

2016 IL App (2d) 151096-U
No. 2-15-1096
Order filed March 29, 2016

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ELIJAH J., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 13-JA-590
)	
)	Honorable
(The People of the State of Illinois, Petitioner-)	Mary Linn Green,
Appellee v. Elisa E., Respondent-Appellant).)	Judge, Presiding.

JUSTICE Birkett delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order finding respondent unfit for her failure to show a reasonable degree of interest, concern or responsibility as to her son Elijah's welfare was not against the manifest weight of the evidence where respondent missed multiple visitations and left visitations early. Also, her moderate mental retardation, coupled with her intermittent explosive disorder, made her a danger to her child. The trial court's order finding that it was in Elijah's best interests to terminate respondent's parental rights was also upheld where the foster mother had been caring for Elijah almost since his birth, he was very attached to the foster mother, the child was on target developmentally, and two of his siblings were in the process of being adopted by the foster mother.

¶ 2 Respondent, Elisa E., appeals from an order of the circuit court of Winnebago County terminating her parental rights to her son, Elijah J. On appeal, respondent argues: (1) the State failed to prove by clear and convincing evidence that she was an unfit parent; and (2) the State

did not prove by a preponderance of the evidence that it was in Elijah's best interest that her parental rights be terminated. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The record reflects that Elijah was born on December 21, 2013. Five days later, the State filed a neglect petition and alleged that pursuant to the Juvenile Court Act of 1987 (Act), Elijah was a neglected minor in that he was under eighteen years of age and his environment was injurious to his welfare. Specifically, the State alleged that Elijah's siblings were removed from the respondent's care and that respondent had failed to cure the conditions which caused the removal of Elijah's siblings, thereby placing him at risk of harm. 705 ILCS 405/2-3(1)(b) (West 2012)). The State also alleged that it was in Elijah's best interest that he be adjudged a ward of the court and that proceedings be held in accordance with the Act (705 ILCS 405/1-1 *et. seq.* (West 2012). The trial court subsequently adjudicated Elijah a neglected minor and granted custody to the Department of Children and Family Services (DCFS). Respondent appealed, and this court affirmed the judgment of the trial court. *In re Elijah J.*, 2015 IL App (2d) 141139-U (Jorgensen, J., dissenting). In a separate proceeding, the trial court also terminated respondent's parental rights to her other children. On appeal, we affirmed the trial court's judgment. *In re Jeremiah J., Terrion W. and Sharlisa W.*, 2015 IL App (2d) 141163-U.

¶ 5

1. The Permanency Hearings

¶ 6 The first permanency hearing was held on November 25, 2014. At the hearing Robert May, the guardian *ad litem* (GAL), said that the caseworker, Lisa Wells from Youth Services Bureau (YSB), submitted a report, and he was willing to stand on it. The GAL's recommendation was that respondent was doing the best she could, and he thought she made reasonable efforts at that point. However, he noted that the disposition was rendered recently,

and this permanency review was only set because temporary custody of Elijah was taken on January 2, 2015, and it was required to have a permanency hearing within a year of temporary custody. Melissa Voss, an assistant state's attorney, asked the court to find that respondent had made reasonable efforts, but because this was a first permanency review the State would not ask for any progress findings until the next review. Voss asked for a return home goal of 12 months. The court found that it was in Elijah's best interest that the goal be changed to return home within 12 months, that respondent had made reasonable efforts during this review period, that DCFS and YSB had made reasonable efforts, and that placement was currently necessary and appropriate.

¶ 7 In the YSB report, Wells indicated that on February 21, 2014, a hotline call was made to DCFS by some nurses who were treating Elijah at the hospital for acid reflux. The nurses stated that the foster mother left Elijah unattended while in a car seat, and he slid out of the seat. The foster mother reported that she received a telephone call and stepped out of the room to take the call, leaving Elijah with the nurses to care for him. Elijah was then removed from the foster mother's home. The foster mother appealed DCFS's decision and she won. While these proceedings were occurring Elijah was in another foster home for approximately 5 weeks.

