2019 IL App (4th) 180603-U

NO. 4-18-0603

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 7, 2019
Carla Bender
4th District Appellate
Court, IL

In re ADOPTION OF D. R.	) Appeal from the
	) Circuit Court of
(Jathan P. and Kristin P.,	) Macon County
Petitioners-Appellees,	) No. 17AD30
v.	)
Timierra J.,	) Honorable
Respondent-Appellant).	) Thomas E. Little,
	) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) By finding respondent to be an "unfit person" within the meaning of sections 1(D)(b) and (l) of the Adoption Act (750 ILCS 50/1(D)(b), (l) (West 2016)), the trial court did not make a finding that was against the manifest weight of the evidence.

(2) Nor did the trial court make a finding that was against the manifest weight of the evidence by finding it would be in the child's best interests to terminate respondent's parental rights.

¶ 2 Petitioners, Kristin P. and Jathan P., seek to adopt D.R., born June 11, 2017. Respondent, Timierra J., is D.R.'s mother, and she opposes the proposed adoption. On the motion of petitioners, the trial court terminated respondent's parental rights after finding, in separate hearings, that (1) she was an "unfit person" under sections 1(D)(a), (a-1), (a-2), (b), (c), (h), (k), (l), and (o) of the Adoption Act (750 ILCS 50/1(D)(a), (a-1), (a-2), (b), (c), (h), (k), (l), (o) (West 2016)) and (2) terminating her parental rights would be in the best interests of D.R.

Respondent appeals. (The court also terminated the parental rights of the reputed father, Demetrius R., but he does not appeal.)

¶ 3 When, with the record before us, we review the trial court's finding that respondent lacked a reasonable degree of interest, concern, or responsibility as to D.R.'s welfare (*id.* § 1(D)(b), (l)), we are unable to say that the finding was against the manifest weight of the evidence. Nor can we say that the court made a finding that was against the manifest weight of the evidence by finding it would be in D.R.'s best interests to terminate respondent's parental rights. Therefore, deferring to those findings of fact, we affirm the judgment.

¶ 4 I. BACKGROUND

¶ 5 A. The Commencement of the Adoption Proceeding

¶ 6 On May 12, 2017, petitioners filed a document titled "Verified Petition to Adopt Unborn Child and Verified Petition to Pay Living Expenses." In count I of their petition, they stated they wanted to adopt a child to whom they were unrelated and who, it was expected, would be born on or about June 18, 2017. Respondent, the unborn child's mother, had signed a "Preliminary Consent to Adoption of Unborn Child," which was attached to the petition. By an "Affidavit of Identification," also attached to the petition, respondent identified someone named Christopher, last name and whereabouts unknown, as the unborn child's father. In count II, petitioners stated that they wished to pay the reasonable living expenses of respondent. They explained:

> "There is a need for the payment of such expenses to protect the health of the biological parent and the health of the child sought to be adopted, as the biological mother is unable to afford the living expenses associated with the care of herself and her unborn child."

Petitioners proposed filing an accounting no later than 45 days after the birth of the child.

¶ 7 B. A Short-Term Guardianship

¶ 8 On April 19, 2017, the same day she signed the preliminary consent to adoption, respondent signed a document titled "Appointment of Short-Term Guardian" (see 755 ILCS 5/11-5.4 (West 2016)), in which she appointed petitioners as the short-term guardians of the child to whom she expected to give birth on or about June 18, 2017. The effective date of the appointment was "[t]he date of the baby's birth," and the guardianship was to end "on the date the adoption [was] final and the judgment of adoption [was] entered."

¶ 9 Also on April 19, 2017, respondent signed a document titled "Request for the Minor Child to Be Released from the Hospital to Short Term Guardians." The document read:

> "I hereby request that my child be released from Decatur Memorial Hospital in Decatur, Illinois[,] directly into the care, custody[,] and control of [petitioners], who reside in Macon County, Illinois. I have directly appointed [petitioners] as the short-term guardian [*sic*] for our child[,] as evidenced in the attached document[,] titled [']Appointment of Short Term Guardian['] "

¶ 10 C. The Appointment of a Guardian *Ad Litem*

¶ 11 On May 24, 2017, the trial court appointed a guardian *ad litem*, Craig W. Runyon. On June 2, 2017, he filed an answer, which neither admitted nor denied the allegations in the adoption petition but demanded "full proof thereof."

¶ 12 D. Petitioners' Motion to Terminate Parental Rights

¶ 13 On September 22, 2017, petitioners filed a motion titled "Verified Motion Seeking Finding of Unfitness and for Permanent Termination of Parental Rights." In their

motion, they stated that they wished to adopt respondent's daughter, D.R., who was born on June 11, 2017, and who had been in "their exclusive care, custody[,] and control" since her birth.

¶ 14 Petitioners reminded the trial court that on August 16, 2017, "in an uncontested guardianship proceeding," Macon County case No. 2017-P-182, the court appointed them as plenary guardians of D.R. The order so appointing them stated that the reason for the appointment was that respondent and Demetrius R. (who now, instead of Christopher, was the reputed biological father) were "unable to provide care for [D.R.]"

