2017 IL App (5th) 160415-U

NO. 5-16-0415

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re A.H., *et al.*, Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Pulaski County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 12-JA-13, 12-JA-14,
	)	12-JA-15, 12-JA-16
Jared H.,	)	
	)	Honorable
Respondent-Appellant).	)	William Thurston,
	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order is affirmed where no fifth amendment constitutional violation occurred, and where termination of parental rights was not against the manifest weight of the evidence.

¶ 2 The appellant, Jared H., appeals the circuit court's order granting the State's motion to terminate his parental rights. We affirm.

¶ 3 BACKGROUND

¶ 4 To begin, this court notes that juvenile petitions regarding Jared H.'s children, A.H., born April 12, 2002; K.H., born May 28, 2004; J.W.H., born August 17, 2005; and J.H., born April

24, 2009, were originally filed in 10-JA-1, 2, 3, and 4, and that the circuit court entered the first shelter care order on September 8, 2010. On February 8, 2011, these cases were voluntarily dismissed on the State's motion for failure to meet the 90-day requirement for adjudication pursuant to section 2-14(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-14(b) (West 2010)). The State immediately filed a second set of juvenile petitions in 11-JA-1, 2, 3, and 4. A second shelter care order was entered, and again, these cases were later voluntarily dismissed on the State's motion for failure to meet the 90-day requirement for adjudication. 705 ILCS 405/2-14(b) (West 2010). The record on appeal does not contain the court orders or transcripts regarding these earlier proceedings.

¶ 5 The facts pertinent to this appeal are as follows. This case began with a hotline report to the Illinois Department of Children and Family Services (DCFS) on September 3, 2010. The hotline report indicated that Mindy H. had instructed A.H., her oldest daughter, to call her father to tell him that she had attempted to commit suicide. Upon receiving A.H.'s phone call, Jared H. called the police informing them that Mindy H., his children's mother, had taken an overdose of over-the-counter pain relievers. Kelly Foster (Foster), a DCFS investigator, was then assigned to investigate the hotline report.

¶ 6 Following Jared H.'s call, the police arrived and Officer Bosecker watched the children while Mindy H. was transported by ambulance to the hospital. Once Jared H. arrived, Officer Bosecker left the children in his care. Jared H. then arranged for the four children to stay with a friend in Metropolis, Illinois, while Mindy H. was in the hospital. Upon investigation, Foster determined that a safety care plan was necessary for the safety and well-being of the minor children. She then made phone contact with Jared H. to discuss the safety care plan with him and inform him that the children were not allowed to be alone with Mindy H. During their

conversation, Jared H. told her that DCFS could take custody of the four children. Foster then attempted to locate a suitable relative that would be willing to supervise the children.

¶ 7 While Foster discussed the safety care plan with her DCFS supervisor, A.H. informed Foster that her father had sexually abused her. A.H. explained to her that at the age of seven Jared H. had anal and vaginal intercourse with her, and had also instructed her to perform oral sex on him and Mindy H. A.H. also reported to Foster that K.H., the second oldest child, had told her that Jared H. had sexually abused her twice in the past. At that time, Foster took the children to the hospital to be examined for physical signs of sexual abuse. The medical examinations revealed that both A.H. and K.H. had "completely torn" hymen, which was consistent with physical penetration. The two oldest children, A.H. and K.H., were placed with Jared H.'s sister, and the two younger children were placed at The Night's Shield Children's Shelter. As a result of such disclosures, Jared H. and Mindy H. were charged with criminal offenses, and the circuit court entered a no-contact order that forbade Jared H. from having any contact with the four children. On September 5, 2010, DCFS took protective custody of the four minor children.

¶ 8 SHELTER CARE: On August 30, 2012, the State filed its third set of petitions for adjudication of wardship and requested a shelter care order for the children. At the third shelter care hearing, the parties stipulated to the details of the case based on testimony given during the earlier shelter care hearings as detailed above. Accordingly, the circuit court found probable cause that the minor children had been abused, and that it was a matter of immediate and urgent necessity to remove the minor children from the home.

