2018 IL App (2d) 180457-U
No. 2-18-0457
Order filed October 22, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re L.B., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 16-JD-67
	)	16-JD-187
	)	17-JD- 49
	)	
(The People of the State of Illinois, Petitioner-	)	Honorable
Appellee, v. Anthony B., Respondent-	)	Janet R. Holmgren,
Appellant).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Hudson and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment that respondent was unfit and unable to care for the minor was not against the manifest weight of the evidence and it properly granted guardianship and custody to the Department of Children and Family Services.

¶ 2 This case began when, early in 2016, the minor, L.B., was alleged to be delinquent. L.B. pleaded guilty to the charges and was placed on juvenile probation. During his time on probation, L.B.'s behavior did not improve, and he was alleged delinquent on other charges and alleged to be in violation of his probation. Ultimately, the State moved to transfer guardianship and custody from L.B.'s mother and father, respondent, Anthony B., to the Department of Children and Family Services (Department). During the hearing on the motion to transfer,

respondent appeared in the case for the first time. At the conclusion of the evidentiary hearing on the motion to transfer, the trial court held that both the mother and respondent were unfit or unable to care for L.B. The trial court granted the motion and transferred guardianship and custody to the Department. Respondent appeals,[1] arguing that the trial court's judgment was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We summarize the pertinent facts appearing in the record. On February 29, 2016, the State filed a petition alleging that L.B. was a delinquent minor. Specifically, the State alleged that L.B. had shoplifted a BB gun (720 ILCS 5/16-25(a)(1) (West 2016)). On May 27, 2016, the State filed a new petition alleging delinquency on the bases that: (1) L.B. had resisted a peace officer by running away from the police officer investigating a report that four juvenile offenders had shot a woman with a BB gun as she attempted to enter her home (720 ILCS 5/31-1(a) (West 2016)); and (2) L.B. was in possession of a small amount of cannabis (720 ILCS 550/4(a) (West 2016)). The offenses in both of the 2016 petitions were classified as misdemeanors. Both of the 2016 delinquency petitions listed L.B.'s mother, and both of the petitions listed L.B.'s father as "Unknown." On June 14, 2016, L.B. entered into negotiated pleas of guilty to the offenses and was placed on probation on the petitions. L.B.'s custody remained with his mother.

¶ 5 On February 21, 2017, the State filed the third delinquency petition in this matter alleging that L.B. committed the felony-level offense of disorderly conduct by threatening to bring a gun to school and " 'shoot this place up' " (720 ILCS 5/26-1(a)(3.5) (West 2016)). In addition to the new delinquency petition, the State also petitioned to revoke L.B.'s probation based on the new

[1] L.B.'s mother is not a party to this appeal.

offense as well as a number of alleged failures to comply with the conditions of probation in the 2016 petitions. The 2017 petition for delinquency and the petitions to revoke probation on the 2016 delinquency petitions all listed L.B.'s father as "Unknown."

¶ 6 At the March 21, 2017, hearing to arraign L.B. on the 2017 delinquency petition and the petitions to revoke probation, L.B.'s mother, for the first time in the case, revealed that respondent was L.B.'s biological father. L.B.'s mother did not know respondent's address. She further stated that respondent neither provided any money to support L.B. nor spent any time with L.B.

¶ 7 In an April 12, 2017, hearing on the State's amended petitions to revoke probation, L.B.'s mother again named respondent as L.B.'s father. This time, she informed the trial court that respondent lived in the area with a girlfriend, and saw or spent time with L.B. an average of once a month. L.B.'s mother maintained that respondent did not financially support L.B.

¶ 8 On August 8, 2017, the Stated filed third amended petitions to revoke L.B.'s probation on the 2016 delinquency petitions. On each of the petitions to revoke, L.B.'s father was listed as "Unknown." At the August 16, 2017, hearing on the presentment of the amended petitions to revoke, the trial court noted that the amended petitions persisted in listing L.B.'s father as unknown. L.B.'s mother stated that respondent was the father, but she did not know his address. This time, L.B.'s mother stated that "[s]ometimes" respondent provided financial support for L.B., and that "[s]ometimes" he spent time with L.B. Immediately following L.B.'s mother's statements, the State "ask[ed that] the father be declared a non-indispensable party for these proceedings." The trial court responded, "So ordered." The State's request was never reduced to writing; the trial court order was similarly never reduced to writing. In fact, the parties appeared unable to recall that this exchange occurred throughout the balance of the proceedings. In any

event, the developments occurring during the proceedings appear to have overtaken this purported determination that respondent was a non-indispensable party.

