2015 IL App (5th) 140446-U

NO. 5-14-0446

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ADOPTION OF A.M., a Minor	)	Appeal from the
	)	Circuit Court of
(Richard D.,	)	Madison County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 13-AD-29
	)	
Danyelle M.,	)	Honorable
	)	Ben L. Beyers II,
Respondent-Appellee).	)	Judge, presiding.

PRESIDING JUSTICE CATES delivered the judgment of the court.
Justice Welch concurred in the judgment.
Justice Goldenhersh dissented.

ORDER

¶ 1 *Held*: The trial court's denial of petitioner's request to terminate the parental rights of respondent and allow petitioner to adopt A.M. was against the manifest weight of the evidence and a misinterpretation of the "best interest" standard provided by section 1-3(4.05) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2010)).

¶ 2 Petitioner, Richard D., appeals from an order of the circuit court of Madison County denying his petition to terminate the parental rights of respondent, Danyelle M., and denying his petition to adopt the parties' minor child, A.M. Petitioner contends that the trial court's decision is against the manifest weight of the evidence and a

misinterpretation of section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2010)). We reverse.

¶ 3 We note that pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010), our decision in this case was to be filed on or before February 7, 2015, absent good cause shown. Both parties sought and received an extension of time in which to file their respective briefs and, as a result, the respondent's brief was not due until December 30, 2014. Respondent failed to file a brief, however, and failed to return the record on appeal to this court in a timely manner. As a result of these delays, we find that good cause exists for issuing our decision after February 7, 2015.

¶ 4 BACKGROUND

¶ 5 Petitioner and respondent are the biological parents of a male child, A.M., born November 26, 2006. The parties are not and have never been married to each other. Petitioner lives in Madison County, Illinois, and is employed full-time. Respondent also resides in Madison County, Illinois. Respondent has three other minor children (not including A.M.) who live with her. Petitioner is not the father of any of those children. Respondent has not been employed for several years. She has been seeking a disability determination for the past several years based upon a work-related injury she claims she suffered in 2010. In order to make ends meet, respondent has, in the past, received a medical card and food stamps from the State of Illinois and has received some financial support from her boyfriend (fiancé). It is not clear how she finances her day-to-day living expenses. Petitioner testified respondent receives money from whomever she is living with at the time. Respondent indicated to the court that she and her family are

living off of a social security disability income (SSI) check received by one of her daughters, and that she receives some money from her fiancé.

¶ 6 On April 14, 2010, when A.M. was just four years old, respondent took him to the Madison County circuit clerk's office with the intent to terminate her parental rights over A.M. Respondent stated that she could no longer take care of and financially support A.M., and the situation was causing stress on her relationship with her fiancé. Respondent ultimately filed a *pro se* legal petition, and instead of termination, petitioner assumed custody of A.M. in April 2010. A.M. has been living with petitioner since that time. Respondent was given the opportunity to have court-ordered visitation with her son, but she declined the offer. Over the past several years, except for a few inquiring text messages to petitioner, respondent has had no contact with petitioner regarding A.M. Respondent has not seen A.M. over the past 4½ years, although she has not been prevented from doing so. Respondent has taken no action to regain visitation with her son, and readily admits this is true.

¶ 7 Presently, A.M. is enrolled in public school, and has been doing quite well. His grades are above average, as is his reading ability. He engages in extracurricular activities and spends time with his father's parents, who live close by and help out often, while petitioner is at work. A.M. has a close relationship with his paternal grandparents, aunt, and uncle. A.M. has three siblings, two of whom were fathered by respondent's fiancé, and the third with a man not petitioner. Respondent has not brought A.M. back into her family circle to reestablish a relationship between A.M. and his siblings since petitioner assumed custody of him, even though she lives less than 20 miles away. Since