¶ 9 PERMANENCY PLANNING AND SERVICE PLAN REPORTS: Since the entry of the first shelter care order, there were several permanency planning reports and service plans filed with the court. It is indicated in each report that Jared H. had failed to cooperate with the

recommended services. In particular, on October 9, 2012, a permanency planning report indicated that the children had been in foster care for two years and that Jared H. had "blatantly refused to cooperate with recommended services through the department." Jared H. indicated that it was against his religion to complete these evaluations. The report further noted that he had failed to keep DCFS informed of his current address.

¶ 10 On May 24, 2013, the service plan indicated that Jared H. had made unsatisfactory progress, given that he had no involvement with the children, had refused to cooperate by completing recommended services, and had violated the service plan on many occasions.

¶ 11 On March 12, 2014, the service plan indicated that Jared H. had failed to make progress because he had failed to complete recommended services. The report further indicated that Jared H. had moved to Kentucky, which placed his residence outside DCFS's jurisdictional boundaries, preventing the caseworker from visiting his home to verify compliance. Moreover, his out-of-state move made compliance with and attendance at recommended services more difficult. In addition, on August 29, 2014, the service plan indicated unsatisfactory progress because of Jared H.'s continued refusal to cooperate with DCFS's recommended services.

¶ 12 On February 26, 2015, an initial pre-adjudication permanency planning hearing was held. First, Marilou Shaner, the guardian *ad litem* (GAL), provided a report where she indicated that she had visited with the children several times since the case began four years earlier. The GAL reported that, at the time of the hearing, J.H., the youngest child, was 5 years old and had been placed in foster care when she was 16 months old. J.H. had no memory of her parents, and had resided with her sister, K.H., the second oldest child, in the same foster home since the shelter care order. At the time of the hearing, K.H. was 10 years old and had been in foster care since

she was 6 years old. K.H. had limited memory of her parents. Both J.H. and K.H. were active, doing well in school, and had participated in ongoing counseling services.

¶ 13 The GAL next reported that, at the time of the hearing, J.W.H. was nine years old and had been in foster care placement since he was five years old. At nine years of age, he had been in several foster homes and had received treatment through a juvenile psychiatric facility. The GAL indicated that J.W.H. had adjusted well to his current placement, which was on a farm, and that he liked the farm animals and enjoyed math and reading.

¶ 14 In addition, the GAL reported that A.H., the oldest child, was 12 years old at the time of the hearing, and had been in foster care since she was 8 years old. Due to her disruptive behavior, A.H. had been placed in several different foster homes. However, she was enjoying her current foster home, and had been attending therapy and sexual abuse counseling.

¶ 15 The GAL further reported that all of the children were doing well physically and had improved mentally since their removal from their parents' care. Moreover, the GAL testified that none of the children wished to have contact with their parents.

¶ 16 Next, Ester Mead (Mead), a DCFS child welfare advanced specialist, testified that she had supervised the family's caseworkers and attended the administrative case review (ACR) conferences, as well as coordinated recommended services. She testified that ACR conferences were in place to educate parents on recommended services and how to obtain those services in order to complete service plan requirements and work towards family reunification. Mead testified that in the past four years Jared H. had attended only four of the nine ACR conferences, and that he had unsatisfactory progress toward the completion of his service plan. In particular, Jared H. had failed to complete the following recommended services: (1) inform DCFS within 24 hours of any change in his address, phone number, household composition, and/or employment;

(2) attend all DCFS appointments; (3) sign necessary releases for exchange of information between service providers; (4) fully participate in assessment, evaluation, and counseling with DCFS service providers; and (5) complete a sexual perpetrator evaluation and attend sexual perpetrator treatment. Additionally, Mead asserted that Jared H. had shown little to no interest in the minor children and had failed to even inquire about them in four years.

¶ 17 Based on the evidence and testimony presented, the circuit court found that Jared H. had failed to make reasonable progress toward the return of his children because he had failed to complete the service plan requirements. The court also approved the State's recommended goal of "substitute care pending termination of parental rights."

¶ 18 On April 6, 2015, the service plan stated that Jared H. had failed to complete any recommended services.

¶ 19 On August 25, 2015, Mead's permanency planning hearing report was filed with the court. Mead indicated that Jared H. had cooperated with the service plan by participating in psychological and sex offender evaluations, although these were the only services he had completed in five years.