¶ 15 When D.R. was born (the motion continued), respondent for the first time identified Demetrius R. as D.R.'s father. Although Demetrius R. visited D.R. in the hospital, petitioners did not know if he had signed a voluntary acknowledgment of paternity. In any event, after notice was published pursuant to section 7 of the Adoption Act (750 ILCS 50/7 (West 2016)), no man, not even Demetrius R., had registered with the putative-father registry (see *id.* § 12.1).

¶ 16 Petitioners alleged that Demetrius R., "All Whom It May Concern," and respondent were "unfit persons"—in other words, that they were unfit to be the parents of D.R.—and petitioners requested a termination of their parental rights to D.R. Because Demetrius R. does not appeal the termination of his parental rights, we need not recount the allegations against him. As for respondent, petitioners alleged that, for essentially seven reasons, she was unfit to maintain her parental rights to D.R.

¶ 17 First, petitioners alleged that respondent had abandoned D.R. (see *id.* §§ 1(D)(a), (a-1), (a-2)), as evidenced by her execution of the "Preliminary Consent to Adoption of Unborn Child"; her appointment of petitioners as short-term guardians of D.R.; and her failure to

participate in the guardianship case, Macon County case No. 2017-P-182, despite having received due notice.

¶ 18 Second, petitioners alleged that respondent had failed to maintain a reasonable degree of interest, concern, or responsibility as to D.R.'s welfare. See *id.* § 1(D)(b).

¶ 19 Third, petitioners alleged that respondent had deserted D.R. "for more than 3 months next preceding the filing of this petition." See *id.* § 1(D)(c).

¶ 20 Fourth, petitioners accused respondent of "[o]ther neglect of, or misconduct toward[,] the child" (*id.* § 1(D)(h)) in that (1) during gestation, she failed to obtain necessary prenatal medical care for the child and failed to take the necessary vitamins and nutrition; (2) when D.R. was born, respondent's blood tested positive for marijuana (according to the "information and belief" of petitioners); and (3) for over a month after her birth, D.R. showed symptoms of marijuana withdrawal (also "according to the information and belief" of petitioners, who had formed this belief after speaking with D.R.'s physician).

¶ 21 Fifth, petitioners alleged that, for more than a year immediately before the commencement of the unfitness proceeding, respondent was addicted to drugs other than those prescribed by a physician. See *id.* § 1(D)(k).

¶ 22 Sixth, petitioners alleged that, during the first 30 days after D.R.'s birth, respondent failed to demonstrate a reasonable degree of interest, concern, or responsibility as to D.R.'s welfare. See *id.* § 1(D)(l).

¶ 23 Seventh, petitioners alleged that respondent had repeatedly and continuously failed to provide D.R. with adequate food, clothing, or shelter even though she had been physically and financially able to do so. See *id.* § 1(D)(o). Petitioners added: "Despite working two jobs, she has provided no physical or monetary care or support for the child since her birth."

¶ 24 E. The Amended Petition for Adoption

¶ 25 On September 22, 2017, petitioners moved for permission to file an amended petition for adoption. On December 11, 2017, the trial court granted the motion, and on December 13, 2017, petitioners filed a verified petition to adopt D.R.

¶ 26 F. Respondent's Petition to Discharge Guardianship of Minor Dismissed Because of Her Failure to Appear

¶ 27 On September 26, 2017 (according to the date of the notarization), respondent signed a document titled "Petition to Discharge Guardianship of Minor" (see 755 ILCS 5/11-14.1(b) (West 2016)), in which she requested that Kristin P. (alone) "be discharged as guardian of [D.R.]" and that D.R. be returned to her custody.

¶ 28 On January 8, 2018, respondent filed this petition in the guardianship case, Macon County case No. 2017-P-182, and served a notice on Kristin, at her attorney's address, that the petition would be heard on January 23, 2018, at 8:45 a.m. (For convenience and brevity, when referring to petitioners individually, we will call them by their first names since they have the same last name. We intend no familiarity or disrespect.) Petitioners appeared at the scheduled hearing, but respondent did not appear and, consequently, the trial court dismissed her "Petition to Discharge Guardianship of Minor."

¶ 29 G. The Unfitness Hearing

¶ 30 On August 6, 2018, the trial court held an unfitness hearing on petitioners' motion to terminate parental rights. (A proceeding for the termination of parental rights is divided into two hearings. There is an initial hearing on the allegations that the parent is an "unfit person" as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016). If, in that initial hearing, the trial court finds the allegations to be proven by clear and convincing evidence, only then does the court hold a subsequent hearing, in which the court decides whether it would be in

the best interests of the child to order the termination of parental rights. *In re A.S.B.*, 381 Ill. App. 3d 220, 225 (2008)). We need not recount all the evidence adduced in the unfitness hearing. The following summary should suffice to impart an understanding of the case.

¶ 31 1. *Judicial Notice*

¶ 32 At the beginning of the hearing, at the request of petitioners and without objection by respondent, the trial court took judicial notice of the docket entries in the guardianship case, the order in which the court appointed petitioners as plenary guardians of D.R., the petition that respondent subsequently filed to terminate the guardianship, and her failure and Demetrius R.'s failure to appear at the hearing on her petition.