April 2010, respondent has made no effort to establish any sort of visitation with A.M., and A.M. has had no contact with his maternal grandparents or other members of his mother's family. The dissent suggests that our disposition does not adequately recognize the significance of A.M.'s half-siblings, and that by termination of respondent's parental rights, we essentially assure the fact that A.M. will have no relationship with them. There was no testimony that A.M. has ever had any sort of meaningful relationship with his brother and sisters. He has not seen them since he began living with petitioner over 4½ years ago. Moreover, the testimony revealed that petitioner had to obtain an order of protection when A.M.'s half-sister was choking him and trying to drown him in the pool while respondent was present. Respondent has had no interest in visiting with A.M., and she offered no plan for visitation with A.M. at all, not even one reuniting A.M. with his brother and sisters. Thus, it is respondent who has, of her own volition, terminated any potential to conjoin the "sibling relationship." And the trial court has been equally instrumental in assuring that the sibling relationship will not be restored, at least for the present, as the court was unwilling to order resumption of visitation between A.M. and respondent.

¶ 8 Petitioner filed a motion to terminate respondent's parental rights and a petition for adoption, seeking a finding that it was in the best interests of A.M. to allow petitioner to adopt him and to change A.M.'s last name. Respondent wrote a letter to the trial court and asserted that she suffers from a bipolar and functional neurological disorder, and that she was unable to pay any filing fees because she cannot work. The trial court appointed counsel to represent respondent. Despite numerous phone calls and messages to her

court-appointed attorney's office, she was unable to contact him, and had to file a *pro se* motion to have her court-appointed attorney dismissed and a new attorney appointed. The trial court entered an order on October 13, 2013, appointing new counsel and set the fitness hearing for April 9, 2014. On that date, respondent appeared with her new counsel, and stated that she was voluntarily consenting to a finding and determination that she was an unfit parent relative to A.M. within the meaning of section 1(D)(n) of the Adoption Act (750 ILCS 50/1(D)(n) (West 2010)). The court questioned respondent to insure that her consent was voluntary and that she understood the consequences of consenting to a finding that she was an unfit parent toward A.M. Following this inquiry, the court accepted respondent's consent and entered an order finding respondent an unfit parent pursuant to section (D)(n) of the Adoption Act on the basis that she failed to visit, communicate, or maintain contact with A.M. for a period exceeding 12 months, even though she was aware of A.M.'s "address and phone number and has not been prevented from doing so by either an agency or court order." The court also based its finding on the fact that respondent "has failed to maintain contact with or plan for the future of the minor though physically able to do so." Respondent refused, however, to consent to termination of her parental rights, and the court explained that the next step would be a hearing on "best interests."

¶ 9 In conjunction with these proceedings, a guardian *ad litem* (GAL) was appointed for A.M. The GAL submitted a report, setting forth the crux of the matter as follows: "[Petitioner] wishes to have the parental rights of the mother terminated and to be [A.M.'s] sole parent. [A.M.'s] mother does not seek custody of [A.M.]. She would like

to re-establish visitation with him." The GAL interviewed the various parties and wrote an extensive report. The GAL related: "[A.M.] indicates that he enjoys living with his father and that they have a good relationship. He further indicates that he has no particular memories of his mother nor any desire to see her or have a relationship with her." The GAL further related that in her conversation with A.M., he expressed "no affection for his mother." The GAL even went so far as to express concern that changing the stability of the child "at this point in time is dangerous." Recognizing that the petitioner's request for termination was an "extreme remedy," the GAL opined that because respondent "has expressed little interest in [A.M.] for years" and "it appears that [respondent] has little to offer [A.M.] in regards to a stable, loving relationship," "it is in the best interests of the minor child that the parental rights of [respondent] be terminated."

