

NOTICE
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2018 IL App (5th) 180149-U

NO. 5-18-0149

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re J.E., a Minor</i>)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 14-JA-53
)	
Jeremy E.,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order terminating the respondent father's parental rights to his minor child is affirmed where the court's findings that he was incarcerated for seven years as a result of a criminal conviction at the time that the petition to terminate his parental rights was filed, that he had little contact with the minor child prior to his incarceration, and that the length of his incarceration prevented him from discharging his parental duties are not against the manifest weight of the evidence. Also, the court's finding that termination of his parental rights was in the best interests of the minor is not against the manifest weight of the evidence.

¶ 2 The respondent father, Jeremy E., appeals the judgment of the circuit court of Madison County terminating his parental rights to his minor child, J.E. On appeal,

Jeremy E. argues that the court's findings that he was unfit is against the manifest weight of the evidence. He further argues that the court's finding that termination of his parental rights was in J.E.'s best interests is against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 As a preliminary matter, because this appeal involves a final order terminating parental rights, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on August 4, 2018. The case was placed on the August 22, 2018, oral argument setting, and we now issue this Rule 23 order.

¶ 5 J.E. was born on April 9, 2014, to Jessica B. and Jeremy E. Jessica B.'s parental rights were also terminated, but the only appellant in this case is Jeremy E.

¶ 6 On April 14, 2014, almost one week after J.E.'s birth, the State filed a juvenile petition, asserting that J.E. was a neglected minor and requesting that he be adjudicated a ward of the court. The petition alleged that J.E. was neglected in that his parents did not provide the proper or necessary support, education, medical, or other remedial care for his well-being in violation of section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2012)). The petition asserted that Jessica B. had previously been indicated by the Illinois Department of Children and Family Services (DCFS) for inadequate supervision and environmental neglect of her three other children; that she was diagnosed with bipolar disorder, anxiety disorder, and

panic attacks, which impaired her ability to parent; that she was on probation for felony drug possession; and that Jeremy E. had an order of protection filed against him.

¶ 7 That same day, the trial court entered a temporary custody order, denying temporary custody of J.E. to DCFS. The court found that probable cause for filing the petition existed because Jessica B. had three other children in care, had been indicated three times by DCFS, and had not addressed her mental health issues as ordered by her service plan. However, the court found that there was no immediate and urgent necessity to remove J.E. from the home of Jessica B. or Jeremy E. and leaving J.E. in the home was not contrary to his health, welfare, and safety.

¶ 8 On October 22, 2014, Jessica B. went to prison for violating her probation. On December 9, 2014, the trial court entered an adjudicatory order, finding that J.E. was neglected by Jessica B. in that he suffered from a lack of support, education, and remedial care. Jessica B. was released from prison on June 5, 2015, and the court ordered that any contact between J.E. and Jessica B. was required to be supervised by DCFS. There were no allegations made against Jeremy E. At the time of the adjudicatory hearing, J.E. was living with Jeremy E.

¶ 9 At some point between December 2014 and July 2015, J.E. was placed in the care of Jeremy E.'s parents, and Jeremy E. only had supervised visitation. However, the dispositional report filed by Hoyleton Youth and Family Services (Hoyleton) on July 14, 2015, indicated that J.E. resided with Jeremy E. and Jeremy E.'s sister.

¶ 10 On July 14, 2015, the trial court entered a second temporary custody order, placing temporary custody of J.E. with DCFS. The court found that there was an immediate and

urgent necessity to remove J.E. from the home and that leaving J.E. in the home was contrary to his health, welfare, and safety for the following reasons: (1) Jeremy E. was being investigated for sexually abusing a 15-year-old; (2) he allowed Jessica B. to have unsupervised contact with J.E. after she was released from prison; and (3) he violated previous court orders.

¶ 11 On September 17, 2015, an adjudication/disposition report was filed by Hoyleton, which indicated that Jeremy E. was arrested in July 2015 and placed into custody at the Madison County jail and that he had been charged with two counts of sexual assault of a 15-year-old. J.E. was taken from Jeremy E.'s care on July 14, 2015, after the arrest, and Jeremy E. was not allowed visitation with J.E. because of the pending charges.

¶ 12 On October 27, 2015, the trial court entered an adjudicatory order, finding that J.E. was neglected by Jeremy E. in that J.E. suffered from a lack of support, education, and remedial care and was in an environment that was injurious to his welfare as defined by section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2014)). The court based these findings on the fact that Jeremy E. was unable to provide care, support, or concern for J.E. because he was charged with two counts of criminal sexual assault and one count of aggravated criminal sexual abuse and was being held in the Madison County jail on these pending charges.