¶ 33 2. *The Testimony of Kristin P.*

¶ 34 On March 12, 2017, Kristin received the following text message from respondent, with whom she previously was unacquainted: "Good Morning, My Name is Timierra & and I was passed on your number by a good friend. I'm seeking adoption parents?" Kristin texted back: "My husband and I are seeking to adopt!!!!" and she introduced herself and her husband, stating that she was a sixth-grade teacher and that he was a counselor. Respondent then explained to her:

> "I have two kids already and I'm 20. Im choosing adoption because another baby would put my life on hold again & I still have goals and dreams I'm trying to accomplish. I'm just not ready for 3 kids[.]
>
> * * *
>
> I went to an appointment twice throughout this pregnancy, I know that's bad but I don't want this Child. I know that sounds even worse but I'm so happy I

found you guys. I have an appointment next Wednesday & and I'm only going to make sure she's healthy for you guys[.]

* * *

Well I'm sure, I don't want this baby I've been sure since day one. I see if it was my first child hell even my second but no its the 3rd one & no I just can [*sic*] & I won't[.]"

¶ 35 At one point in this conversation, Kristin texted: "I know many women that have an abortion and it just kills me." Respondent replied:

"That was my first choice, I had the abortion pill. But why kill a child. & only clothing I have is From the girls. I don't have anything & I don't plan on getting anything. Sorry for being so blunt. I'd rather she grows up with a mother & father instead of a split home[.]"

¶ 36 Sometime afterward, petitioners met with respondent in person, in a restaurant.

¶ 37 On April 21, 2017, Kristin texted respondent that she was "just so nervous about buying things yet because of [her] last experience and then had to take a lot of things back." Respondent assured her: "[I']m not changing my mind[.]" Kristin texted: "OK. I was hoping you were not changing your mind." Respondent added: "[Y]eah I just know what I want & what I dont want is to waste another year of my life."

¶ 38 On June 4, 2017, Kristin sent the following text message to respondent: "Are you rethinking the adoption? I am just so worried is all. I think I am so worried because our last birth mom was good up until she was about to have the baby and then she backed out." Respondent replied: "No I'm not backing out as long as I can be in her life & get to explain to her why I made the decision[,] then I'm fine with the adoption." Kristin texted back: "Of course you can be

in her life and explain to get [*sic*] why you made the decision. We honestly would love that." Respondent continued: "Yea I don't want her to grow up feeling neglected even tho she's going to be well taken care of and loved she will become older & she's gonna want answers."

¶ 39 So, there was to be an adoption, subject to the understanding that respondent would get to be in the child's life. Before the child was born, respondent signed multiple documents in contemplation of an adoption. Kristin identified the short-term guardianship and the preliminary consent to adoption, which were admitted in evidence. She also identified an "Adoption/Birth Plan for Mother," which respondent signed on April 19, 2017, and which provided as follows:

> "V. Labor/Birthing/Recovery
>
> [Respondent] is due on or about June 18, 2017. [Respondent] would like Kristin to cut the baby's umbilical cord. [*Respondent*] *does not want to see the baby after her birth and would like her removed immediately from the labor room to* [*petitioners'*] *room.* ***
>
> VI. After the Baby is Born (post[]partum)
>
> [Respondent] does not want to see the baby after her birth and would like her removed immediately from the labor room and transported to the nursery or to the [petitioners'] room. [Respondent] would like the baby transferred into the [petitioners'] room as soon as possible after the birth of the baby. [Respondent] would like the [petitioners] to give the baby her first bottle and make all decisions concerning the baby, including but not limited to, formula selection, shots[,] and medication.
>
> * * *

[Respondent] would like the baby to remain in the private nursery or in the alternative in the [petitioners'] private room. The baby should sleep in the [petitioners'] room unless it is medically necessary for the baby to be in the nursery.

[Respondent] permits the [petitioners], as the guardians of the baby, to make all decisions relating to the baby, including but not limited to medical decisions.

[Respondent] permits the [petitioners] to provide the baby with his/her legal name.

VII. Release

[Respondent] has appointed [petitioners] as the short-term guardian [*sic*] of the baby. Therefore, it is permissible to discharge the baby prior to [respondent's] discharge." (Emphases in original.)

¶ 40 On June 11, 2017, when respondent went into labor, petitioners joined her in the hospital. Demetrius R. also was there. For the first time, petitioners learned that he, purportedly, was the father. Respondent gave birth to D.R. Petitioners fed D.R. her first bottle of formula. D.R. stayed with petitioners in their private hospital room, and hospital staff deferred to petitioners in all decisions relating to D.R.'s medical care.

¶ 41 The next day, respondent was discharged from the hospital, but D.R. had to stay in the hospital an additional day because of something (Kristin could not remember what) that had been passed to her through the birth canal. Respondent left D.R. in the hospital with petitioners. Kristin testified: "The last thing [respondent] said before she walked out of the room

was[,] 'I guess I'll see you when you get older.' " Petitioners took D.R. home with them when D.R. was discharged from the hospital, and they remained her custodians.