¶ 20 ADJUDICATORY HEARING: On March 11, 2013, after numerous pretrial delays, motions, and hearings, the adjudicatory hearing on the State's petition for adjudication of wardship was set to begin. However, Jared H. filed a motion to dismiss the petition, alleging that the State failed to prosecute the case in a timely manner. That same day, the circuit court held a hearing on Jared H.'s motion. The court determined that the State was responsible for a 53-day delay, from August 30, 2012, the date of the filing of the petition, to October 22, 2012. Conversely, the court found that all other delays after October 22, 2012, were either agreed to or partially caused by Jared H. Accordingly, the court denied Jared H.'s motion to dismiss.

¶ 21 After the motion to dismiss was denied, the hearing on the State's petition for adjudication of wardship commenced and the State called Foster as its first witness. Foster testified that Jared H.'s sister, Pricilla Hazelwood, had encouraged A.H. to tell Foster that her father had sexually abused her since she was seven years old. Foster further testified that A.H. had told her that she was afraid of her father and that he had hurt her sister, K.H., stating, "he did it to her, too, in the butt." Foster informed the court that DCFS had taken protective custody of the children following A.H.'s statements of sexual abuse and that the medical examinations showed signs consistent with sexual abuse on A.H. and K.H. Shortly after Jared H.'s counsel began cross-examination of Foster, the hearing was recessed for the day due to issues regarding discovery.

¶ 22 Following the March 11, 2013, adjudicatory hearing, the circuit court heard testimony regarding the State's petition for adjudication of wardship on seven additional days: November 15, 2013; December 13, 2013; March 14, 2014; March 28, 2014; May 5, 2014; February 15, 2015; and March 25, 2015. On March 25, 2015, after more than two years after the initial start of the proceeding, the adjudicatory hearing concluded. The court allowed the parties to submit written closing arguments.

¶ 23 On April 10, 2015, after the parties had submitted their written closing arguments, the circuit court entered an adjudicatory order which found, by a preponderance of the evidence, that J.H., K.H., and J.W.H. were neglected minors as defined in section 2-3(1)(b) of the Act (705 ILCS 405/2-3(1)(b) (West 2010)) and that A.H. was a sexually abused minor as defined in section 2-3(2)(iii) of the Act (705 ILCS 405/2-3(2)(iii) (West 2010)). The court's order specifically stated:

"This finding is based on the following facts: [T]estimonies of the State's witnesses are believable and consistent in the totality of evidence. The testimonies include in-court testimonies as well as transcripts of prior related interviews. *** The state has proven its *** petitions by a preponderance of the evidence."

The court found that both Mindy H. and Jared H. had neglected and abused the children.

¶ 24 DISPOSITIONAL HEARING: On June 25, 2015, the circuit court held a dispositional hearing. The court found Jared H. unfit and unable to care for, train, educate, supervise, or discipline the minors. The court further determined that reasonable efforts and appropriate services aimed at family reunification could not prevent or eliminate the necessity or removal of the minors from the home, and that leaving the minors in the home was contrary to the health, welfare, and safety of the minor children. The court found that the service plan prepared by DCFS was appropriate and had been provided to Jared H. The minors were made wards of the court and placed in the custody of the DCFS Guardianship Administrator. The dispositional order provided the following admonishments:

"The parents are admonished that they must cooperate with the Illinois Department of Children and Services. The parents must comply with the terms of the service plan and correct the conditions that required the minor to be in care or they risk termination of their parental rights."

The dispositional order indicated that the parties were given their appeal rights.

¶ 25 TERMINATION OF PARENTAL RIGHTS: On March 22, 2016, the State filed a motion for termination of parental rights and for the appointment of a guardian with power to consent to adoption. In this petition, the State alleged that Jared H. was unfit based on the following four grounds:

"Failing to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor children. 750 ILCS 50/1 (D)(b); An inability to discharge his parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness, or mental retardation as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable period of time. 750 ILCS 50/1(D)(p); Failing to protect the minor children from conditions within his environment injurious to the children's welfare. 750 ILCS 50/1(D)(g); and Failing to make reasonable efforts to correct the conditions that were the basis of the removal of the children from the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. 750 ILCS 50/1 (D)(m)(i)."