¶ 10 On August 18, 2014, the trial court conducted a "best-interest" hearing. Petitioner, respondent, and petitioner's mother (Grandmother) testified. Petitioner testified that A.M. lived with respondent during the first 3½ years of A.M's life. Also present at various times in respondent's home was her boyfriend, now her fiancé. Respondent's boyfriend was known to have some episodes of violence, including a recent event in the year prior to the hearing where he kicked respondent with his steel-toe boots. At the time of the hearing, respondent's fiancé was still living with her, and undergoing anger management classes. Petitioner admitted that during the time A.M. lived with respondent, he appeared, for the most part, to be well cared for. Grandmother testified that respondent had little patience with A.M., was inattentive, and yelled at A.M. and the

kids often. Grandmother also testified that on one occasion, A.M. reported that respondent had locked him in a bedroom, and that he "cried until he threw up." Grandmother helps petitioner by watching A.M. after school, when petitioner is working. She stated that petitioner has been a good father, and that petitioner and A.M. have a very close relationship. Grandmother described A.M. as a very bright, stable child.

¶ 11 Since 2010, when A.M. began living with petitioner, respondent has had little contact with the petitioner and no contact with A.M. Respondent has sent only three or four text messages to petitioner and has called Grandmother's house only once and left a voicemail message. That message, however, had nothing to do with A.M., and in that message, respondent did not make any inquiry about A.M. During the years A.M. has resided with petitioner, respondent has not contributed to A.M.'s welfare in any way. When asked if she had made any plans over the last 4½ years for her son's health, welfare, or well-being, respondent replied, "I haven't done anything." Even as of the date of the hearing, respondent acknowledged that she had not made any future plans for A.M., other than her plan to remove him from his present school and enroll him in a Christian school. She testified that her fiancé could pay the tuition, but she would not ask him to support A.M. She stated that she could provide food and clothing if her disability claim, which had been pending for three years, was ever approved. Significantly absent from respondent's testimony was any information about what was in the best interests of A.M. as it related to her plan for reentry into her son's life. Respondent offered no testimony associated with the least disruptive placement for A.M., the child's need for permanence and stability, or the effect that a change in placement would have on A.M.'s

emotional and psychological well-being.

¶ 12 After the hearing, the trial court entered an order, finding as follows: "Best Interests hearing held 8/18/14−Not in best interests. Adoption denied. As stated above−'ORAL ORDER ENTERED' on the record." The court's oral order will be discussed as a part of our analysis. Petitioner filed a timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 The issue raised in this appeal is whether the trial court's decision to deny the petition to terminate the parental rights of respondent was against the manifest weight of the evidence and a misinterpretation of section 1-3(4.05) of the Act. Petitioner asserts that the evidence fails to support the trial court's finding that it was not in the best interest of A.M. to have respondent's parental rights terminated. We agree with petitioner.

¶ 15 The Act sets forth a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2010). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2010). Here, respondent consented to a finding of unfitness. Following a finding of unfitness, the issue is no longer whether parental rights can be terminated, but, focusing on the needs of the child, whether the parental rights should be terminated. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004).

¶ 16 At a best interest hearing, a parent's interest in maintaining the parent-child relationship yields to the child's interest in a stable, loving home. *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. A child's best interest is superior to all other factors, including the interests of the biological parents. *In re V.M.*, 352 Ill. App. 3d 391, 398, 816 N.E.2d 776,

781 (2004). A parent's unfitness to have custody, however, does not automatically result in the termination of her legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). In order to terminate parental rights, it must be proven by a preponderance of the evidence that the termination of such rights is in the minor's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006). A court reviews a best interest determination under the manifest weight of the evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 17 The Act sets forth factors to be considered whenever a best interest determination is required, all of which are to be considered in the context of a child's age and developmental needs, the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious backgrounds and ties; and the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS

405/1-3(4.05) (West 2012). Other relevant factors in best interest determinations include the nature and length of the minor's relationships with his present caretaker and the effect a change in placement would have upon his emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871, 945 N.E.2d 81, 92 (2011).