¶ 42 On June 20, 2017, respondent texted Kristin: "[Demetrius R.] explained to me that he wants his rights because when [D.R.] get [*sic*] older she can see that he didn't give up his rights he was only supporting my decision and he wasn't involved in the decisionmaking process."

¶ 43 In a text conversation with Kristin on June 24, 2017, respondent told her:

> "I'm happy you guys are happy. When I got home I cried for hours. Didn't know how bad it was gonna hurt me to see her leave. But on the other hand I feel good about you guys raising her.
>
> * * *
>
> I feel safe and comfortable with her being with y'all. I believe she will be very loved. I made the right choice I just have to adjust."

¶ 44 In a text conversation the next day, respondent stated that although she was supposed to sign the adoption papers 72 hours after birth (see 750 ILCS 50/9(A), (B) (West 2016)), Demetrius R. did not want to give up his parental rights.

¶ 45 For some time after D.R. was born, respondent continued to ask for, and petitioners continued to send her, money for such things as utilities and a car.

¶ 46 In text messages, respondent continued to make inquiries about D.R. and to ask for photographs, which Kristin provided.

¶ 47 A final and irrevocable consent to adoption was never signed by either biological parent. At some point, respondent stated to Kristin that, instead of an adoption, she wanted a guardianship until D.R. turned 18; in other words, she wanted petitioners to be D.R.'s guardians

until D.R. became an adult. Accordingly, petitioners filed a petition to be appointed plenary guardians of D.R. The hearing on the petition was on January 23, 2018. Neither respondent nor Demetrius R. attended the hearing. The trial court granted the petition, and petitioners had been plenary guardians of D.R. since then.

¶ 48 Respondent has had a total of five visits with D.R. The visits occurred on July 8 and 23, 2017, on August 13 and 29, 2017, and on September 2, 2017. All the visits were either at respondent's apartment or her mother's house. Some of the visits were cut short at respondent's request, and respondent canceled a sixth visit, which was supposed to take place on July 30, 2017. When canceling that visit, respondent explained to Kristin that a visit that was only three hours long would just " 'piss [her] off.' "

¶ 49 There was a falling out, and visitation ceased altogether, when respondent refused a proposed visitation schedule in which she would have visitation with D.R. every three weeks. The purpose of the proposed schedule was to instill some predictability into visitation and to alleviate the disruptiveness of having to abruptly change plans whenever respondent, at the spur of the moment, called and asked for a visit. Respondent bridled at the proposed visitation schedule; she did not think that a visit every three weeks would be enough.

¶ 50 In September 2017, respondent texted Kristin that her attorney would be contacting her, Kristin. This message led Kristin to decide that any further contact between respondent and her or her husband should be through attorneys. She continued sending photographs of D.R. to respondent, though. The last time Kristin had any contact with respondent was in September 2017.

¶ 51 Respondent had never provided any financial support to D.R. and never sent D.R. any cards, letters, or gifts.

¶ 52 3. *The Testimony of Jathan P.*

¶ 53 Petitioners' attorney asked Jathan:

> "Q. *** When [respondent] was getting ready to be discharged [from the hospital after giving birth to D.R.], did she make any statements about when she would next see the child?
>
> A. The last thing she said before she walked out of the room was[,] 'I guess I'll see you when you get older.' "

¶ 54 Before leaving D.R. with petitioners in the hospital, respondent never obtained their home address. That was fine with Jathan. He preferred not to divulge to respondent where he and Kristin lived, because he had seen things on social media that made him leery. He had looked at Demetrius R.'s Facebook page and had seen some indications that Demetrius R. might be in a street gang. Jathan, who was an auxiliary police officer with the Decatur Police Department, testified:

> "A. I suspected that there may be some gang affiliation, specifically with the Vice Lords, because, like, in one of the pictures, they're all dressed in red. You can't see it too clearly in this picture, but they're all throwing up signs. He's got one picture where he's like pointing his arm at you like he's got a gun and he's pointing at the screen like he's pulling a trigger."

Concerned by what they saw on Facebook, petitioners decided it would be best if communication between themselves and respondent occurred either through attorneys or by telephone; respondent and Kristin had each other's cell phone number.

¶ 55 Respondent knew the address of petitioners' attorney because they had mailed her documents from that address—for example, the petition for plenary guardianship. Petitioners

filed that petition because after D.R. was born, respondent decided not to proceed with the adoption but to have petitioners be D.R.'s guardians instead, with the understanding that she would get to see D.R. now and then.

¶ 56 Originally, in conversations with petitioners, respondent took the position that although she wanted to be in D.R.'s life, she did not need to see D.R. as often as every other week. When petitioners gave respondent a proposed visitation schedule of every three weeks, she took offense and insisted on seeing D.R. every other week. Had respondent been willing to attend a meeting on visitation in the office of petitioners' attorney, petitioners would have offered her the additional visitation time that she wanted. The additional visitation time would have been in the form of holidays, birthdays, and other special occasions—but she failed to show up for either of the two meetings that petitioners scheduled to take place in their attorney's office.

¶ 57 Respondent had never sent D.R. any gifts, toys, or extra clothing. Since September 2017, when the visits stopped, Jathan had never seen any cards or gifts from respondent for D.R.