¶ 26 FITNESS HEARING: On June 22, 2016, the circuit court held the first-stage parental fitness hearing on the State's petition to terminate parental rights. The court took judicial notice of all previous testimony and evidence presented in the earlier proceedings, as well as the permanency planning reports. Additionally, the court took judicial notice of Jared H.'s April 3, 2015, psychological report, which indicated his Personality Disorder diagnosis, and the evaluator's recommendation that he "should not be allowed any contact with his children" given his history of violence and sexual abuse towards children. Moreover, the court took judicial notice of the May 25, 2015, sex offender evaluation, where the evaluator stated "[i]t is my

professional opinion that [Jared H.] has been a danger to society and I would consider him being around any children a dangerous situation."

¶ 27 In addition, the following testimony was adduced at the first-stage parental fitness hearing. Mead testified that DCFS had made reasonable efforts to assist Jared H. with the service plan, but he failed to comply. Furthermore, Mead testified that Jared H. had made no attempt to inquire as to how he could contact the minor children. Additionally, Shannon Griffith (Griffith), the DCFS child welfare specialist for K.H. and J.H. for nearly four years, testified that she only had contact with Jared H. one time, aside from court appearances. Cindy Thomas (Thomas), a DCFS caseworker for A.H., testified that Jared H. had shown no signs of interest, concern, or responsibility for A.H., and that she had had no contact with Jared H., aside from court appearances, since her involvement with the case in April 2015. Jessica Melton (Melton), a Lutheran Child and Family Services caseworker for J.W.H., testified that she had had no contact with Jared H., other than court appearances, since she her involvement with J.W.H. in December 2014. At the close of the evidence, the court found, by clear and convincing evidence, that Jared H. was an unfit parent, based upon the four grounds alleged in the State's March 22, 2016, motion for termination of parental rights.

¶ 28 BEST INTEREST HEARING: On August 24, 2016, the circuit court held the second-stage best interest hearing. The circuit court took judicial notice of all previous testimony and evidence presented in the earlier proceedings, as well as the permanency planning reports. The court heard the following testimony from the children's caseworkers.

¶ 29 Thomas, a DCFS caseworker for A.H., testified that she believed it was in the best interest of A.H. for the circuit court to terminate Jared H.'s parental rights. When asked to describe the connection A.H. had with her father, Thomas described it as essentially nonexistent.

Thomas further testified that A.H. could be adopted if Jared H.'s parental rights were terminated. However, if A.H. was not adopted, DCFS would help her reach an independence goal. Lastly, Thomas testified that A.H. supported the termination of her parents' rights and desired to have no contact with them in the future.

¶ 30 Griffith, a DCFS child welfare specialist for K.H. and J.H. from November 2012 to April 2016, testified that she believed it was in the best interest of K.H. and J.H. for the circuit court to terminate Jared H.'s parental rights. She testified that the two girls participated in organized sports, regularly attended church, and did well academically in school. She testified that both girls bonded well with their foster parent and referred to her as "mom," and that the foster parent desired to adopt both girls. Griffith further testified that both girls had told her that they did not wish to have future contact with Jared H.

¶ 31 Eugina Clark, a DCFS caseworker for K.H. and J.H. since April 2016, testified that she agreed with Griffith's opinion that it was in K.H. and J.H.'s best interest for the circuit court to terminate Jared H.'s parental rights. She testified that the girls had voiced a desire for the court process to end and that they both desired to be adopted by their foster mother, who they have lived with for nearly six years.

¶ 32 Melton, a Lutheran Child and Family Services caseworker for J.W.H. since December 2014, testified that she believed it was in the best interest of J.W.H. for Jared H.'s parental rights to be terminated. Melton further testified that J.W.H. desired to be adopted by his current foster parents and wanted no further contact with Jared H.

¶ 33 Mead testified that she had been involved with the children since 2010. Mead testified that she believed it was in the best interest of the children that the circuit court terminate Jared H.'s parental rights, given, what she believed, was clear and convincing evidence that A.H. had

been sexually abused, and that Jared H. had not completed recommended services, other than his cooperation to participate in psychological and sex offender evaluations, which were required for family reunification. Mead testified that the children had regularly visited with each other and that their visits would likely continue in the future even in the event of adoption.