¶ 8 The second permanency review was held on May 19, 2014. That hearing was continued because the GAL had just received a parental capacity assessment report (PCA) and he needed time to review it. The third permanency review was held on June 16, 2014. At that hearing, the GAL said that he would like to stand on the YSB report and the PCA. Defense counsel said that he would like to take some testimony because it was his understanding that DCFS would request a goal change that day. The GAL told the court that YSB had "screened" this case, and it had

passed legal screening within DCFS for a goal change to substitute care pending court determination of termination of parental rights.

¶ 9 Lisa Wells testified that since January 2014 respondent had missed around five visitation appointments with Elijah. As to the PCA report, Wells said that it recommended therapy for respondent. The author of the report noted that respondent had certain cognitive functioning issues and that she needed special treatment to learn how to parent. Wells admitted that YSB had not implemented any of the recommendations in the PCA yet. She said that she received the report about a month ago and that YSB was in the process of “staffing the case” to get respondent set up with in-house counseling. She explained that “staffing the case” occurs when she, her supervisor and a therapist meet and discuss current recommendations and what direction a case is going. Wells said that when YSB seeks to terminate parental rights it takes that recommendation to “legal screen” at DCFS, which it did on June 10, 2014. If the court changed the goal to substitute care pending termination of parental rights YSB would not provide the services recommended in the PCA.

¶ 10 On cross-examination, Wells said that respondent had not participated in any parenting classes since Elijah was born because YSB was waiting on the recommendations in the PCA. Wells testified that respondent had made very little progress and that she had had many counselors and services over the years. Respondent had already completed parenting classes in Elijah’s siblings’ case, and she had a parenting coach in that other case as well.

¶ 11 On cross-examination by the GAL, Wells said that it was normal procedure for DCFS to look at an alternative goal in the event that a return home goal is not successful.

¶ 12 Respondent testified that during the last six months she had missed about six visits with Elijah because of doctor appointments, courts dates stemming from a different lawsuit, and

attending her grandmother's birthday party. Wells told her that if an appointment was open she could make up a visit. However, respondent said that Wells never got back to her. According to respondent, every time she missed a visit she asked to make it up but she was never able to make up any visits.

¶ 13 The parties then gave their recommendations to the court. The GAL argued that it had been 13 months since Elijah was adjudicated a neglected minor, and although respondent had made reasonable efforts, she had not made reasonable progress. Over the course of the past year, respondent's parental rights to her other three children were terminated. Even disregarding this information, respondent was still no closer to having Elijah returned to her care. The visits were still supervised and the frequency of the visits had not changed. Although respondent was now coming to most of the visits on a weekly basis, she was still missing some visits. Further, the results of the PCA were very problematic. Those results indicated that there were very significant issues regarding whether it was even possible, given a considerable amount of time, effort, and specialized services, that respondent would ever be in a position to safely care for Elijah. Also, this was not a situation where this was the mother's "first go-around, so let's give her more time." The GAL concluded that it was clearly in the minor's best interest here that the goal be changed to substitute care pending determination of termination of parental rights.

¶ 14 Defense counsel argued that YSB and DCFS should implement the suggestions in the PCA since it was those departments that requested the assessment. He said that it was prejudicial to respondent to change the goal because if the goal were changed, DCFS would not pay for any services for respondent to improve, and respondent did not have the resources to pay for those services herself.

¶ 15 Erin Buhl, regional counsel for DCFS, asked the court to change the goal to substitute care pending determination of termination of parental rights. Buhl believed that a goal change was supported by the information contained in the reports that were submitted as well as the PCA.