¶ 9 Repeatedly throughout this matter, the trial court placed L.B. into detention. The detentions often arose as a result of L.B.'s inability to follow rules of school, probation, and the like. On August 30, 2017, L.B. was placed into the custody of his aunt, one day after the trial court in a different case had held that L.B.'s mother was unfit in a case involving L.B.'s sibling (which sibling was also another of respondent's children).

¶ 10 L.B.'s behavior eventually resulted, in November 2017, in his enrollment into the Youth Recovery Court. In December 2017, L.B. entered into a negotiated admission to the pending petitions to revoke probation on the 2016 delinquency petitions. At the same time, L.B. admitted to the allegations in the 2017 disorderly conduct delinquency petition. The trial court vacated the probation from the 2016 petitions and imposed a new two-year period of probation. Following this December 22, 2017, adjudication, the parties proceeded to the issue of guardianship and custody, with the State seeking to place guardianship and custody with the Department. In a 402 conference, the information revealed was encouraging, so the trial court and the parties agreed to continue the hearing to another date to see if L.B.'s behavior and actions would continue to improve, thereby positively impacting the trial court's ultimate decision on the guardianship and custody issue, among others

¶ 11 On January 9, 2018, the news continued to be good. L.B. reported favorable conduct, and the trial court continued the matter once again for status. On January 16, 2018, L.B.'s conduct was reported to be so favorable, that the trial court allowed him to select an item from the Youth Recovery Court's "prize box" as a reward for his hard work and good conduct. Between the next few status dates, L.B.'s family and mother were engaged in moving their

residence to a new dwelling.

¶ 12 On February 5, 2018, neither L.B. nor his mother appeared at a continuation of the guardianship and custody portion of L.B.'s dispositional hearing regarding the petitions to revoke and the 2017 delinquency petition. Despite having been told the necessity of their presence at the February 5 hearing, they were apparently involved in the moving process. The State and the minor's guardian *ad litem* registered their concern over L.B.'s attendance at school and the unknown and unchecked state of their new residence during the hearing. L.B.'s mother eventually showed, explaining that their housing situation had deteriorated, necessitating the move, but that they were in a single-family dwelling, and that their family situation had stabilized, so she could once again focus on L.B.'s issues. The matter was continued.

¶ 13 On March 5, 2018, the State filed a new delinquency petition (that is not at issue in this case, although it does provide the basis for some of the issues raised in the State's petitions to revoke probation), and petitions to revoke probation based on an incident in which L.B., while handling a firearm, shot himself in the leg. On March 6, 2018, L.B. was placed into detention after entering denials on the petitions to revoke probation. During the March 6 hearing, L.B.'s mother informed the trial court that respondent would be attending the guardianship and custody hearing, and that he was obtaining representation.

¶ 14 On March 12, 2018, the trial court began taking evidence in the guardianship and custody hearing. The trial court admitted the State's exhibits and took judicial notice of several other cases related to L.B.'s family situation. Luis Fernandez, the Department's caseworker for L.B.'s sibling, testified that the sibling was in foster care ordered in another proceeding. The Department required, in the sibling's proceeding, L.B.'s mother to attend parenting classes and counseling, and, for the sibling to be returned to L.B.'s mother's care, she needed to regularly

attend the ordered and scheduled services.