¶ 58 4. *Respondent's Testimony*

¶ 59 Respondent testified that, during her pregnancy, she was having financial difficulties. She already had two daughters, and she was making only "a hundred some dollars a week or barely that" at Burger King. Financial hardship was one of the main reasons why raising a third child seemed so daunting to her.

¶ 60 Therefore, in March 2017, respondent reached out to Kristin, asking if she and her husband were interested in an adoption. But she always made clear to Kristin that she wanted to be in the (as of yet unborn) child's life. Petitioners agreed to allow her to do so.

¶ 61 In the delivery room, respondent began having second thoughts about an adoption and "didn't want to go through with it." She put aside her feelings, however, because she did not want to disappoint petitioners.

¶ 62 Immediately after D.R.'s birth, respondent regretted the decision to give her up for adoption. Because respondent was so moody and distraught about leaving D.R. with petitioners in the hospital, she did not visit D.R. much immediately after D.R.'s birth. Nevertheless, even when not visiting D.R., respondent was texting Kristin, asking her how D.R. was doing and requesting photographs.

¶ 63 Eventually, respondent's finances improved, and she began asking for more visits. In September or October 2017, she started a second job. Because she was working a total of 66 hours a week, scheduling visits was difficult. But she was "available [for visitations] on the weekends because [she] was off both jobs on the weekends." Respondent testified: "I started to feel better once that I started saving and got a second job and started doing better and saving stuff, buy[ing] [D.R.] stuff[,] preparing for her to come home."

¶ 64 Respondent's attorney asked her:

> "Q. During your visits, we've heard testimony that you did not provide any gifts or letters or cards, things of that nature, but when [D.R.] was with you, did you supply the things that she needed?
>
> A. Yes, I had blankets for her, I had clothes, I had food. I informed them I had blankets, I had formula, I can get WIC for her. They said they didn't need it. Money isn't anything and that they got it. So[,] I took that as I should just save for myself and save up for her for myself.
>
> Q. Okay. But you did have items at home for her[,] then?

A. Yes."

¶ 65 In September 2017, the relationship between respondent and petitioners "fell apart." Kristin informed respondent, by text message, that petitioners' attorney was going to tell her about a proposed visitation schedule. The attorney then informed respondent that, under the proposed schedule, visitation would be once every three weeks. Respondent testified: "I felt like one time a month is not enough when I constantly informed them that I want to be in her life. She would not know me for real with one time a month." At the time, respondent was unaware that petitioners "planned to offer her additional days and holidays and family outings."

¶ 66 Respondent texted Kristin that she, too, would be hiring a lawyer. Respondent's attorney asked her:

"Q. When you told her you were hiring a lawyer, did you intend for that to mean all communication between you and her should break down?

A. No. I said I was gonna hire a lawyer because she wasn't responding. She wasn't—so I felt like me saying[,] '[H]ey, I'm gonna get a lawyer' would get her to be like[,] ['O]kay, let me talk to her.[']

After communication broke down, respondent continued sending text messages to Kristin, inquiring how D.R. was doing and requesting more photographs. Respondent's attorney asked her:

"Q. Was there ever any response?

A. No.

Q. After that breakdown in communication, were you ever able to get visits?

A. No."

¶ 67 Respondent's attorney asked her why she failed to appear in January 2018 for the hearing on her petition to end the guardianship. She answered:

"A. I was coming down, I got caught by a train. I came, but I came too late, and they gave me a docket and said that it was dismissed.

Q. Did you know what to do at that point?

A. No.

Q. In fact, once the adoption proceedings started to sort of take off here in this courtroom, did you take another pro se copy of a petition to terminate the guardianship to the attorney that was appointed to represent you?

A. I gave it to Matthew.

Q. Mr. Butler?

A. Yes.

Q. And then at that point in time, were you—were your attorneys more or less of the impression that it was a little too late to proceed with that now that the fitness proceeding was going forward?

A. Yes."

¶ 68 On cross-examination, petitioners' attorney asked respondent:

"Q. Did you make it to—were you aware that there were two meetings scheduled at my office to talk about visits, talk about moving forward with visits between you and [D.R.]?

A. Yes.

Q. And you didn't make either of those meetings; correct?

A. Correct."

¶ 69 On redirect examination, respondent's attorney asked her:

"Q. And it looks like you initially completed the [petition to end the guardianship] in September of 2017; correct?

A. Yes. It took me so long to file it because I was trying to find a lawyer. I didn't know if I should do it on my own. Then my mom was like just go file the papers.

Q. Okay. So you were looking for an attorney and someone to help you to make sure you did it right?

A. Uh-huh.

Q. And in the end, you had to file it pro se?

A. Uh-huh.

Q. Is had [*sic*] yes?

A. Yes.

Q. And you did that on January 8th of 2018?

A. Yes."

¶ 70 H. The Best Interest Hearing

¶ 71 On August 30, 2018, the trial court held a best interest hearing. The evidence tended to show the following.