¶ 16 After hearing all the parties' arguments, the trial court found that respondent had made reasonable efforts, but not progress. Therefore, it found that it was in Elijah's best interest that the goal be changed to substitute care pending a determination of termination of parental rights. On August 20, 2015, the State filed a motion for termination of parental rights and power to consent to adoption. In count I of the motion the State alleged that respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to Elijah's welfare. 750 ILCS 50/1(D)(b) (West 2014). In count II the State alleged that respondent failed to make reasonable progress toward the return of Elijah to her within any 9-month period after an adjudication of neglect pursuant to section 2-3 of the Act. 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 17 2. The Unfitness Hearing

¶ 18 The unfitness hearing was held on October 9, 2015. At the hearing, Denice Mock testified that she was a licensed clinical social worker with a master's degree in social work who worked for the State of Illinois as a parenting capacity assessor. Respondent completed a PCA in April 2015. That report contained the results of a clinical interview, which was a 35-page questionnaire that inquired about a parent's social history, background, history of trauma, mental health history and parenting history. It also contained the results of a one hour parent-child observation.

¶ 19 With regard to the parent-child observation, Mock said that there were times when Elijah would approach some safety hazards in the visitation room, but respondent did not appear to be aware of them. The safety hazards needed to be pointed out by the caseworker who was also present. At one point, Elijah was hungry but respondent had not brought any food to the visit, so the case aide gave the baby crackers. Mock said that throughout the entire parent-child observation respondent constantly asked what time it was and whether or not the session would be over soon. Mock said that was relevant because she had been told that respondent had a history of leaving visits early, and there was concern that there was not an affectionate bond between mother and child. Mock was also wondering if respondent was able to stay for an entire visit or if anxiety or something else was causing her to leave the visits early. Respondent was easily occupied with “outside things” that were going on during the visit. For example, in the visit, respondent said she was concerned about housing, so she wanted to get down to the township right away.

¶ 20 Mock said that part of the assessment contained a child abuse inventory. That inventory did not actually predict whether someone was going to abuse a child. Instead, it was based off of known responses from parents or people in the past who have abused children. So, it is an indication whether there is a potential for child abuse given an elevated risk. For example, if a child is falling, and there is significant stress going on in the parent’s life, that parent’s reaction to the child’s fall may be more intense and more impulsive. Some factors that would indicate a risk to a child were: whether the parent was rigid, if the parent was having difficulty with the autonomy of a child, if the parent’s perceptions of the child were that they needed to be older than their actual age, or if the parent’s expectations of the child are higher than they should be. The validity scale in the PCA also took into account the “faking-good index.” The “faking-good

index” meant that the parent went through the assessment and she was either inconsistent in her replies or had replies that were not consistent with other questions. In respondent’s case the “faking-good” index was elevated, so Mock could not use the results of the child abuse inventory.

¶ 21 Mock also used the nurturing skills test and the “adult-adolescent potential inventory.” The results of the nurturing skills assessment showed that respondent had multiple misunderstandings and higher role expectations. Based on the totality of the PCA, Mock had concerns about respondent’s ability to safely parent Elijah. Specifically, she testified:

“In addition to the psychometric testing and the interviews that I—the questions that I asked of her and in conjunction with what I viewed in the parent-child observation, it was clear that [respondent’s] expectations of her child are very, very high, that she can be impulsive, and that she has a very rigid area of thinking. That, in combination with misunderstandings in child development, was very concerning.”

¶ 22 When asked whether this was something that could be resolved in a short period of time with some counseling or parenting classes, or if it was more pervasive, Mock said,

“[Respondent] has been diagnosed as having moderate mental retardation. Because of that, it takes an extensive amount of time to work with parents with learning difficulties in specialized services in order to do so; it would not have been mediated or remediated within a shortened period of time. And given the length of time that her child has been in care, it would take approximately two more years to do—to get her to the point of most potential.”

¶ 23 The trial court then indicated to respondent’s counsel, and counsel noted that for the record, respondent said she was listening to the testimony presented, but that she was also trying

to sleep. The court said that it appeared respondent was sleeping and it was concerned about that. Respondent said, “[a]fter today, I’m not even coming back, so y’all do what you gotta do.”

¶ 24 On cross-examination, Mock said that her background was in working with parents that have intellectual disabilities, so she knew from research and her own practice that, in respondent’s case, there were other components that would severely limit her ability to progress. Specifically, Mock noted respondent’s diagnosis of intermittent explosive disorder, combined with her moderate mental retardation, was a very dangerous combination for a child’s safety. Mock said there was no doubt in her mind that respondent loved her child, but that it really came down to the impulsiveness of the intermittent explosive disorder and the difficulty in learning the parenting needs.