¶ 34 Jared H. testified that he did not want his parental rights terminated because he believed that it was in the best interest of the children to be placed with his mother, Dee Castle (Castle). He testified that he had discussed placement with Castle and that she was willing to adopt the children so that the children could live in the same home.

¶ 35 Castle testified that she was willing to adopt the children. However, on cross-examination, she testified that she had not contacted DCFS about her willingness to adopt the children. In addition, she testified that she had not established visitation with the children or contacted DCFS regarding the children's welfare. Moreover, she testified that she had suffered a nervous breakdown in 2012, and as a result, she had to live a stress-free life.

¶ 36 In addition to the testimony presented at the hearing, the circuit court heard the GAL's recommendation that the circuit court terminate Jared H.'s parental rights. The GAL reported that she had discussed the termination proceeding with all of the children and that each child desired adoption and did not wish to have contact with Jared H.

¶ 37 Based on the evidence presented at the best interest hearing, the circuit court found that A.H. did not wish to have contact with Jared H. Furthermore, testimony showed that A.H. had received good grades in school and that her physical safety and emotional needs were being met while in her current placement. Additionally, the court found that K.H. and J.H. had developed a meaningful relationship with their foster parent, as they had been together in the same foster placement since their removal from Jared H.'s care. Further, the court noted that K.H. and J.H.'s

foster parent had expressed a desire to adopt both girls, and that both children wished to be adopted by her as well. Moreover, the court found that the evidence supported a finding that both K.H. and J.H. were well-adjusted to their school, home, church, and community. Like A.H., they also did not wish to have contact with Jared H. Lastly, the court determined that the testimony demonstrated that J.W.H. wished to be adopted by his current foster parents. Similar to his other siblings, J.W.H., too, wished to have no contact with Jared H. The court determined that termination of Jared H.'s parental rights was in the best interest of the children. Jared H. filed a timely notice of appeal.

¶ 38 ANALYSIS

¶ 39 On appeal, Jared H. raises eight arguments. First, Jared H. argues that the circuit court was untimely when it failed to hold his adjudication hearing within 90 days following the State's motion. Second, he contends that the adjudicatory hearing was unfair. Third, he argues that the court demonstrated a lack of impartiality by questioning a witness during the initial permanency planning hearing, thus denying him a fair hearing. In his fourth argument, Jared H. attacks the sufficiency of the evidence presented at the adjudicatory hearing. In his fifth argument, he contends that the court inappropriately allowed counsel for DCFS to participate at the adjudicatory hearing. In his sixth argument, he contends that his fifth amendment right against self-incrimination was violated. In his seventh argument, he asserts that A.H. was threatened by the State prior to her testimony at the adjudicatory hearing. Lastly, in his eighth argument, he challenges the court's order terminating his parental rights.

¶ 40 Although not addressed by either party, we find it necessary to discuss this court's jurisdiction to review the arguments raised by Jared H. This court has a duty to consider *sua sponte* its jurisdiction and to dismiss an appeal if jurisdiction is wanting. See *In re Marriage of*

Link, 362 Ill. App. 3d 191, 192 (2005). Supreme Court Rule 303(a) provides, in pertinent part, that "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed ***." Ill. S. Ct. R. 303(a) (eff. June 4, 2008). Also, Supreme Court Rule 306(a)(5) permits a party who wishes to appeal a permanency planning order to petition the appellate court for leave to file an interlocutory appeal. Ill. S. Ct. R. 306(a)(5) (eff. Feb. 26, 2010). If the petition raises important legal questions or refers to questionable actions taken by the circuit court, the appellate court may grant review. See *In re Curtis*, 203 Ill. 2d 53 (2002). In addition, Supreme Court Rule 660(b) provides that appeals from final judgments entered in proceedings under the Act, other than delinquent minor proceedings, are governed by the rules applicable to civil cases. See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001). Compliance with the rules governing the deadline for filing a notice of appeal is mandatory and jurisdictional. *In re C.S.*, 294 Ill. App. 3d 780, 229 (1998).