¶ 15 In the middle of the March 12 hearing, respondent entered the courtroom. Respondent had never before appeared in any of the hearings involving the minor, from the initial 2016 petition for delinquency until the March 12, 2018, hearing. The guardian *ad litem* reported that, from his appointment until March 12, he had never spoken to respondent. Respondent declared in open court that he was L.B.'s biological father and presented a voluntary acknowledgment of paternity executed in another case. The State disputed respondent's standing to appear in this matter, maintaining that he was a non-indispensable party and had never yet appeared. The State further noted that L.B. had resided with his mother for the entirety of the proceedings in these matters. The trial court questioned whether respondent was, in fact, a non-indispensable party, noting that no order to that effect appeared in the record.[2]

¶ 16 Respondent was sworn and testified that he had resided at a 15th Street residence in Rockford for the previous six months, and that he had further resided at a 5th Avenue residence for the three years preceding. Respondent testified that L.B. spent time with him on weekends and on holidays. L.B. did not spend time with respondent every day because respondent maintained a separate household from L.B., his mother, and the rest of L.B.'s family. Respondent testified that he was aware that L.B. had incurred a juvenile case and that he was also aware that L.B. had been detained intermittently throughout the progress of that case. L.B.'s

[2] The trial court, which was a different judge than the judge who orally declared respondent a non-indispensable party, apparently was unaware of that oral declaration. Nevertheless, we again note that no written motion requesting such a judgment or written order holding that respondent was a non-indispensable party was ever filed or entered.

aunt (and respondent's sister) had informed him that he needed to become involved in L.B.'s juvenile proceedings because the Department had become involved. Respondent admitted that, since 2012, he had not paid child support on L.B.'s behalf. Respondent testified that he had another child (L.B.'s sibling by L.B.'s mother and respondent) who was involved in another juvenile case. Respondent testified that he had appeared in the sibling's case, but L.B.'s mother appeared in L.B.'s case. Respondent conceded that L.B.'s mother also appeared in the sibling's case as well as L.B.'s case. L.B.'s counsel indicated the L.B. was interested in a custody placement with respondent.

¶ 17 The trial court noted that no summons to respondent appeared in the record before it; likewise, no publication of the matter had occurred. The trial court noted that it could find no indication that respondent had been declared a non-indispensable party.

¶ 18 Respondent informed the trial court that he wanted to become a party in this matter. The State served respondent, in open court, with the petitions and motions that had been previously filed in this matter, along with the documents pertaining to all current matters. The trial court also appointed counsel to represent respondent.[3] Respondent's unexpected appearance presented

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[3] We note that, on June 7, 2016, respondent's counsel stepped up to cover for L.B.'s then-counsel. The matter was up for status, and respondent's counsel secured a date that was convenient for L.B.'s then-counsel to appear in another hearing. Respondent's counsel did not bring up this appearance when he was appointed by the trial court; however, respondent's counsel raised this appearance in respondent's brief on appeal. We appreciate that respondent's counsel raised the issue unprompted, and we conclude, based on the appearance covering for an absent attorney, no conflict of interest arises because counsel appeared solely as a courtesy for a

L.B. with the dilemma of whether to withdraw his pleas and begin the adjudication process anew, or persist in his pleas and simply begin the sentencing hearing anew. L.B. decided to maintain his pleas, and the trial court set the matter for a new sentencing hearing.

¶ 19 On April 12, 2018, apparently for the first time, the State filed a motion to transfer L.B.'s guardianship and custody to the Department. On April 27, the matter again advanced to hearing, and this time, respondent was present.

¶ 20 Fernandez, the Department's caseworker, testified about L.B.'s mother's failure to complete the ordered services in order to regain custody of L.B.'s sibling. Fernandez testified that, upon the request of the guardian *ad litem*, he had evaluated respondent as a possible placement in lieu of L.B.'s mother. Fernandez testified that respondent was an inappropriate placement based on respondent's criminal history. Fernandez explained that, in 2016, respondent was involved in a domestic-abuse incident which involved the presence of weapons and children were in proximity during the incident. According to Fernandez, the Department's investigation of the incident resulted in an indicated finding against respondent. Finally, Fernandez related that the criminal history was the single reason that he believed placement with respondent would be inappropriate for L.B. While Fernandez was aware that respondent had completed some services in relation to the domestic-abuse incident, because a full, integrated assessment had not been conducted, Fernandez did not know and would not speculate as to what

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colleague who was unavoidably absent. Counsel represents, and we accept the representation, that he had no information on the substance of L.B.'s case prior to his appointment as respondent's counsel, and we note that the representation is not contradicted by the record in any fashion.

other services respondent might need to complete in order to allay the Department's concern about placing L.B. with him. Fernandez also indicated that he was not aware of respondent's level of involvement in L.B.'s education and discipline.