¶ 25 With regard to her comment that respondent could reach her maximum potential in two years, Mock said that she would gain developmental understanding, but it would be “just-in-time needs,” so respondent would require interventions that targeted the specific age of her child. She would need to be followed through services because of both diagnoses for the rest of her child’s life. She said that it was *not* her opinion that respondent could parent in a couple of years. Instead, at the two-year mark, with services, respondent still would not be capable of parenting. Mock testified that there was medication for intermittent explosive disorder, but respondent was adamantly opposed to any type of medication. Without the medication there was no type of therapy that could control her intermittent explosive disorder.

¶ 26 Lisa Wells testified that she was the caseworker for respondent and Elijah. At the time of the hearing, Elijah was eighteen months old. She had been Elijah’s caseworker since his birth. As part of her responsibilities Wells creates and rates service plans. A service plan is used for YSB and DCFS to provide the appropriate services to a parent in order for her to try to regain

custody of her child. Wells used an integrative assessment (IA) in formulating the service plan. An IA is a process whereby the caseworker interviews the parent about her social history. It is used to determine what services the parent needs.

¶ 27 The results of the IA indicated that respondent threatened to harm the caseworker, and she had difficult relationships with those who were trying to help her from the agencies. The IA also indicated that respondent was unable to acknowledge her own issues that interfered with her parenting, such as aggression. Therefore, her prognosis was poor with regard to her ability to provide a safe environment for Elijah.

¶ 28 In a service plan dated November 13, 2014, Wells indicated that respondent was sent to Rosecrance Ware Center to have an assessment completed. Respondent completed the assessment in May 2014, and the results indicated that respondent had no mental health issues. In that same service plan, Wells reported that on September 22, 2014, a hotline call was made after one of Elijah's older brothers (4 years old at the time) said that his foster mother had hit him. The case was investigated and it was determined that the minor had fallen and scratched his back at day care. Incident reports were written by the daycare provider. Another hotline call was made when school personnel reported that the same child had a bruise on his cheek. The facts surrounding that incident indicated that the children were playing at the foster mother's home and the boy ran into a wall. DCFS investigators came out to the home on September 25, 2014, and reported that there were no safety concerns or need to remove the children.

¶ 29 Wells testified that during the nine-month period between July 24, 2015 and April 24, 2015, YSB was not able to work towards unsupervised visits or placement of Elijah because of the little progress respondent was making. The same determination was made for the nine-month period from November 24, 2014 to August 24, 2015. Wells said that respondent was not

attending her visits consistently. However, she did attend other services, such as counseling. Even so, by attending those other services Wells still did not see respondent integrate any progress in her parenting towards Elijah during those nine-month periods.

¶ 30 Some of the YSB visitation notes indicated that respondent was caring for Elijah because she changed his diaper during visits, prepared him a bottle, took pictures of him, read to him and was affectionate to him. However, Wells testified that during the visits respondent attended she struggled with being able to pick up on the “little things,” like if Elijah was irritated, or if he needed a snack. If Elijah needed a snack she never had anything to give to him. Also, when she got frustrated she looked to the case aides for assistance. With regard to Elijah’s father, Wells said that the only name respondent gave her was excluded as a possibility after paternity testing, and respondent would not give her any other names.

¶ 31 Wells responded to defense counsel’s questions about why some visit notes were missing. Wells said that if the case aide had not finished her report of a visit before the time the YSB report was due to the court, it would not be included in that report. However, she assured defense counsel that she would provide the court with those notes. However, on cross-examination by the GAL, Wells corrected herself and said that all the case notes she included in the last report were all of the visit notes that she was aware of and were part of the record up through the end of April 2015. Wells also said that if there were no visit notes for some weeks that meant that there were no visitations that week.

¶ 32 Respondent testified that she missed three visits with Elijah. With regard to services, she said she was required to attend parent coaching and counseling. She said that something happened in either mid-May or mid-June 2015 and then the agency did not ask her to do any more services.