¶ 72 Petitioners have been married for nine years. Kristin, age 38, was a teacher. Jathan, age 39, was a counselor for Sexual Assault Support Services at Heritage Behavioral Health, and he also was an auxiliary police officer. They earn enough income to meet D.R.'s needs, and they have been providing for her since her birth. From 7:15 a.m. to 2:30 p.m., when petitioners are away at work, D.R. is at "a home daycare," where there are other children, her

friends. Kristin testified that D.R. "absolutely loves her daycare provider." As a teacher, Kristin has summers, holidays, and spring and winter breaks off, during which D.R. stays at home with her.

¶ 73 For nine years, petitioners have lived in the same home, a one-story, three-bedroom house, where D.R. has two dogs; plenty of diapers, toys, and clothing; and her own bedroom as well as her own playroom. D.R. knows petitioners' extended family members, and she calls Kristin "Mama" and Jathan "Dada." Kristin testified:

> "A. *** That's all she says pretty much is ['D]ada, dada.[']
>
> Q. Okay. When Jathan comes home from work, how does she react?
>
> A. We have a big front window[,] and I always see him pulling in[,] so I'll always say[,] ['D]addy's home.['] And she goes running to the front door[,] and I open the front door[,] and when he comes up the steps, she immediately has her hands up[,] saying[,] ['D]ada, dada.['] She gets so excited when Jathan comes home from work."

¶ 74 When petitioners rested, respondent took the stand and testified that she never intended the guardianship to be permanent. She had a home where D.R. could live, and she was able to provide D.R. with food, shelter, and clothing. She insisted that it was not her own choice to discontinue visitation but that, rather, petitioners had stopped letting her see D.R. Respondent had tried to hire an attorney to get in contact with petitioners' attorney and establish a visitation schedule, but she could not afford to pay a retainer fee of $3500.

¶ 75 At the conclusion of direct examination, respondent testified:

"A. I am her mother. I carried her. Her sister[s] need to know her. Her family asks about her. The decision that was made, it was because I was incapable of providing for her. It was not because I didn't want her.

Q. And you love [D.R.]?

A. Yes."

¶ 76 On cross-examination, petitioners' attorney asked respondent:

"Q. Did you receive notice of the plenary guardianship?

A. Yes. But I met—I was at your office while you were in—in court and when you guys walked over that they gave you guys plenary guardianship, which I was upset about. Demetrius [was] upset about, which you guys know. I just—it was too late.

Q. Okay.

A. It was already done.

* * *

Q. So you knew where my office was?

A. That's where I waited for you while you are in court, yes.

Q. So[,] since August of last year, you knew where my office was, correct?

A. Yeah.

Q. Did you ever come back up to the office after August of last year?

A. Not sure."

¶ 77 The guardian *ad litem*, Runyon, had met with petitioners in their house and with respondent in her apartment. He found petitioner's home to be "well-maintained, nicely

furnished, and certainly suitable as a living space for [D.R.]." Runyon wrote the following in his account of his visit to respondent's apartment:

> "When I arrived for the meeting, I called Timierra[,] who told me she was still on her way home from work. When she arrived, we walked up to the apartment together[,] and upon reaching the front door, Timierra starting banging on the door and asking to be let in. There was no response from inside the apartment, so after a minute or two, Timierra called Demetrius and told him to open the door. We waited another minute or two, and then came Demetrius up the stairs behind us. [Three-year-old Ar.] and [two-year-old Ay.] were inside the apartment by themselves. I have no idea how long they were left alone and, although I did not ask directly, no explanation for this situation was offered by either Timierra or Demetrius."

¶ 78 Runyon got the impression that Demetrius, age 24, did not live with respondent, age 21, even though they reported being in a relationship. At the end of Runyon's visit, when respondent asked Demetrius to walk Runyon out of the apartment building and to the parking lot, respondent had to give Demetrius directions.

¶ 79 Runyon reported that respondent was employed as a material specialist at Caterpillar in Decatur, Illinois. Demetrius R. was unemployed and was looking for a job. He "was briefly employed at Hydro-Gear in Sullivan, Illinois, but that did not work out." Demetrius R. lacked a valid driver's license and had a criminal record of misdemeanors, but he denied to Runyon that he was a member of a street gang.

¶ 80 At the conclusion of the best interest hearing, Runyon observed that petitioners, who had been married for more than nine years, appeared to have a stable and loving

relationship. He had met with them in their home on at least three occasions and had found the home to be "well kept and [in] good order and [D.R.] to be well cared for." He also had visited respondent and Demetrius R. in their home. He summed up:

> "So[,] I think from my interactions with the parties, from my home visits and from the evidence we have, I do believe that [D.R.] is bonded to [petitioners] and she sees them as her parents and the only parents she probably really has ever known. So[,] I do think it's in [D.R.'s] best interest that [petitioners'] petition be granted."

¶ 81 The trial court agreed and granted petitioners' motion for the termination of parental rights.

¶ 82 This appeal followed.

¶ 83 II. ANALYSIS

¶ 84 A. Parental Unfitness

¶ 85 Respondent challenges the trial court's finding that she is an "unfit person" as that term is defined in sections 1(D)(a), (a-1), (a-2), (b), (c), (h), (k), (l), and (o) of the Adoption Act (750 ILCS 50/1(D)(a), (a-1), (a-2), (b), (c), (h), (k), (l), (o) (West 2016)).