¶ 13 On November 10, 2015, the trial court entered a dispositional order, finding that J.E. was a neglected minor and consistent with his health, welfare, and safety, it was in his best interests to become a ward of the court. The court found that Jeremy E., for reasons other than financial circumstances alone, was unfit to care for, protect, train,

educate, supervise, or discipline J.E. and that placement with Jeremy E. was contrary to J.E.'s health, safety, and best interests. Thus, custody of J.E. was placed with DCFS.

¶ 14 In January 2016, Jeremy E. was convicted and sentenced to seven years in prison. On July 7, 2016, he signed a final and irrevocable consent to adoption by his cousin and her husband. At the hearing on the consent to adoption, the trial court informed Jeremy E. that J.E. would be placed for adoption with his cousin if Jessica B.'s parental rights were terminated but that his parental rights would remain intact if his cousin could not or did not adopt J.E.

¶ 15 On April 25, 2017, the State filed a petition for termination of Jessica B.'s parental rights and for appointment of guardian with power to consent to adoption. On September 19, 2017, the trial court entered an order terminating Jessica B.'s parental rights. On October 3, 2017, Jeremy E.'s cousin gave notice for J.E. to be removed from her home. Thereafter, J.E. was put in traditional placement with Lashawnda B.

¶ 16 On November 28, 2017, the State filed an amended petition for termination of Jeremy E.'s parental rights and for appointment of guardian with power to consent to adoption. In the petition, the State alleged that Jeremy E. was unfit to have J.E. under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)) in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to J.E.'s welfare; under section 1(D)(m)(i) of the Adoption Act (*id.* § 1(D)(m)(i)) in that he failed to make reasonable efforts to correct the conditions that were the basis for J.E.'s removal during any nine-month period after the adjudication of neglect; under section 1(D)(m)(ii) of the Adoption Act (*id.* § 1(D)(m)(ii)) in that he failed to make reasonable progress toward

J.E.'s return during any nine-month period after the adjudication of neglect; and under section 1(D)(r) of the Adoption Act (*id.* § 1(D)(r) (West 2016)) in that he was convicted of criminal sexual assault, was sentenced to seven years' imprisonment, had little contact with J.E. prior to his incarceration, and the length of his incarceration prevented him from discharging his parental duties. That same day, the trial court entered a permanency order, changing the permanency goal to substitute care pending termination of parental rights.

¶ 17 On January 16, 2018, Hoyleton filed a best interest report, which indicated that Jeremy E. had no contact with J.E. since surrendering his parental rights.

¶ 18 At the March 6, 2018, fitness hearing, Corinne Fish, a foster care case manager at Hoyleton, testified that J.E. was initially brought into DCFS care in April 2014, shortly after he was born, because Jessica B. had three other children already in care, and she was not making satisfactory progress on her service plan. Custody of J.E. was then given to Jeremy E., and J.E. was with Jeremy E. for a little over one year. In July 2015, J.E. went back into DCFS custody because Jeremy E. had left J.E. unsupervised with Jessica B. Around this time, Jeremy E. was charged with aggravated criminal sexual assault, and he went to prison. J.E. was then placed with a relative, and Jeremy E. signed a final and irrevocable consent to adoption. J.E. lived with the relative for approximately one and a half years; he was removed from the home after the relative determined that he was a safety concern.

¶ 19 Corinne testified that she did not personally refer Jeremy E. for any services because he was already in prison when she became the caseworker, and he would remain

in prison for a lengthy period of time. She did not know if the prison offered any services, and she did not talk to anyone at the prison about the services offered because Jeremy E. had signed the consent to adoption. During her time as the caseworker, Jeremy E. did not have any visitation with J.E. She explained that DCFS did not facilitate visitation once a parent has signed a consent to adoption. She further explained that Jeremy E. did not request visitation with J.E. from the time that she was assigned to the case in January 2017 until October 2017, when J.E. was moved into traditional foster care. She was not aware of Jeremy E. attempting to maintain contact with J.E., sending cards or gifts to the child, or requesting that his relative bring J.E. to the prison for visitation. She further testified that she first met Jeremy E. at the January 2018 hearing, she did not correspond with him before meeting him, and she did not talk to anyone at the prison about his case.

