

NOTICE
Decision filed 08/28/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 180063-U

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

NO. 5-18-0063

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> J.M. Jr., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 15-JA-60
)	
J.M. Sr.,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Barberis and Justice Moore concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court erred in terminating father’s parental rights without first eliciting a factual basis for such termination even though father admitted his unfitness.
- ¶ 2 Father, J.M. Sr., appeals the order of the circuit court of Madison County entered on February 20, 2018, terminating his parental rights. We reverse and remand for further proceedings.
- ¶ 3 On March 13, 2015, the State of Illinois filed a juvenile petition alleging the minor, J.M. Jr., was abused. A temporary custody order was entered as to father, on

March 23, 2015, and as to D.E., mother, March 19, 2015, granting the Department of Children and Family Services (DCFS) temporary custody. On July 21, 2015, an adjudicatory order was entered finding the minor to be neglected and abused. Father was alleged to have left the minor at home unsupervised with drug paraphernalia and marijuana in the house. Father was also alleged to have a substance abuse addiction that impaired his ability to provide adequate care for the minor, that resulted in him leaving his home in a deplorable condition, and that kept him from protecting the minor from domestic violence. Mother was alleged to have failed to provide adequate care, support, or concern for the minor, and she previously had been found to be unfit in a prior juvenile case with respect to the minor's siblings.

¶ 4 On January 22, 2018, the State filed a petition for termination of father's parental rights and for appointment of a guardian with power to consent to the minor's adoption. The hearing on the unfitness of father was scheduled for January 23, 2018. On the motion of father, over the objection of the State, the court entered an order continuing the unfitness hearing to February 1, 2018. The court further entered the following notation: "Father *** admits to the Allegations in the State's Petition to Terminate Parental Rights, and admits that he is Unfit at a clear and convincing evidence standard." On February 1, 2018, the court conducted a bifurcated unfitness, best interest hearing. At the hearing, the court took judicial notice that mother had already filed a final and irrevocable surrender on August 10, 2017. The minor's legal father was served by publication and evidence was presented that he was unfit. The State then noted that father was present in court and had "conceded *** that he is unfit at a clear and convincing standard" on January 23,

2018. No other evidence was presented in the unfitness portion of the case. The court found father unfit by clear and convincing evidence. Specifically, the court found that father failed to make reasonable efforts to correct the conditions that led to removal of the minor; failed to make reasonable progress toward the return of the minor; and failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor. The court noted that father had previously appeared and admitted that he was unfit. There was no factual basis for the finding that father was unfit, however. The court entered the order terminating father's parental rights on February 20, 2018, and father filed his notice of appeal the same day.

¶ 5 Father raises three issues on appeal, but we need only address one: whether the court erred in finding father unfit, without eliciting a factual basis prior to accepting his admission as to unfitness. The simple answer is “yes.” And, because the court's termination of father's parental rights was based solely on his admission of unfitness, without first determining whether a factual basis existed for such an admission, the court committed error, and this cause must be remanded for an appropriate finding of unfitness.

¶ 6 Before a court can adjudicate a parent unfit and terminate his or her parental rights, the State must prove by clear and convincing evidence that a parent is unfit. *In re M.H.*, 196 Ill. 2d 356, 365 (2001). While father may be unfit in this instance, the State presented no factual basis to the court for such a determination, nor did the court question father as to whether he understood his rights prior to accepting his admission of unfitness. The order merely repeated the statutory definition of unfitness. A factual-basis requirement ensures that the State has a basis for its allegation of unfitness and further

ascertains that a parent's admission of unfitness is knowing and voluntary. *In re M.H.*, 196 Ill. 2d at 365-66. Because due process requires the court to determine whether a factual basis exists for a parent's admission of unfitness before accepting any such admission (*In re M.H.*, 196 Ill. 2d at 368), we must remand this cause for a new fitness hearing with an appropriate finding of unfitness.

¶ 7 For the foregoing reasons, we reverse the termination of father's parental rights and remand this cause for further proceedings.

¶ 8 We also note that pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) our decision in this case was to be filed on or before July 23, 2018, absent good cause shown. Father requested an extension of time to file briefs after substitution of appellate counsel, resulting in a delay and the scheduling of oral argument on August 23, 2018. Consequently, we find good cause exists for issuing our decision after July 23, 2018.

¶ 9 Reversed and remanded with directions.