¶ 86 Before examining the merits of respondent's challenge to that finding, we should be clear why that finding matters in the first place. It matters because petitioners wish to adopt D.R. and unless respondent either consents to the proposed adoption or surrenders her parental rights to D.R., the adoption cannot go forward without a finding, by clear and convincing evidence, that petitioner is an "unfit person" within the meaning of section 1(D) of the Adoption Act (*id.* § 1(D)). See *id.* §§ 5(B)(j), 8(a)(1); *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 67-68 (2005). Respondent never surrendered her parental rights to D.R. by signing a document

substantially in the form prescribed by section 10 of the Adoption Act (750 ILCS 50/10 (West 2016)). Nor has she signed a final and irrevocable consent to adoption in the form prescribed by that section (*id.*). It is true that about two months before D.R.'s birth, she signed a "Preliminary Consent to Adoption of Unborn Child," but the consent was, as the title of the document said, merely preliminary, and the document was not substantially in the form prescribed by section 10 (*id.*). Therefore, to proceed with their petition to adopt D.R., petitioners were required to prove, by clear and convincing evidence, that respondent was an unfit person, making her consent to the proposed adoption unnecessary. See *id.* §§ 5(B)(j), 8(a)(1); *L.T.M.*, 214 Ill. 2d at 67-68.

¶ 87 It was the trial court's job, not ours, to decide whether petitioners carried their burden of proof, and we should defer to the court's decision unless it is against the manifest weight of the evidence. See *L.T.M.*, 214 Ill. 2d. at 68. This is a deferential standard of review. A decision is against the manifest weight of the evidence only if the evidence "clearly" calls for the opposite decision or only if the decision is "unreasonable, arbitrary, and not based on the evidence presented." *In re S.R.*, 326 Ill. App. 3d 356, 360-61 (2001). Therefore, on appeal, when a parent challenges a finding by the trial court that he or she is an unfit person, the question for us is whether it is "clearly apparent" (*In re J.J.*, 201 Ill. 2d 236, 249 (2002)), from the evidence in the fitness hearing, that the definition of an unfit person was unproven by clear and convincing evidence. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417 (2001). The opposite conclusion, *i.e.*, that parental unfitness was unproven, would clearly be the proper result if the finding of parental unfitness were unreasonable, arbitrary, or not based on the evidence presented in the fitness hearing. See *S.R.*, 326 Ill. App. 3d at 360-61. If, however, reasonable minds could differ as to whether the definition of an unfit person was proven by clear

and convincing evidence, our duty is to affirm the judgment. See *North Avenue Properties, L.L.C. v. Zoning Board of Appeals of the City of Chicago*, 312 Ill. App. 3d 182, 184 (2000).

¶ 88 Applying that deferential standard of review, we will compare the evidence in the fitness hearing to the relevant statutory definition of an unfit person. In their motion for the termination of parental rights, petitioners invoked nine of the statutory definitions of an unfit person (750 ILCS 50/1(D)(a), (a-1), (a-2), (b), (c), (h), (k), (l), (o) (West 2016)), all of which the trial court found to be proven. By fitting the description of only one of the statutory definitions, a parent is an unfit person; therefore, we need not discuss all nine of the definitions at issue in this case. See *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). Instead, we will choose two overlapping definitions the proof of which appears to be the most straightforward and the least contestable: "[f]ailure to maintain a reasonable degree of interest, concern[,] or responsibility as to the child's welfare" (750 ILCS 50/1(D)(b) (West 2016)) and "[f]ailure to demonstrate a reasonable degree of interest, concern[,] or responsibility as to the welfare of a new born child during the first 30 days after its birth." (*id.* § 1(D)(l)).

¶ 89 An "unfit person" includes a parent who "[f]ail[s] to maintain a reasonable degree of interest, concern[,] or responsibility as to the child's welfare." *Id.* § 1(D)(b). We begin by making four observations about this statutory language, which, like any statutory language, should be given its plain and ordinary meaning (*In re M.I.*, 2016 IL 120232, ¶ 23).

¶ 90 First, to be fit to have a child, a parent must "maintain"—that is, keep up, perpetuate, or sustain—"a reasonable degree of interest, concern[,] or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2016). Sometimes demonstrating a reasonable degree of interest, concern, and responsibility but at other times failing to do so could result in a finding of parental unfitness.

¶ 91 Second, section 1(D)(b) requires that the interest, concern, and responsibility be reasonable in degree. *Id.* Demonstrating *some* interest, concern, and responsibility as to the child's welfare is not necessarily the same as demonstrating those qualities to a reasonable degree. *In re E.O.*, 311 Ill. App. 3d 720, 728 (2000).

¶ 92 Third, by its use of the disjunctive "or," section 1(D)(b) signifies that a failure to maintain a reasonable degree of interest *or* concern *or* responsibility makes a parent unfit to have a child. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010).