¶ 33 Respondent said that she was employed as a home care worker. She said that she did everything that YSB and DCFS asked of her, but nothing was ever good enough for them. She was capable of taking care of her son and she did not need any help to do so. According to respondent, she also had a large support system to help her.

¶ 34 On cross-examination, respondent said that she had a psychological evaluation done in 2013 because her other children were in the care of DCFS. When she was asked if she knew why Elijah was taken into care, respondent said, “[t]hey said due to my other children.” When asked whether she remembered an allegation that she picked him up by one arm out of his bassinet in the hospital soon after his birth, she said, “I did not pick him up with one arm—with one whatever. I remember that and that was not true.” When asked if she remembered why her other children were taken into foster care respondent said Jerimiah was in foster care because they said she was not giving him his medication, which was not true. Terrion was in foster care because they said she left him unattended, and that also was not true. After the parties’ arguments, the case was set to October 30, 2015, for a decision on unfitness and a possible best interest hearing.

¶ 35 On October 30, 2015, respondent did not appear in court. The YSB caseworker informed the court that respondent had called her that day and said that she already knew the decision the court was going to make so she was not coming to court. The court then announced its ruling from the unfitness hearing. It held that the State met its burden of unfitness as to both count I (failure to maintain a reasonable degree of interest, concern or responsibility) and count II (failure to make reasonable progress).

¶ 36 As to count I, the court found that respondent maintained interest in Elijah, but she had a problem with responsibility. She missed multiple visitations, left early on the ones she did

attend, and many times did not interact much with Elijah. She also did not bring any necessary supplies to the visits. Further, the IA indicated that respondent threatened to harm the caseworker, and she had difficult relationships with those who were trying to help her from the agencies. The IA also indicated that respondent was unable to acknowledge her own issues that interfered with her parenting, such as aggression. Therefore, her prognosis was poor with regard to her ability to provide a safe environment for Elijah. As for the PCA, Mock testified that respondent would never be able to parent appropriately. In addition, respondent's intermittent explosive disorder, coupled with her mental retardation, could be dangerous for the child, especially due to respondent's impulsivity.

¶ 37 As to count II, the court found no reasonable progress in the 9-month period after adjudication, which occurred from July 24, 2014 to April 24, 2015. In the first nine-month term respondent had no unsupervised visits and there was no movement to place Elijah with her. In the second nine-month time frame (November 24, 2014 to August 24, 2015), the permanency review showed no reasonable progress. Within that time frame there was also no movement toward placement or unsupervised visits with respondent. Therefore, the court found respondent to be an unfit parent pursuant to the Act.

¶ 38 **2. Best Interest Hearing**

¶ 39 Before the hearing began, the trial court took judicial notice of the evidence and testimony from the unfitness portion of these proceedings, as well as the most recent YSB report. Lisa Wells was then called as a witness.

¶ 40 Wells testified that Elijah was in a traditional foster home with two of his biological siblings, ages 3 and 5, and a foster mother. Those siblings were currently going through the adoption process. Another one of Elijah's siblings was removed from the home because she did

not want to live there. The foster mother also had two biological children living with her, ages 13 and 6. Wells said that Elijah had a good relationship with the other children in the home. He had a very close bond with the foster mother, and he had been with the foster mother almost exclusively since he was two days old. The foster mother took Elijah and the other children to the YMCA. She was currently in a “mommy and me” type of swim class with Elijah. Elijah got upset if he had to leave the foster mother, and he was always happy to see his foster mother when he got home. Elijah was developmentally on target and his foster mother works with him on letters, colors, etc. The foster mother has committed to adopting Elijah. It was Wells’ opinion that it was in Elijah’s best interest for him to be freed up for adoption.

¶ 41 On cross-examination, Wells said that Elijah’s 14-year-old sister left the foster home and chose not to come back. She actually jumped out of a moving vehicle. Wells said that she was unaware of the facts surrounding that event because there was another adoption worker assigned to that case. When asked about visitation between respondent and Elijah, Wells said that she thought there was a bond on respondent’s part, and that she seemed to love her child. However, Elijah had no reaction to respondent when he saw her. The case aide had to assist in order to get Elijah comfortable with respondent.