¶ 18 Petitioner asserts the trial court failed to take into account the best interest factors and instead focused solely on its concern about single parent adoption. The trial court's docket entry says nothing about the "best interests" of the minor child. It simply reads: "Best interests hearing held 8/18/14–Not in best interests. Adoption denied. As stated above−'ORAL ORDER ENTERED' on the record. File is closed." The "oral order" reveals that in denying the petition for termination of parental rights, the court began by stating, "[W]hat we're here to determine today is the best interest as to whether or not her [respondent's] parental rights should be terminated. And quite frankly, this is not a case that I believe parental rights should be terminated at all." These comments cause us some concern that the trial court may have had a fallacious view of the law. "Following a finding of unfitness, *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated. Accordingly, at 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. See *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002); *In re A.H.*, 215 Ill. App. 3d 522, 531 (1991); *Allen*, 172 Ill. App. 3d at 959." (Emphasis in original.) *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Moreover, the burden of proof that the termination of such rights is in the minor's best interest is simply preponderance of the

evidence. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. The best interests of the child in having a loving, stable home are superior to the parent's desire to have a renewed parent-child relationship.

¶ 19 In this case, instead of looking at the factors set forth in section 1-3(4.05) of the Act, the court introduced its own factors, such as "limiting the child's ability for any future child support." Even though respondent had failed to support A.M. for over 4½ years, and had no plans to do so unless her disability claim came through, the court noted that things might be different in the future, such as respondent "winning the lottery." Everyone who plays the lottery hopes to win, but the factors set forth in section 1-3(4.05) center on stability, love, support, and permanency, among others. Instead of focusing on these statutory considerations, the court fabricated an unreasonable event–winning the lottery–to justify its decision not to terminate respondent's parental rights. Winning the lottery is an exceptionally unlikely event, and it is statistically more probable that lightening will strike us than winning the lottery. Terminating A.M.'s statistically irrelevant chance of good fortune in the future is not one of the factors listed in section 1-3(4.05), but the court seriously believed that if respondent won the lottery, the entry of a termination order would disinherit the "child as to any rights to support or inheritance." In our view, the fact that a parent may somehow, someday, come into unexpected, unforeseeable money has little to do with whether a child actually feels loved, feels an attachment and a sense of value, or whether the child feels secure. The manifest weight of the evidence, considering respondent's failure to provide for the support of her child, failure to provide for his welfare, failure to inquire about his well-being for over 4½

years, her continued desire not to have custody of him, and her alienation of him from his family, among the other factors set forth in section 1-3(4.05), allowed for only one conclusion. That conclusion was termination of respondent's parental rights over A.M.

¶ 20 The trial court also denied termination because it did not want to sever the possibility of any "future relationship with the child," yet the court indicated it would not allow visitation between respondent and A.M. to commence. That was a matter for a future, *albeit* separate, proceeding. The trial court also stated that if a parent's rights are terminated, it "extinguish[es] any possibility of any future relationship with that parent." While this finding may be true in many circumstances, in this case, A.M. knows he has a mother who took him to the local courthouse to terminate her parental rights over him. A.M. knows that his mother has not been to see him for over 4½ years and has never come to take him to be with his brother and sisters. A.M. knows that respondent has not appeared for any parental activities, whether at school or in A.M.'s extracurricular endeavors. Yet the court's decision did not acknowledge the abandonment of this child by his mother. The court also neglected to accept that respondent had no desire to integrate A.M. into her family circle–a circle that at times was somewhat violently unstable in respondent's home. The trial court did not need to concern itself with the future possibility of a relationship between respondent and A.M., as this is mere conjecture. When A.M. is old enough to make a decision for himself, he may choose to see his mother and initiate a relationship, or he may not. With regard to the best interest proceedings, however, the manifest weight of the evidence allowed for only one conclusion in light of all the facts, and that was termination of respondent's parental

rights.