¶ 20 After J.E. was removed from relative placement, and the consent to adoption became invalid, Jeremy E. requested visitation in January 2018, but it was determined that visitation was not in J.E.'s best interests because Jeremy E. was in prison, he would remain there for a long period of time (his projected discharge date was July 2023), he had not seen J.E. for approximately two years, the prison was approximately four hours roundtrip from J.E.'s home, and the State had already filed a petition to terminate Jeremy E.'s parental rights. Corinne noted that J.E. would be six years old at the time of Jeremy E.'s parole and, if Jeremy E. did not make parole, J.E. would be eight years old when Jeremy E. was released from prison.

¶ 21 Jeremy E. testified that the prison had services, such as anger management and parenting programs, but he was not allowed to participate in the parenting program because he was a sex offender. He did successfully complete the anger-management program, which he entered about one month ago. He testified that he initially did not want to sign the consent to adoption but determined that it was the best thing for J.E. and that J.E. belonged with family. After J.E. was born, Jeremy E. received a phone call from DCFS informing him that they had taken J.E. from Jessica B.'s care and that if he did not take J.E., J.E. would go into foster care. At the time, he was living in Oklahoma to be near his other children, but he "dropped everything" and moved to Illinois to care for J.E.

¶ 22 After Jeremy E. went to jail, he requested visitation with J.E. but was told that the jail would not allow visitation. He also requested visitation while in prison, but the only time that he was allowed to see J.E. was at the court hearing where he signed the consent to adoption. He was able to monitor J.E.'s progress and well-being while in prison because his mother stayed in contact with his cousin. He testified that he was willing to do anything that it took to get his son back, which included engaging in any required services.

¶ 23 After hearing the testimony and the arguments of counsel, the trial court determined that Jeremy E. was unfit pursuant to section 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2016)) as he was an "uninvolved incarcerated parent." In making this decision, the court stated as follows: "You might be out in three years, but that just might be a best case scenario. It could be longer than that. I cannot make this child wait that long because it could be longer."

¶ 24 The trial court then proceeded to the best-interest hearing. At the best-interest portion of the hearing, Corinne testified that J.E. had been placed with Lashawnda B. on two separate occasions; the first time he lived with her for approximately one year but was removed from her house after Jeremy E. requested that J.E. be placed in his cousin's home. After over one year of living with the relative, J.E. was removed from that home and then placed back with Lashawnda B. in October 2017. He had lived with Lashawnda B. for approximately 18 months of his life. Corinne testified that Lashawnda B.'s home met minimum DCFS standards, that she signed a permanency commitment, that she was employed and financially able to support J.E., and that she had facilitated visits between J.E. and his biological siblings. Corinne testified that she had the opportunity to observe J.E. in his foster home and noted that Lashawnda B. provided snacks for J.E. after school, helped him with his homework, did activities with him, and read with him. She observed J.E. hugging Lashawnda B. and opined that J.E. was bonded with her and looked to her to meet his needs. She explained that J.E. felt safe and protected in the home and was excited about getting his own bedroom.

¶ 25 Corinne testified that she had not observed Jeremy E. interact with J.E. and that he had not had visitation with J.E. during her time as the caseworker. She testified that the only time that Jeremy E. reached out to her about visitation was during the January 2018 court hearing, after the petition for termination of parental rights was filed. She did not offer visitation between Jeremy E. and J.E. at that time because they did not feel that visitation was in J.E.'s best interests, the termination proceedings had already begun, and Jeremy E. was in prison. She believed that Jeremy E.'s last visit with J.E. occurred in

2015 and opined that J.E. was not bonded with his father because he had spent "very little time with him and only when he was an infant and very early on in his age" and spent "most of his life not being around his father and not knowing his father."

¶ 26 Jeremy E. testified that he asked his caseworker for visitation while he was in jail, but the visitation never occurred. While in prison and before he signed the consent to adoption, he attempted to contact his caseworker by letter, but he received no response. The day that he went to jail was the last time that he saw J.E. He testified that he wanted what was best for J.E. and that if he was "doing some hard time," he would let him go to a home where he would have a safe and good life. However, since he only had three years left until his parole date, he wanted to retain his parental rights.

¶ 27 After hearing the testimony and the arguments of counsel, the trial court found that it was in J.E.'s best interest that Jeremy E.'s parental rights be terminated and that J.E. be made available for adoption. In making this decision, the court stated as follows: "While everybody hopes that you are going to get out in three years, the fact of the matter is you have a five year sentence left, and I have to err on the side of caution and have to assume that you're going to do the *** five years if you do well." The court found that J.E. seemed bonded to Lashawnda B. and noted that Jeremy E. would be "away for a long time" and would have to be a registered sex offender for at least 10 years after his release.