¶ 42 After hearing the arguments of the parties the court said that it had considered the statutory best interest factors as they related to Elijah’s age and developmental stage, the evidence presented, both documentary and testimonial, the credibility of the witnesses and the arguments of counsel. In doing so, it found that the State had met its burden by a preponderance of the evidence that it was in Elijah’s best interest for respondent’s parental rights to be terminated. The court also found that it was in Elijah’s best interest to change the permanency goal to adoption.

¶ 43

II. ANALYSIS

¶ 44 On appeal, respondent argues that the State failed to prove by clear and convincing evidence that she was unfit on the grounds that: (1) she failed to make reasonable progress toward the return of her child within any 9-month period after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014); and (2) she failed to maintain a reasonable degree of interest, concern or responsibility as to Elijah's welfare (750 ILCS 50/1(D)(b) (West 2014).

¶ 45 Before we address the merits of respondent's case we must note that the statement of facts presented by respondent's counsel in this case was woefully inadequate. With more than 900 pages in the record, over 400 pages of which were transcripts of the trial court's proceedings, counsel's statement of facts is four pages long. Counsel devotes only one paragraph to the best interest hearing portion of these proceedings, and provides this court with facts such as, "[Lisa Wells] testified as to [Elijah's] relationship with his foster parent" without providing any details about that relationship. Also, the facts presented are one-sided, and leave out portions of the record that are unfavorable to respondent. The amount of information provided in counsel's statement of facts is insufficient for this court to review the trial court's judgment. In its brief, the State claims that appellant's statement of facts is sufficient to present the issues for review. We strongly disagree with this statement. However, we note that the State has properly introduced additional facts into the argument section of its brief. Unfortunately, we note that we admonished this same counsel about his inadequate statement of facts in the prior proceedings, and we must do so again. *In re Elijah J.*, 2015 IL App (2d) 141139-U (Jorgensen, J., dissenting), ¶ 32.

¶ 46 Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires the appellant to include a statement of facts outlining the pertinent facts accurately and with appropriate reference to the

pages of the record on appeal. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Here, respondent's counsel has violated section (h)(6) of this rule by failing to provide all the pertinent facts in this case. The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8 (citing *People v. Campbell*, 224 Ill. 2d 80, 87 (2006)). Where a brief has not complied with Rule 341, we may strike the statement of facts or dismiss the appeal should the circumstances warrant. *Id.* (citing *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9). Given the extremely important nature of this case, and because we have thoroughly reviewed the record and discerned all the pertinent facts necessary to review this appeal, we will neither strike counsel's statement of facts nor dismiss the appeal. However, we caution counsel that any future violations of appeal rules will subject counsel to sanctions. S. Ct. R. 375 (eff. Feb. 1, 1994). We now turn to the merits of this appeal.

¶ 47

A. Findings of Unfitness

¶ 48 Section 2–29 of the Act provides a bifurcated procedure for termination of parental rights. 705 ILCS 405/2–29 (West 2014). To terminate a party's parental rights, the trial court must find: (1) the party is unfit, by clear and convincing evidence; and (2) by a preponderance of the evidence, that termination of the party's parental rights is in the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). Neither an unfitness finding nor a best interest finding will be disturbed on review unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613, 617 (2009). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006).