¶ 21 In making its findings, the trial court also disregarded the report of the guardian *ad litem*. The court found the fact that respondent's lack of effort to be a part of A.M.'s life, or even to see him over the past 4½ years, was not a sufficient reason to terminate respondent's parental rights. The court ignored the GAL's opinion that respondent had "little to offer [A.M.] in regards to a stable, loving relationship." And the GAL, who looked at almost every factor set forth in section 1-3(4.05), concluded that it was in the best interests of the minor child that respondent's parental rights be terminated. The trial court, however, did not specifically explain his ruling by relating it to any of the specific factors listed in section 1-3(4.05) of the Act. For example, with regard to the factor which looks to the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child, as well as the child's own wishes, it was clear from the testimony and the GAL's report that A.M. has a stable, loving relationship with his father and paternal grandparents. A.M. does well in school and excels in reading above his own grade level. According to the GAL, A.M. has no feelings of attachment to his mother and no desire to see her or have a relationship with her, although petitioner testified that A.M. had asked about his mother on occasion in the past. But there was no evidence that A.M. had any sincere sense of attachment or love for his mother. Certainly these are factors that should have been important to the court, although it is well accepted that a trial court is not required to explicitly mention each factor or even articulate any specific rationale for its decision. *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55, 940 N.E.2d 246, 254-55 (2010). In fact, the

court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63, 810 N.E.2d 108, 127 (2004); *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55, 940 N.E.2d 246, 254-55 (2010).

¶ 22 Here, the record reveals respondent has had her fair share of problems, both mental and physical. It also reveals that she has been far less than an ideal parent to A.M., although respondent claims she does not want to relinquish her parental rights. This is so despite the fact that she took A.M. to the Madison County courthouse to terminate her parental rights because he was causing stress with her boyfriend, and after transferring custody of A.M. to petitioner, declined even court-supervised visitation. The dissent empathizes with respondent, pointing out a letter respondent wrote to the court after she was served with the petition for adoption and petition to terminate parental rights. That letter, dated four days before she asked the court to appoint her free legal counsel claimed: "I was unable to work due to my [*sic*] Bi-polar and Functional Neurological Disorder. I have to have others take care of me as I am unable to care for myself. We are living off of my daughters Social Security Disability income for the time being until I am approved for my SSI." Respondent then went on to claim she had no idea where her son was and that she wanted him back and was going to fight this case.

¶ 23 During the very first case management hearing on July 3, 2013, the court appointed an attorney for respondent. According to the respondent, counsel did not fulfill his obligations of appointment, contrary to Rule 6.2 of the Illinois Rules of Professional Conduct, but there is no information in the record with regard to why this attorney

declined representation. Respondent, however, correctly alerted the court on August 28, 2013, during a case management hearing, that her court-appointed counsel was not responding to her. The court set the next hearing date for October 23, 2013, and just prior to that date, on October 10, 2013, the court appointed attorney David Elliott to represent respondent. On October 23, 2013, the court set another case management conference for December 11, 2013, but respondent did not appear. The case was then continued to January 22, 2014, and the record reveals that respondent, and her counsel, David Elliott, appeared before the court. From that date forward, there is no doubt that attorney Elliott became actively involved in representing respondent.

¶ 24 The court set deadlines for pleadings, and another hearing date for February 19, 2014. A deposition notice for respondent was sent to Mr. Elliott, as well as a request for the production of many documents. On respondent's behalf, Mr. Elliott filed a "Compliance With Demand For Production" on behalf of respondent, which included copies of photographs, journal entries, an affidavit of assets and liabilities, and other evidence. The collection of these documents and the filing of the response would have required Mr. Elliott to meet with respondent and discuss the requests. There is also a suggestion in the transcript of the "best interests" hearing that the deposition of respondent did take place. Presumably, Mr. Elliott appeared with respondent at that deposition. Mr. Elliott also appeared with respondent on April 9, 2014, the date when respondent consented to the fact that she was an unfit mother as it related to A.M. On April 9, 2014, respondent voluntarily consented to a finding of unfitness. She was represented by her attorney, who had zealously represented her interests. It is quite clear

from the record that respondent wanted to consent to the finding of unfitness as it related to A.M. The judge questioned her and first asked whether she had discussed the matter with her attorney. Respondent answered that she had spoken with her attorney. When asked if she was satisfied with his representation, she answered, "yes." The court then questioned respondent further to make sure she understood what was happening, and that her consent was voluntary and that she was not under the influence of any drugs or alcohol. After the court completed its questioning, petitioner's attorney also asked questions aimed at making sure the record was clear and that respondent wanted to consent to a finding of unfitness as it related to A.M. Thus, everyone in the courtroom at the unfitness hearing was convinced that respondent was aware of her rights and was voluntarily consenting to a finding that she was an unfit mother as it related to A.M. In light of all the effort the court went through to insure that respondent's consent was voluntary, and freely given, it would be improper for us to interject our personal view of whether this consent should (or should not) have been given.

