of saying that "adults

believe the child[ren] should feel such love, attachment, and a sense of being valued" when they have a self-identity as members of a large extended family in the Chicago area. 705 ILCS 405/1-3(4.05)(d)(i) (West 2014).

¶ 134 But L.H. and E.N. feel love, attachment, and a sense of being valued right now, where they are at. It makes no sense to exchange a presently existing safe and loving home for a series of promised safe and loving homes. That would be like exchanging a presently existing good thing for impermanence and uncertainty. E.N. especially needs stability now, at two years of age, as he struggles to overcome his developmental delay. Under respondent's plan, L.H. and E.N. would be removed from the custody of their foster parents, who for two years have been good parents and who want to adopt them, to the custody of his great aunt, and then eventually—no one knows when—to his own custody. That plan might be in respondent's best interest, but it would not be in the children's best interest.

¶ 135 We are unable to say the trial court made a finding that was against the manifest weight of the evidence when finding it would be in the children's best interest to terminate respondent's parental rights and thereby to make way for their adoption by the foster parents, to whom the children are attached and with whom they are, by all appearances, happy and content.

¶ 136 III. CONCLUSION

¶ 137 For the foregoing reasons, we affirm the trial court's judgments in the two cases.

¶ 138 Affirmed.