¶ 28 On March 6, 2018, the trial court entered a written order terminating Jeremy E.'s parental rights. The court found by clear and convincing evidence that Jeremy E. was unfit under 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2016)) in that he was convicted of criminal sexual assault, was sentenced to seven years' imprisonment,

had little contact with J.E. prior to his incarceration, and the length of his incarceration prevented him from discharging his parental duties. The court also found by a preponderance of the evidence that it was in J.E.'s best interests that Jeremy E.'s parental rights be terminated. The court concluded that the foster parents wished to adopt J.E., that J.E. was strongly bonded with the family, that he was not strongly bonded with Jeremy E., and that his emotional, psychological, and financial needs were being met in his foster home. Jeremy E. appeals.

¶ 29 Termination of parental rights proceedings are governed by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2016)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)). *In re D.T.*, 212 Ill. 2d 347, 352 (2004). A petition to terminate parental rights is filed under section 2-29 of the Juvenile Court Act, which delineates a two-step process in seeking to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2016). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). 705 ILCS 405/2-29(2), (4) (West 2016); *D.T.*, 212 Ill. 2d at 352. If the court finds that the parent is unfit, the matter proceeds to a second hearing, at which the State must prove that termination of parental rights is in the best interests of the child. 705 ILCS 405/2-29(2) (West 2016); *D.T.*, 212 Ill. 2d at 352. Because each of the statutory grounds of unfitness is independent, the trial court's finding may be affirmed where the evidence supports a finding of unfitness as to any one of the alleged grounds. *In re D.C.*, 209 Ill. 2d 287, 296 (2004).

¶ 30 Our courts have recognized that parental rights and responsibilities are of deep importance and should not be terminated lightly. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000). Thus, parental rights may be terminated only after a finding of unfitness that is supported by clear and convincing evidence. *In re M.F.*, 304 Ill. App. 3d 236, 238 (1999). A finding of parental unfitness will not be disturbed unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent from the record. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A trial court's finding of unfitness is given great deference because it has the best opportunity to view and evaluate the parties and their testimony. *Id.* A reviewing court, therefore, does not reweigh the evidence or reassess the credibility of the witnesses. *K.B.*, 314 Ill. App. 3d at 748.

¶ 31 In this case, the State asserted the following four grounds for unfitness against Jeremy E.: (1) that under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2016)), he failed to maintain a reasonable degree of interest, concern, or responsibility as to J.E.'s welfare; (2) that under section 1(D)(m)(i) of the Adoption Act (*id.* § 1(D)(m)(i)), he failed to make reasonable efforts to correct the conditions that were the basis for J.E.'s removal during any nine-month period after the adjudication of neglect; (3) that under section 1(D)(m)(ii) of the Adoption Act (*id.* § 1(D)(m)(ii)), he failed to make reasonable progress toward J.E.'s return during any nine-month period after the adjudication of neglect; and (4) that under section 1(D)(r) of the Adoption Act (*id.* § 1(D)(r)), he was incarcerated as a result of a criminal conviction that prevented the discharge of his parental duties for a period in excess of two years after the filing of the

petition for termination of parental rights, accompanied by little or no previous contact and/or support for J.E. The trial court found him unfit on the fourth ground.

¶ 32 Section 1(D)(r) provides that a single incarceration can make a parent unfit under the following circumstances:

"The child is in the temporary custody or guardianship of [DCFS], the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights." 750 ILCS 50/1(D)(r) (West 2016).

There are four elements to this definition of "unfit person" that the State must prove by clear and convincing evidence. *In re M.H.*, 2015 IL App (4th) 150397, ¶¶ 25, 27.

¶ 33 As for the first element, that the child is in the temporary custody or guardianship of DCFS, J.E. was in DCFS custody when the petition to terminate Jessica B.'s parental rights was filed in April 2017 and when the amended petition to terminate Jeremy E.'s parental rights was filed in November 2017. As for the second element, that the parent was incarcerated as a result of a criminal conviction at the time the petition to terminate parental rights was filed, Jeremy E. pled guilty to criminal sexual assault in January 2016 and was sentenced to seven years' imprisonment. The amended petition to terminate his parental rights was filed after he was incarcerated.