¶ 21 Next, juvenile probation officer Pamela Mueller testified that she had supervised L.B. from June 2016 when he was placed on probation. Mueller noted that L.B.'s mother attended the appointments with L.B., but respondent did not; Mueller noted that, before respondent's appearance in court in March 2018, she had not met or communicated with him. Mueller testified that she was not aware of respondent's involvement in L.B.'s education. By contrast, L.B.'s mother attended most of the meetings involving L.B.'s educational issues while respondent attended none. When Mueller advocated that L.B. be placed in a therapeutic day school, his mother and aunt attended the tours with him; respondent did not.

¶ 22 Mueller testified that, when L.B. had school attendance issues, respondent did not step in to take L.B. to school. Instead, Mueller oversaw the issue. Likewise, when L.B.'s school attempted to reach his mother, but could not, Mueller visited the residence and learned that she had left town on vacation. The school did not attempt to conference with respondent but instead managed to contact L.B.'s mother.

¶ 23 Mueller testified that she was aware the L.B. visited respondent on the weekends, but she did not know how often the visits occurred. Mueller noted that she did not know much information about respondent. Mueller could not give an opinion on whether respondent would be an acceptable placement for L.B. because he had not previously been much involved in this case. She did, however, express that she had concerns about respondent's criminal history and a pending case in which respondent was charged with domestic battery. Mueller concluded that the two bases which made her question to appropriateness of placing L.B. with respondent were

his criminal history and his lack of involvement in the case.

¶ 24 L.B.'s mother testified that, when he was not in detention, he would live with her, along with three other children and two grandchildren. She provided L.B. with the necessities of food, shelter, and clothing. L.B.'s mother testified that, in October or November 2017, she lost visitation with one of the other children.

¶ 25 L.B.'s mother testified that, in March 2018, she took a vacation to Las Vegas. She left her children behind under the care of her sister and brother, as well as her oldest child. L.B. was not left in the care of respondent. In March 2018, L.B. was shot in the leg while under the care of her brother, who took L.B. to the hospital.

¶ 26 L.B.'s mother acknowledged that L.B. had school-attendance issues. She attributed it, in part, to her work schedule, which caused her to absent from her home when L.B. was supposed to leave for school. She also explained that they had other issues, such as housing problems, that prevented her from getting L.B. to school on some occasions.

¶ 27 L.B.'s mother did not inform respondent about attendance and transportation issues. She explained that, because she believed that she could take care of the issues herself, she did not try to get respondent involved. According to L.B.'s mother, the school was given respondent's telephone number and, when L.B. got in trouble, the school would call respondent. She believed that respondent had spoken with the principal before.

¶ 28 L.B.'s mother testified that she kept respondent up-to-date about L.B., and she denied that she prevented respondent from being involved in L.B.'s education. She noted that L.B. had a cell phone, so he could contact respondent whenever he wanted and whenever he wanted to go with him. According to L.B.'s mother, L.B. was "crazy about [respondent]."

¶ 29 L.B.'s mother denied that either she or respondent bore any of the responsibility

regarding L.B.'s behaviors and suspensions from school. She stated that "[L.B.] is a child and he does kid things, so you can't put that one on me or [respondent]." She further believed that L.B.'s troubles at school were completely his choice. Finally, she believed that, with respect to L.B.'s threat to shoot a school bus driver, it was not L.B. who made the threat, but another child, and it was L.B.'s record that caused the blame to fall on him for the threat.

¶ 30 Following the presentation of evidence, the trial court heard argument by the parties. Following the arguments, the trial court set a date on which to deliver its judgment.