¶ 25 Attorney Elliott also appeared at the hearing to determine whether it was in the best interests of A.M. that respondent's rights be terminated. A fair reading of the record from that hearing reveals again that Mr. Elliott aggressively represented the interests of his client and was well-versed in the facts of the case. Most significantly, respondent did not complain once about her attorney's representation throughout the proceedings. Yet the dissent is critical, pointing out "the lack of adequate representation respondent received throughout many of these proceedings, especially this appeal." *Infra*, ¶ 36. It is true that respondent's counsel did not file a brief on her behalf. Respondent was the

prevailing party and there are a multitude of reasons why respondent does not have a brief on file. There is no rule requiring that respondent file an appellee's brief, and the fact that an appellee's brief was not filed is certainly not foreign to our appellate court. In fact, our supreme court, in cases where the appellee has failed to file a brief, has stated:

> "We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

The suggestion that the outcome would have been any different if respondent had been able to pay for representation is not warranted.

¶ 26 We are mindful that a parent's interest in maintaining a parental relationship with his or her child involves a fundamental liberty interest, and the termination of such right is a drastic measure. *In re D.R.*, 307 Ill. App. 3d 478, 482, 718 N.E.2d 664, 667 (1999). Therefore, courts should not make these decisions lightly. Even after petitioner filed the petition to terminate respondent's parental rights, respondent did not change course. She continued to neglect her parental obligations, both financially and emotionally. Instead

of making every attempt within her means to renew her relationship with A.M., she instead consented to a finding that she was an unfit mother. Respondent's overwhelming inattention to her son since relinquishing custody 4½ years ago leads to only one conclusion–that the best interests of the minor demand termination of respondent's parental rights. Given the record before us, we believe that petitioner proved by a preponderance of the evidence that the parental rights of respondent should be terminated, and that the trial court's determination is against the manifest weight of the evidence. For the foregoing reasons, we hereby reverse the judgment of the circuit court of Madison County and hereby grant petitioner's petition to terminate parental rights and further grant petitioner's petition for adoption.

¶ 27 Reversed.

¶ 28 JUSTICE GOLDENHERSH, dissenting.

¶ 29 I respectfully dissent. I strongly disagree with the majority's conclusion that the trial court's denial of petitioner's request to terminate the parental rights of respondent and allow petitioner to adopt A.M. was against the manifest weight of the evidence and a misinterpretation of the "best interest" standard provided by section 1-3(4.5) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2010)). For a finding to be against the manifest weight of the evidence, the opposite result must be clearly evident. *In re J.P.*, 261 Ill. App. 3d 165, 174, 633 N.E.2d 27, 34 (1994). Under this standard, the trial court is granted deference because "it is in the best position to observe

the conduct and demeanor of the parties and the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain." *In re D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 943 (2002).

¶ 30 A review of the trial court's oral order indicates that the trial court properly considered the best interest of A.M., rather than the best interest of respondent. In support of my determination, I offer the trial court's oral order in its entirety:

> "Okay. All right. Well, I have heard all the evidence and testimony in this matter, and like I said at the preface, [respondent] entered into a stipulated order of unfitness. Well, what we're here to determine today is the best interest as to whether or not her parental rights should be terminated.
>
> And to speak quite frankly this is not a case that I believe parental rights should be terminated at all. We're not even honestly in the ball park with that for a number of reasons.
>
> First of all, when you're talking about any single parent adoption the [c]ourt would already have concerns as to the best interest of the child because you are limiting that child's ability for any future child support or inheritance from that parent. Whether or not that parent has provided support in the past, I think only has minor relevance because that parent could win the lottery tomorrow, and I have now disinherited a child as to any rights to support or inheritance.
>
> You've also extinguished any possibility of any future relationship with that parent. And, again, I understand the past is some indication of what the future may hold. I'm not finding it in the best interest that there should be visitation at

this period of time. That's in a separate case. That's in the 07 F 559 case. We're not here to determine that. We're here to determine whether or not [A.M.] would benefit by having that possibility, that avenue open, in case that may happen in the future. And the [c]ourt would have to weigh that in a little bit different fashion than what we're here for today, that's a separate case.