¶ 49 The first ground upon which the trial court found respondent to be unfit was based upon her failure to maintain a reasonable degree of interest, concern, or responsibility as to Elijah's welfare. 750 ILCS 50/1(D)(b) (West 2014). Since the language in section 1(D)(b) of the Act is in the disjunctive, any of the three grounds identified—the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the welfare of the child—may be established as a basis for unfitness. *In re C.L.T.*, 302 Ill. App. 3d 770, 773 (1999). In determining whether a parent has shown a reasonable degree of interest, concern or responsibility for her child's welfare, courts consider a parent's efforts to visit and maintain contact with her child, as well as other indicia of interest, such as inquiries into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 50 Respondent first argues that the State did not prove count I by clear and convincing evidence because there are missing documents in some of the visitation notes. Specifically, she alleges that there was no documentation for some of the weeks that she had visits with Elijah. That claim is not accurate. At the unfitness hearing, Wells responded to defense counsel's questions about why some visit notes were missing. Wells said that if the case aide had not finished her report of a visit before the time the YSB report was due to the court, it would not be included in that report. However, she assured defense counsel that she would provide the court with those notes. However, on cross-examination by the GAL, Wells corrected herself and said that all the case notes she included in the last report were all of the visit notes that she was aware of and were part of the record up through the end of April 2015 (at which time the goal was changed to substitute care pending a determination of termination of parental rights). Wells also said that if there were no visit notes for some weeks that meant that there were not visitations that week. Further, respondent herself testified at the unfitness hearing that she had missed several

visitations. For these reasons, we find respondent's claim to be without merit.

¶ 51 Respondent also argues that the YSB visitation notes show that she was caring for Elijah because she changed his diaper during visits, prepared him a bottle, took pictures of him, read to him and was affectionate to him. While this is accurate, the majority of the evidence in the record indicates that respondent's conduct during the visitations did not reflect a reasonable degree of responsibility for Elijah's welfare. Although respondent's visitations with Elijah had increased, respondent still left the visits early on many occasions. She also did not come to the visitations with any snacks for Elijah, although she saw that on many occasions the baby was hungry during the visit and the case aide would have to provide snacks. Also, Mock testified that in observing a visitation between respondent and Elijah, respondent could not recognize specific safety hazards in the visitation room during the visits, and the case aide had to point them out to her so that Elijah would not be hurt.

¶ 52 Even more important, the results of the PCA were very disturbing. Mock testified that due to respondent's mental retardation, along with her intermittent explosive disorder, which respondent refused to take medication for, respondent would never be able to parent appropriately. Also, the results of the IA indicated that there were issues with regard to respondent's ability to deal with others and being able to safely take care of her child. Respondent claims that the PCA and the IA were refuted, however, by the Rosecrance Ware assessment, which reported that respondent had no mental health issues, and a portion of the PCA wherein Mock stated that respondent "had the ability to handle [Elijah's] needs both physically and emotionally."

¶ 53 We are not persuaded. Although a YSB report does indicate that the Rosecrance Ware assessment indicated that respondent had no mental health issues in May 2014 when respondent

was assessed, this finding is contrary to the findings in the IA and the PCA. It also contradicts DCFS' reports that were admitted into evidence at the adjudicatory hearing on the State's neglect petition filed in late 2013. Those DCFS reports indicated that respondent had a history of mental health problems that included a diagnosis of intermittent explosive disorder. This court relied upon those reports in upholding the trial court's order that seven-month-old Elijah was neglected. See *In re Elijah J.*, 2015 IL App (2d) 141139-U (Jorgensen, J., dissenting), ¶¶ 17, 40, 41, 48, 56. Therefore, those reports form the basis for our ruling in the earlier case, and that ruling is the law of the case. See *In re Rico*, 2012 IL App (1st) 113028, ¶ 64. Those reports, along with the IA and PCA, refute the findings of the Rosecrance Ware assessment.

¶ 54 With regard to respondent's claim that the IA is also refuted by one of Mock's comments in the PCA that she had "the ability to handle [Elijah's] needs both physically and emotionally," respondent's counsel does not provide this court with the full quote in his brief. When taken in context, we find respondent's contention to have no merit. Specifically, in the PCA Mock reported:

"Throughout the parent/child observation, [respondent] was observed to have the ability to handle Elijah's (1.4yr) needs both physically and emotionally, *although often mis-read her child's cues to stranger shyness, tiredness, hunger, and requests for interactions.*" (Emphasis added.)

¶ 55 Here, the majority of the evidence in the record indicates that respondent's conduct demonstrated a failure to maintain a reasonable degree of responsibility for Elijah's welfare. Therefore, the trial court's determination on unfitness on this ground was not against the manifest weight of the evidence. 750 ILCS 50/1(D)(b) (West 2014).