¶ 31 On June 5, 2018, the trial court delivered an oral ruling. The trial court stated:

> "Well, with respect to the motion [for guardianship and custody], there were—there was a considerable amount of evidence provided by the State in the record, as well as testimony from various witnesses and from the exhibits from the court files—it is clear since January of 2016 [L.B.] has been on a projectory [*sic*] of engaging in delinquent behavior that has escalated. In the Court's opinion, it has been serious from the beginning culminating in March when he shot himself while engaging in conduct that was in violation of his probation and court orders.
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> Despite being court involved since January of 2016, there hasn't been any parental interjection or intervention that has in any way deescalated, I guess, this projectory [*sic*] of delinquent behavior. He has got a brother who is in care and open to [Department] services. The testimony is basically that mom has periodically engaged in some services but has yet to complete any of the services necessary in that case to allow [the Department] to consider returning that minor to her care.
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> Father, [respondent], did show up, I think, the second day of the hearing or the day of the hearing and asserted his interest perhaps in having [L.B.] placed in his care;

> however, father has been part of the picture and aware of the minor's involvement in delinquency court for two years, and there has been no apparent effort on his part to in any way parent or intervene or discipline this minor to remediate the delinquent behavior.
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> In looking at the entire record—in addition, I believe the testimony from the [Department] caseworker for the minor sibling was that father could not be considered as a placement under [Department] rules because of his LEADS history and the violent offenses that were part of the evidentiary record that were submitted to the Court.
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> In looking at everything, it is clear that [L.B.] is clearly a minor out of control. He has not [*sic*] parental intervention or influence that has in any way provided him with the protections, discipline, structure that he needs to keep himself safe. In looking at all of that, the Court is led to the only conclusion that the finding is appropriate that the parents are unable or unfit to care for, train, or discipline [L.B.], and that services have been made available to parents. The have been unsuccessful in rectifying the conditions that have caused the State to seek the request that guardianship and custody be transferred.
>
> So the Court's decision with regard to the motion is to grant the motion and transfer custody of the minor—guardianship and custody of the minor to the [D]epartment with discretion to place with a responsible relative or in foster care."

¶ 32 Respondent timely appeals.

¶ 33 II. ANALYSIS

¶ 34 On appeal, respondent argues that the trial court's determination that he was unfit or unable to care for L.B. was against the manifest weight of the evidence. We begin by considering our standard of review for such a claim.

¶ 35 A. Standard of Review

¶ 36 The trial court's judgment on a dispositional order will be disturbed only where the trial court's factual findings are against the manifest weight of the evidence, or if the trial court abused its discretion by selecting an inappropriate dispositional order. *In re Al. S.*, 2017 IL App (4th) 160737, ¶ 41. A trial court's factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary, or not based on the evidence presented. *Id.* This standard accords deference to the trial court, which is in a better position to observe the witnesses, assess their credibility, and weigh the evidence. *Id.* Similarly, an abuse of discretion occurs when the trial court's judgment is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the view taken by the trial court. *In re Jawan S.*, 2018 IL App (1st) 172955, ¶ 16. With these principles in mind, we turn to respondent's contention on appeal.

¶ 37 B. The Trial Court's Judgment

¶ 38 Respondent argues that the trial court's judgment that respondent was not a proper placement for L.B. was against the manifest weight of the evidence. To understand respondent's claim, we first discuss the general principles in a juvenile proceeding and in a dispositional hearing.

¶ 39 The State petitioned to transfer guardianship and custody of L.B. to the Department pursuant to section 5-710(1)(a)(iv) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-710(1)(a)(iv) (West 2016)). Section 5-710(1)(a)(iv) provides, pertinently, that a qualifying minor may be placed in the guardianship of the Department. *Id.* The parties do not dispute that the minor qualifies under section 5-710(1)(a)(iv). Further, the trial court may commit the minor to the guardianship and custody of the Department upon a determination that the parents are

"unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so." 705 ILCS 405/5-740 (West 2016). The trial court must also determine "that it is in the best interest of the minor to take him or her from the custody of his or her parents, guardian or custodian." *Id.* Finally, both parents must be found to be unfit, unable, or unwilling before the court can place the minor with the Department, on account of the parents' superior right to custody. *In re Ta. A.*, 384 Ill. App. 3d 303, 307 (2008). It is against the background of these principles that respondent presses his contention.