In this case the [c]ourt has been asked to take two parents and now make one parent, and I cannot find that in the best interest of [A.M.] at this time. Whether or not [respondent] has been the parent of the year for the past four years or not, obviously, she's not arguing that she has been. There's obviously there's been some mistakes made.

But in this case there's been no evidence of abuse to the minor that the [c]ourt finds credible. There's been sketchy abuse mentioned regarding the mother's house. But at first the testimony was in none of the evidence of that was since [A.M.] has been born. So it was the last seven or eight years, but then subsequent testimony seemed to indicate that maybe there was more recent things. But the [c]ourt is not really aware that there was any danger presented to [A.M.]. And, again, the [c]ourt is not here to determine whether or not [A.M.] should be visiting with [respondent] at this time. That's not the purpose of this hearing today.

The fact that [petitioner] when asked for the reasons why he was doing this very very very long pauses only came up with there's been a lack of effort, hasn't really seen [A.M.], in case he might want to get married in the future, may have a

future adoption action with a step-parent. Again, these are not reasons to terminate at this period of time [respondent's] parental rights.

Possible future custody fights, again, not a reason to terminate [respondent's] parental rights at this time. And the question of whether or not if something were to happen to him what may or may not happen, again, that's a separate legal proceeding that we're not necessarily here to determine today.

All of that stuff would be relevant in evidence in terms of what [respondent's] action have been for the last number of years, absolutely, at a hearing of that nature as to, God forbid, something were to happen to [petitioner][,] what would happen to [A.M.][?] That would absolutely be relevant testimony at that proceeding in a probate case or things of that nature if there were to be that. Hopefully, we don't reach that point.

The fact that [A.M.] is asking for [respondent] and that the [respondent] is asking for [A.M.] tells me that there is definitely a possibility of a future relationship here that I cannot see any possible reason that it would be in [A.M.'s] best interest to terminate that possibility of even existing today. There's no benefit gained from it at this point.

As [petitioner] said he will always have a mother, I believe that was the quote, and that will never go away. And that's absolutely true. And his attorney winced when he said that and looked at me, and I knew that she knew at this point that this is how I was going to rule because there's no way that you're going to terminate a mother's rights based on this fact pattern presented today.

Again, this is no indication that there would be any change whatsoever to a custody or visitation [o]rder in the F case. That's a whole different–that's a whole different thing. So, again, I think as far as what's been presented today I don't believe this is a case that honestly should have probably even got to this point because factually it's just not there as far as termination, which is a very serious thing, especially in a single parent adoption action. So, we're not here–I don't find there is any legal basis to grant that; as such it is denied. And I believe that will close this matter.

And, again, this is no indication of how the [c]ourt may or may not rule. I don't even know it's my case. I believe maybe it is the family case. No indication whatsoever in terms of how I rule in that case at this point, especially based on the [g]uardian [*a*]*d* [*l*]*item* report my guess is the [c]ourt would not change any sort of visitation order at this period of time, but, again, what may or may not happen in the future I don't know."

¶ 31 The trial court found that this case was not even close, and the trial court was in a better position than us, as a reviewing court, to judge the credibility of the witnesses and the inferences to be drawn from the evidence.

¶ 32 The majority places much emphasis on the guardian *ad litem*'s report. According to the report, A.M. has no feelings of attachment to his mother and no desire to see her or have a relationship with her; however, petitioner testified to the contrary. Petitioner specifically testified that A.M. does ask for his mother. Accordingly, the record shows that A.M. remembers his mother and continues to ask about her.