¶ 34 The third element, that prior to incarceration, the parent had little to no contact with the child or provided little or no support for the child, is the contested element in this case. To satisfy this element, the State either has to prove that Jeremy E. had little or no

contact with J.E. before incarceration or provided little or no support before incarceration. See *M.H.*, 2015 IL App (4th) 150397, ¶ 28. J.E. was born on April 9, 2014, and was taken into DCFS custody until Jeremy E. moved to Illinois to take over his care. J.E. then remained in Jeremy E.'s custody until July 2015, approximately 13 months, but was removed to relative placement after Jeremy E. allowed unsupervised visitation between Jessica B. and J.E. and after the sexual-abuse allegations were made against Jeremy E. Jeremy E. testified that he remained in contact with J.E. until he went to jail. After realizing that he was going to prison, he signed the consent to adoption in July 2016. J.E. remained in relative placement from July 2016 until October 2017, and Jeremy E. had no contact with J.E. during this time (although he did testify that he was able to monitor J.E.'s progress through his mother). The last time that he saw J.E. was the day he signed the adoption consent in July 2016. DCFS did not facilitate visitation with him while in prison because he had signed the consent to adoption.

¶ 35 Corinne testified that, after the consent became invalid in October 2017, Jeremy E. did not request visitation with J.E. until January 2018, after the petition for termination of his parental rights was already filed and termination proceedings were in progress. DCFS denied his request for visitation because it believed that traveling four hours to visit Jeremy E. in prison would not be in J.E.'s best interests, and Jeremy E. did not make any further visitation requests after this denial. Corinne testified that she was not aware of any attempts by Jeremy E. to maintain contact with J.E. during his incarceration, even when J.E. was in relative placement. Although she was assigned to J.E.'s case in February 2017, she did not hear from Jeremy E. until the January 2018 hearing.

¶ 36 Although Jeremy E. appeared to care for J.E. during the first 13 months of J.E.'s life, the trial court concluded that the third element was met, *i.e.*, that Jeremy E. had little contact with J.E. before his incarceration. We cannot say that the opposite conclusion, that Jeremy E. had sufficient contact with J.E. before his incarceration, was clearly apparent from the record. Accordingly, we conclude that the trial court's finding on this element was not against the manifest weight of the evidence.

¶ 37 As for the last element, that the incarceration will prevent the parent from discharging his parental responsibilities for a period in excess of two years after the filing of the petition for termination of parental rights, Jeremy E.'s projected parole date is July 2021, and his projected discharge date is July 2023, more than two years after the filing of the petition for termination of parental rights. Thus, the fourth and final element is satisfied. Accordingly, we conclude that the trial court's finding of unfitness based on section 1(D)(r) was not against the manifest weight of the evidence.

¶ 38 Jeremy E. also challenges the trial court's best-interests finding. Once the parent has been found unfit, his rights must yield to the best interests of the child. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998). The State has the burden of proving, by a preponderance of the evidence, that termination of parental rights is in the best interests of the child. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). The trial court's best-interests finding will not be disturbed unless it is against the manifest weight of the evidence. *Id.*

¶ 39 In determining the best interests of the child, the court must consider the following statutory factors in the context of the child's age and developmental needs: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's

background and ties; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 40 In the present case, the trial court made the following best-interests findings: (1) that J.E. has been placed in a traditional placement for approximately 18 months; (2) that his foster parents wished to adopt him, and they signed permanency commitments; (3) that he is strongly bonded to the foster family; (4) that he is not strongly bonded to Jeremy E.; and (5) that his emotional, psychological, and financial needs are being met in the foster home.

¶ 41 Based on this record, these best-interests findings are not against the manifest weight of the evidence. The evidence adduced at the best-interests hearing was that J.E. had lived with Lashawnda B. for approximately 18 months of his life, that her home met minimum DCFS standards, that she signed a permanency commitment, that she was employed and financially able to support J.E., and that she facilitated visits between J.E. and his biological siblings. Corinne observed J.E. and Lashawnda B.'s interactions in the home and noted that J.E. was bonded to her, looked to her to meet his needs, and felt safe and protected in the home. Corinne testified that J.E. was not bonded with Jeremy E. Jeremy E. testified the last time that he saw J.E. was when he signed the consent to adoption in July 2016.

¶ 42 Moreover, we note that Jeremy E. is in prison for a minimum of three years and a maximum of five years. To regain custody of J.E., he would be required to engage in services. In the meantime, J.E. would remain in Lashawnda B.'s house and would become more attached and develop a stronger bond with her. It is not in his best interests to be in limbo for that length of time. Thus, after considering all of the statutory factors, we conclude that the trial court's best-interests finding was not against the manifest weight of the evidence.

¶ 43 **CONCLUSION**

¶ 44 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 45 Affirmed.