¶ 40 Respondent first argues that the trial court must enter a parental fitness determination before it may order a change in a minor's guardianship and custody. See *In re M.M.*, 2016 IL 119932, ¶ 28 (expressly repudiating and overruling prior cases in which the best-interests-of-the-child standard had been held paramount even in the absence of a parental unfitness finding). The State does not appear to dispute this principle even though *M.M.* arose specifically in the context of section 2-27 of the Act (705 ILCS 405/2-27 (West 2012)) and not section 5-710. It is not entirely clear to us that the process for finding a minor abused and neglected translates wholesale into the sentencing of a minor adjudged delinquent. However, the similarities in the language employed in articles 2 and 5 of the Act, specifically section 2-27(1) (705 ILCS 405/2-27(1) (West 2016)) and section 5-740(1) (705 ILCS 405/5-740(1) (West 2016)), suggest that they should be similarly interpreted. See *JPMorgan Chase Bank v. Earth Foods, Inc.*, 238 Ill. 2d 455, 470 (2010) (statutes that address related subjects should be construed consistently).

¶ 41 Respondent's first argument impliedly suggests that the trial court did not make the requisite finding. This implication is expressly refuted in the record. The trial court clearly held that respondent (and L.B.'s mother) were "unable or unfit to care for, train, or discipline" L.B.

Thus, the trial court made the necessary finding as a prerequisite to be able to order a change in placement.

¶ 42 Respondent next posits that a parent has superior rights to those of the State regarding his or her child, so that if one parent is found to be unfit, the other parent may "step in to parent his child." Again, this argument is subject to refutation due to the trial court's express finding that respondent was "unable or unfit to care for, train, or discipline" L.B. Additionally, respondent relies on the readily distinguishable *In re C.L.*, 384 Ill. App. 3d 689, 696 (2008). In that case, the father, who was expressly found to be a fit parent (*id.* at 694), was awarded placement of his biological children (*id.* at 696). The mother appealed, and the appellate court held that, by finding the mother unfit, guardianship naturally passed to the father, because he had a superior right than the State. *Id.* Here, by contrast, both parents were alleged to be unfit, and both parents were found to be "unable or unfit." Thus, respondent was not at all in the same position as the father in *C.L.*; rather, he was in the same position as the mother who was found to be unfit. In addition, there was evidence in the record that respondent had engaged in domestic battery, so he was a potential source of exposure to violence or abuse. Finally, unlike *C.L.*, in which the children lived with the father and achieved a stable and nurturing environment in which they were thriving, L.B. had never lived with respondent, had not achieved any semblance of stability (related to respondent's efforts), and, in fact, was spiraling into increasingly dangerous and violent behaviors (as evidenced by the incident in which L.B. shot himself in the leg). Under the circumstances here, *C.L.* is wholly inapposite.

¶ 43 Next, respondent disputes the basis for the trial court's finding of unfitness. Specifically, respondent contends that there were no certified copies of conviction entered into evidence against respondent; respondent also argues that any allegations of misconduct were not

sufficiently proved for the trial court to rely on them. Respondent concludes that the State failed to prove that he was unfit. We disagree.

¶ 44 The record shows that, over the span of the proceedings involving L.B., respondent was nowhere in evidence. It was not until the dispositional hearing that respondent appeared for the first time. Moreover, the testimony taken in the various hearings indicated that respondent was occasionally and marginally involved in L.B.'s life. L.B.'s mother's testimony evolved from asserting that respondent was completely uninvolved in L.B.'s support and care, to L.B. saw him occasionally, to L.B. spent time with him on some weekends during the month. L.B.'s mother was consistent in testifying that respondent provided little if any funds to assist in supporting L.B. The record is abundantly clear that respondent, no matter how much time he spent with L.B., was unable to affect L.B.'s discipline and behavior. Respondent also was not involved in L.B.'s education and, when L.B. was missing school due to housing and transportation issues, respondent did not step in to assist L.B. to attend school. We cannot say, based on this record, that the trial court's determination that respondent was "unable * * * to care for, train, or discipline" L.B. was against the manifest weight of the evidence.