¶ 41 Here, the circuit court entered the initial pre-adjudication permanency planning order on February 26, 2015, the adjudicatory order on March 25, 2015, and the dispositional order on June 25, 2015. The record reflects that Jared H. failed to petition the court for leave to file an interlocutory appeal of the pre-adjudication permanency planning order, and although advised by the court of his appeal rights, he also failed to file a notice of appeal within 30 days after the dispositional order was entered. Rather, Jared H. filed a timely notice of appeal on September 20, 2016, identifying the court's September 6, 2016, order, which terminated his parental rights. Because Jared H. failed to petition for leave to file an interlocutory appeal regarding the February 26, 2015, permanency planning order, and also failed to file a notice of appeal within 30 days of the dispositional order, we have no jurisdiction to consider whether those orders were proper when made. See *In re Leona W.*, 228 Ill. 2d 439, 457 (2008). Accordingly, we dismiss

Jared's third argument as it pertains to the February 26, 2015, permanency planning order. Additionally, we dismiss Jared H.'s first, second, fourth, fifth, and seventh arguments on appeal, as they relate to the March 25, 2015, adjudicatory order. We will only address his sixth argument regarding his fifth amendment right against self-incrimination; and his eighth argument challenging the termination of his parental rights.

¶ 42 In his sixth argument, Jared H. argues that he was placed in a "catch 22," indicating that, in following his counsel's advice and by exercising his fifth amendment right, he refused to cooperate with DCFS because he had criminal charges pending and he feared his cooperation would provide the State with possible evidence that could be used against him on the criminal charge. As a result, he takes issue with the fact that he was found to have made unsatisfactory progress in complying with his service plan at the permanency planning hearings, and that these reports were relied upon at the first-stage parental fitness hearing finding him an unfit parent. We find this argument meritless.

¶ 43 Whether a party has been deprived of constitutional rights presents a question of law. *In re A.W.*, 231 Ill. 2d 92, 106 (2008). We review this question *de novo*. *Id.* The fifth amendment of the United States Constitution prohibits compelled self-incrimination in criminal cases (U.S. Const., amend. V), and the provision is made applicable to the states through the fourteenth amendment (U.S. Const., amend. XIV). The fifth amendment privilege against self-incrimination has been extended not only to criminal proceedings in which the party is the defendant, but also to any other civil or criminal proceeding to which the party's testimony may incriminate the party in future criminal proceedings. *A.W.*, 231 Ill. 2d at 106. " '[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that

testimony is obtained in violation of the Fifth Amendment ***.' " *Id.* (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)).

¶ 44 We find *A.W.* controlling and dispositive of Jared H.'s fifth amendment claim. In *A.W.*, the supreme court affirmed the general rule that the fifth amendment right against self-incrimination applied to the termination proceedings and that a court could not compel a parent to admit to a crime that could be used against him in a later criminal prosecution by threatening to terminate his parental rights. *Id.* at 107-08. The supreme court found, however, that those rules were not applicable because the circuit court had never ordered the respondent to participate in a particular therapeutic program that required the respondent to admit to having committed sexual abuse. *Id.* at 108-09. Rather, the court had ordered only that the respondent participate in a sexual abuse counseling program. *Id.*

¶ 45 Similarly, the record does not show that Jared H. was required to incriminate himself in order to cooperate with the service plan. To the contrary, the record reflects that the service plan was specifically designed to achieve family reunification. In terminating his parental rights, the circuit court specifically indicated that it "ha[d] not considered [Jared H.'s] refusal to admit that he had sexually abused his daughter in its analysis." In fact, the record evidences that the goal was changed to substitute care pending termination of his parental rights because he refused to cooperate with all recommended services, not because he refused to make any admissions of guilt.

¶ 46 Even if we were to assume that the service plan had mandated that Jared H. admit that he had sexually abused his daughters, he could have requested at any one of the permanency planning hearings, or by motion, that the circuit court order DCFS to restructure the service plan so that it would not require him to incriminate himself. See *In re L.F.*, 306 Ill. App. 3d 748, 753

(1999). Instead, he chose inaction and failed to make reasonable efforts towards reunification. Therefore, based on our review of the record, we find that there has been no violation of Jared H.'s constitutional rights against self-incrimination.

¶ 47 In his eighth argument, Jared H. challenges the sufficiency of the evidence presented at the termination of parental rights hearing, arguing that the circuit court's ruling was against the manifest weight of the evidence. We disagree.