¶ 33 Further, the trial court order does not indicate the guardian *ad litem*'s report was disregarded. Rather, the oral order quoted above clearly indicates the trial court gave it less weight and found certain facts to the contrary. Given the deference granted by the trial court, noted above, the trial court could properly make this decision, and an opposite result is not clearly evident in this record.

¶ 34 I also point out that A.M. has three half-siblings, as respondent has three other children who continue to reside with her. A "best interest" determination includes consideration of "the child's background and ties, including familial, cultural, and religious" (705 ILCS 405/1-3(4.05)(c) (West 2010)), as well as "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." (Emphasis added.) 705 ILCS 405/1-3(4.05)(g) (West 2010). The majority's opinion fails to take into account A.M.'s half-siblings. However, by terminating respondent's parental rights, the majority essentially assures that A.M. will never have a relationship with any of his half-siblings.

¶ 35 Furthermore, it is important to note that the trial court specifically found no credible evidence of abuse by respondent toward A.M. had been presented. The trial court also noted that petitioner did not present any good reason why he filed a petition to terminate. The trial court found the fact that respondent may have lacked effort or had not seen A.M. were not good reasons to terminate nor was the fact that petitioner might want to get married in the future and there might be a potential custody fight. The trial court correctly noted that "whether or not if something were to happen to [petitioner] what may or may not happen, again, that's a separate legal proceeding that we're not

necessarily here to determine today." The majority correctly notes that even though the trial court did not specifically refer to all the factors listed in section 1-3(4.05) of the Act, it is well accepted that a trial court is not required to explicitly mention each factor or even articulate any specific rationale for its decision. *In re Deandre D.*, 405 Ill. App. 3d 945, 954-55, 940 N.E.2d 246, 254-55 (2010).

¶ 36 Finally, I would be remiss if I did not point out the lack of adequate representation respondent received throughout many of these proceedings, especially this appeal. Problems with representation started almost immediately as evidenced by the letter respondent wrote to the trial court in which she specifically stated, "I am in desperate need of help! I want my son back. I never did anything wrong and I don't understand how my son can get taken from me and not my other children!!" In response, the trial court appointed counsel to represent her. However, respondent filed a *pro se* motion in which she asked that her court-appointed attorney be dismissed and new counsel appointed because, despite numerous calls and messages to her court-appointed attorney's office, she was unable to contact him. While new counsel represented respondent at the hearing on unfitness, the end result of that hearing was an order entered in which respondent voluntarily consented to a finding of unfitness.

¶ 37 In this appeal, respondent has received virtually no representation. Respondent's attorney failed to file a brief on her behalf. Only after repeated requests did he finally return the record on appeal to this court. I simply cannot help but question whether the outcome of this appeal would have been different if respondent had been able to pay for proper representation. The majority states, "The suggestion that the outcome would have

been any different if respondent had been able to pay for representation is not warranted." *Supra* ¶ 25. But the outcome was different! The trial court ruled in respondent's favor. This ruling is being reversed on appeal where a brief was not even filed on behalf of respondent, and her attorney failed to return the record until he was facing a show-cause order and was nearly held in contempt. Utter failure of representation does not constitute adequate representation; our profession lives by higher standards.

¶ 38 Even though respondent admitted she was unfit to have custody, it does not follow that she cannot remain, at least for now, A.M.'s legal parent. A parent's interest in maintaining a parental relationship with his or her child involves a fundamental liberty interest, and the termination of such right is a drastic measure. *In re D.R.*, 307 Ill. App. 3d 478, 482, 718 N.E.2d 664, 667 (1999). Given the record before us, I cannot agree with the majority that the trial court's denial of petitioner's request to terminate the parental rights of respondent and allow petitioner to adopt A.M. was against the manifest weight of the evidence and a misinterpretation of the "best interest" standard provided by section 1-3(4.05) of the Act. Accordingly, I respectfully dissent.