¶ 45 Regarding the allegations of domestic violence, we agree that there are no certified copies of conviction against respondent, and that no witnesses were called to testify as to the details. However, the Department's witnesses testified that, because of respondent's apparent lack of presence in L.B.'s life, he had not been interviewed or reviewed. Based, however, on the police reports regarding the pending charges, respondent's prior convictions evidenced in the police tracking system LEADS, and the indicated finding from a Department investigation of respondent, respondent was not a suitable placement for L.B.

¶ 46 Moreover, according to L.B.'s mother, respondent was kept apprised of L.B.'s involvement with the juvenile court system. Nevertheless, there is no evidence that respondent used that information to involve himself in L.B.'s travails until literally the last second. When L.B.'s mother went away on vacation, she did not ask respondent to look after L.B. In the two years of proceedings, respondent did not once step in and care for L.B. or provide or attempt to provide structure, stability, and discipline for L.B. Rather, the inference arises that respondent was, during almost all of that time, largely indifferent to providing L.B. the moral and material assistance he needed to thrive.

¶ 47 That is not to say that respondent was entirely absent. We commend respondent for coming forward and offering to now shoulder his responsibilities to L.B. However, based on the record before us, we cannot say that that the trial court's determination of inability and unfitness was against the manifest weight of the evidence.

¶ 48 Last, respondent challenges whether the trial court appropriately considered L.B.'s best interests in rendering its judgment to place the guardianship and custody of L.B. with the Department. Section 1-3(4.05) sets forth the statutory factors a court is to use in determining the child's best interests. 705 ILCS 405/1-3(4.05) (West 2016). The factors include:

> "(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." *Id.*

Respondent focuses on factors (a) and (e), and he argues that the State failed to carry its burden on a number of other factors. Based on this, respondent concludes that the State failed to demonstrate that it was in L.B.'s best interests to transfer guardianship and custody to the Department. We disagree.

¶ 49 The record shows that L.B. was on a course of escalating criminal behavior, the most recent of which occurred when he shot himself in the leg when playing with a firearm. Thus, L.B. was actively endangering his own health and safety, along with that of his community. The record further shows that respondent was little involved in L.B.'s sojourn in the juvenile court and his apparent negligible involvement in L.B.'s day-to-day living had done little to instill

structure, stability, or discipline in L.B.'s life. We believe that the State adequately demonstrated that factor (a), the child's physical welfare and safety, cut in its favor. Respondent argues that there was no showing that L.B. was in danger from respondent himself. While it is true that the record does not show that respondent was likely to physically abuse L.B.'s person, respondent's criminal record, plus a pending 2016 complaint involving a firearm suggest that that placing L.B. with respondent would potentially expose him to examples of violence and, perhaps, more firearms. As L.B.'s most recent offense in this case resulted from use of a firearm, we reject respondent's contention that the State failed to show that the balance on factor (a) was in the State's favor.

¶ 50 Respondent also contends that factor (e), the child's wishes, should be given substantial weight in respondent's favor because it was L.B.'s expressed wish to reside with respondent. We believe this fact, while in respondent's favor, is also counterbalanced by respondent's reported lack of interest and support of L.B. For example, respondent apparently provided little to no financial support for L.B.; likewise, respondent did not involve himself in L.B.'s education. Further, respondent did not intervene or successfully provide structure and discipline to L.B. during his involvement with the juvenile court. Based on these facts from the record, we do not believe that L.B.'s wishes are entitled to significant weight.

¶ 51 Respondent argues the State failed to provide information on factors relating to his identity, ties, and attachments. We disagree. Among the purposes of the Act is the safety and well being of the child. *In re O.S.*, 364 Ill. App. 3d 628, 635 (2006). L.B.'s escalating and increasingly dangerous behavior directly jeopardized both his safety and well being along with that of his community. The trial court recognized that L.B.'s behaviors (threatening to shoot up his school and his bus, as well as actually shooting himself while handling a firearm) were most

direly in need of address. Respondent was not providing L.B. with the direction and discipline necessary to address those behaviors. The record further demonstrates that, in general, respondent was fairly uninvolved in L.B.'s life, despite his wish for custody. Based on the paramount, in this case, considerations of safety and well being for both L.B. and his community, we cannot say that the trial court's judgment was against the manifest weight of the evidence.

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 54 Affirmed.