¶ 56 Since we have found that at least one ground of unfitness was proven by clear and convincing evidence we need not consider whether there are any meritorious bases for challenging the remaining ground of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 103 (appellate court need not review the trial court’s finding on other grounds of unfitness if it has ruled that the trial court’s finding on one ground of unfitness was not against the manifest weight of the evidence).

¶ 57 B. Best Interest Finding

¶ 58 We now turn to the question of best interests. At the best interests stage the court “focuses upon the child’s welfare and whether termination would improve the child’s future financial, social and emotional atmosphere.” *In re D.M.*, 336 Ill. App. 3d 766, 772 (2002). “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.” (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The trial court “cannot rely solely on fitness findings to terminate parental rights.” *D.M.*, 336 Ill. App. 3d at 772.

¶ 59 The statutory factors that the trial court shall consider in the context of the child’s age and developmental needs include: (1) the child’s physical safety and welfare; (2) the development of the child’s identity; (3) the child’s familial, cultural, and religious background and ties; (4) the child’s sense of attachment, including love, security, familiarity, continuity of relationships with parent figures, and considering the least disruptive placement alternative for the child; (5) the child’s wishes and goals; (6) community ties; (7) the child’s need for permanence; (8) the

uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person(s) available to care for the child. 705 ILCS 405/1–3(4.05) (West 2014). Again, a best interest finding will not be disturbed on review unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613, 617 (2009). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re Katrina, Kenya, Kenny and Karl R.*, 364 Ill. App. 3d 834, 842 (2006).

¶ 60 Respondent argues that it is concerning that Elijah was removed from the foster mother's care on February 21, 2014, based on a hotline call that alleged Elijah was left unattended in a car seat. However, the YSB report indicated that the foster mother left Elijah in a car seat in the presence of nurses when she stepped out of a room to take a telephone call. Further, the foster mother appealed the decision to have Elijah removed from her care and she won. Based upon the resolution of that event we are not concerned about the foster mother's ability to care for Elijah. Respondent also argues that there was a hotline call alleging that Elijah's 4-year-old brother said that his foster mother had hit him. However, the investigation revealed that the boy had fallen at day care and had a scratch from that fall. Incident reports filed at the day care verified this event. Respondent also refers to an additional hotline call in which a child in the home went to school with a bruise. However, the incident was investigated and it was determined that the child got hurt when he was playing with his siblings and hit a wall. DCFS did a follow-up investigation and found no safety concerns and no need to remove the children. Finally, respondent argues that it was not in Elijah's best interest for her parental rights to be terminated because at the best interests hearing Wells testified that Elijah's 14 year-old sister was removed from the foster mother's home because she did not want to live there and that she had jumped out of a moving

car. Although a child jumping out of a moving car is clearly a cause for concern, there was no additional evidence introduced in the proceedings below for us to review the facts that led up to this conduct by the teenager. The evidence that we *do* have before us, however, is overwhelming that it is in Elijah's best interests that respondent's parental rights be terminated.

¶ 61 At the best interests hearing, Wells testified that Elijah had been with his foster mother since almost the day of his birth, and that two of Elijah's other siblings lived with the same foster mother. Elijah appeared very attached to the foster mother and became upset if he had to leave her. Conversely, at visitations with respondent, Elijah had no reaction when he saw respondent and the case aide had to assist in order to help Elijah become comfortable with respondent. The foster mother was interested in adopting Elijah. She engaged in activities with Elijah such as "mommy and me" swim classes, and she worked with him on letters, colors, etc. After eighteen months in her care, Elijah was on target developmentally. Although there is no doubt that respondent loves Elijah, all the statutory factors here favored a finding that it was in Elijah's best interest for respondent's parental rights to be terminated. For these reasons, the trial court's order terminating respondent's parental rights ruling was not against the manifest weight of the evidence.

¶ 62 The judgment of the circuit court of Winnebago County is affirmed.

¶ 63 Affirmed.