¶ 48 The termination of parental rights is a two-step process under which the best interests of the child is considered only after a circuit court finds the parent unfit. 705 ILCS 405/2-29(2) (West 2012). First, the circuit court must find, by clear and convincing evidence, that a parent is an unfit person as defined in the Adoption Act. 750 ILCS 50/1 *et seq*. (West 2012); *In re J.L.*, 236 Ill. 2d 329, 337 (2010); *In re D.T.*, 212 Ill. 2d 347, 352-53 (2004). Once a finding of parental unfitness is made, the circuit court must then determine whether the State has proven, by a preponderance of the evidence, that it is in the best interest of the child that the parental rights be terminated. *D.T.*, 212 Ill. 2d at 367; see also *In re M.I.*, 2016 IL 120232, ¶ 20.

¶ 49 Jared H. challenges the circuit court's finding of unfitness. On review, the appellate court will defer to the court's factual findings and credibility determinations, and we will not reverse the circuit court unless the record shows that the factual findings are against the manifest weight of the evidence. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). 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 (2004).

¶ 50 The Adoption Act defines an "unfit person" as "any person whom the court shall find to be unfit to have a child ***." 750 ILCS 50/1(D)(a)-(t) (West 2012). Although the Adoption Act sets forth numerous grounds under which a parent may be deemed "unfit," any one ground under

section 1(D), if properly proven, is sufficient to enter a finding of unfitness. *In re L.M.*, 385 Ill. App. 3d 393, 395 (2008). A circuit court is in the best position to determine parental unfitness as it involves factual findings and credibility assessments. *M.J.*, 314 Ill. App. 3d at 655.

¶ 51 Here, in finding that Jared H. failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor children, the circuit court took into consideration the extensive witness testimony, previous permanency planning reports, and service plan evaluations. The court found, and the record supports, that since the entry of the first shelter care order, several permanency planning reports and service plan evaluations demonstrated Jared H.'s lack of interest, concern, or responsibility as to the welfare of the four minor children. In fact, the court found, and we agree, that several reports indicated Jared H.'s outright refusal to comply and involve himself in the service plan requirements, which contributed to his unsatisfactory progress evaluations. Moreover, Jared H. chose to move to Kentucky, without first notifying DCFS, a service plan requirement. This voluntary move, which added distance between him and the service providers, further contributed to his lack of involvement with DCFS. Thus, we find that the court did not err in finding that Jared H. was an unfit parent, as the court's determination was thoroughly supported by the record. As a result, we find that the court's decision was not against to the manifest weight of the evidence.

¶ 52 Next, Jared H. asserts that the circuit court's finding that it was in the best interest of the children that his parental rights be terminated was against the manifest weight of the evidence. When considering whether termination of parental rights is in a child's best interest, the court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These factors include the following:

"(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)(a)-(j) (West 2014).

¶ 53 In addition, other relevant factors in best interest determinations include the nature and length of the minor's relationships with his/her present caretaker and the effect a change in placement would have upon his/her emotional and psychological well-being. *In re William H.*,

407 Ill. App. 3d 858, 871 (2011). 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 (2004). Accordingly, 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 (2005).

¶ 54 The record, in this case, supports the circuit court's finding that it was in the children's best interest to terminate Jared H.'s parental rights. The evidence and testimony presented in the best interest stage of the proceedings was consistent with the court's findings. At that time, the minors had been in foster care for nearly six years and their need for permanency was compelling. In particular, the record demonstrates that the children were well-adjusted to their current placements. In fact, the record demonstrates that the respective foster parents had provided the children, in particular, K.H., J.H., and J.W.H., with long-term care and a safe home life, something that Jared H. was unwilling and unable to provide. Moreover, the record demonstrates that none of the children wished to have future contact with Jared H. Thus, based on the evidence presented at the best interest hearing, we find the court's determination to terminate Jared H.'s parental rights was not against the manifest weight of the evidence.

¶ 55 Therefore, the circuit court's order is affirmed where no fifth amendment constitutional violation occurred, and where termination of parental rights was not against the manifest weight of the evidence.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, the judgment of the circuit court of Pulaski County is hereby affirmed.

¶ 58 Affirmed.