¶ 93 Fourth, the words "failure" and "reasonable" signal that the standard in section 1(D)(b) is objective. 750 ILCS 50/1(D)(b) (West 2016). See *M.I.*, 2016 IL 120232, ¶ 26; *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). It is a standard of *objective reasonableness under the circumstances*. See *M.I.*, 2016 IL 120232, ¶ 29; *M.J.*, 314 Ill. App. 3d at 657; *E.O.*, 311 Ill. App. 3d at 728 (the parent's "conduct was not reasonable under all the circumstances"). If, for example, the parent has never visited the child or has seldom done so, "the question is whether [the] parent's then-existing circumstances provide a valid excuse." *M.I.*, 2016 IL 120232, ¶ 29. Under case law, circumstances that provide a valid excuse tend to be circumstances external to the parent, such as " 'transportation difficulties, financial limitations, or discouragement of [a] parent's visitation by [a] State agency.' " *Id.* (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990)).

¶ 94 When we compare the evidence in the unfitness hearing to the definition of an unfit person in section 1(D)(b), as explicated above—or, for that matter, in section 1(D)(l)—we are unable to say that by finding the statutory definition to be proven by clear and convincing evidence, the trial court made a finding that was against the manifest weight of the evidence. See

S.R., 326 Ill. App. 3d at 360-61. The following considerations lead us to defer to the court's finding.

¶ 95 1. *Visiting D.R. Only Once During the First 30 Days of Her Life*

¶ 96 During the first 30 days of D.R.'s life—which, for most parents, is a critical time for spending time with a child—respondent chose to visit D.R. only once, on July 8, 2017, and even that visit she cut an hour short: it was supposed to be a three-hour visit, but respondent terminated the visit after only two hours. According to Kristin's unrebutted testimony, this was the only visit that respondent requested during the first 30 days of D.R.'s life. The lack of any request by respondent for further visitation during this crucial time in the parent-child relationship likewise supports the trial court's finding that respondent "[f]ail[ed] to demonstrate a reasonable degree of interest, concern[,] or responsibility as to the welfare of a new born child during the first 30 days after its birth" (*id.*). See *M.I.*, 2016 IL 120232, ¶ 36; *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 97 Respondent points out that even when she was not actually visiting D.R., she was sending text messages to Kristin inquiring about D.R.'s welfare. The supreme court has held, however: "A court looks to other factors such as letters or telephone calls [i]f personal visits *** [were] somehow impractical. [Citation.] The primary consideration is visitation; other factors demonstrating interest, concern, or responsibility are considered if visitation was impractical." (Internal quotation marks omitted.) *M.I.*, 2016 IL 120232, ¶ 36. The record appears to contain no evidence that visiting D.R. was impractical during the first 30 days of her life. Therefore, texting Kristin was no substitute for visiting D.R. See *id.*

¶ 98 2. *Not Visiting D.R. for 11 Months*

¶ 99 Respondent limited her visitation with D.R. to a total of five times. As of the date of the unfitness hearing, August 6, 2018, she had not visited D.R. since September 3, 2017. That was 11 months without any visitation at all.

¶ 100 Respondent blames the discontinuation of visitation on petitioners. She argues that petitioners never divulged their home address to her and that from September 2017 onward, Kristin stopped answering her text messages. For the following reasons, the trial court could have justifiably rejected those excuses as invalid. See *M.I.*, 2016 IL 120232, ¶ 29. First, respondent knew where to find petitioners' attorney, and she could have continued to communicate with petitioners—through their attorney, as they wished her to do. Second, petitioners proposed a visitation schedule, in which respondent would have visitation every three weeks. In response to that proposal, respondent unilaterally discontinued visitation; it was not petitioners who did so. Third, on two occasions, petitioners invited respondent to meet them at their attorney's office to discuss a mutually acceptable visitation schedule. Jathan testified that if only respondent had attended either of those meetings, petitioners would have offered respondent the additional visitation time that she wanted, over and above a visit every three weeks. The additional visitation time would have been in the form of holidays, birthdays, and other special occasions. But respondent declined to attend either meeting. Given those facts, respondent has no valid excuse for failing to visit D.R. for 11 months. There was no real obstacle to continued visitation. It appears that, in a pique, respondent boycotted visitation. Her failure to visit D.R. for such a long period of time was a failure to maintain a reasonable degree of interest, concern, or responsibility as to D.R.'s welfare. See 750 ILCS 50/1(D)(b) (West 2016).

¶ 101 3. *Delegating the Raising of D.R. to Petitioners*

¶ 102 Respondent did not appear at the hearing on petitioners' petition to be appointed plenary guardians of D.R. It is undisputed that respondent received advance notice of that hearing. Nor did respondent appear at the hearing on her own petition to end the guardianship, a hearing she herself had set. Those hearings directly implicated D.R.'s welfare, and, both times, respondent failed to show up, or (according to her testimony) she showed up after the hearing was over. Measured against an objective standard of reasonableness, her excuses for those nonappearances were inadequate. Failing to appear and participate when the custody of D.R. was at stake could well be seen as a failure to maintain a reasonable degree of interest, concern, or responsibility as to her welfare. See *id.*

¶ 103 This is not to suggest that respondent is utterly indifferent to D.R. or completely uninterested in her welfare. No doubt respondent is "still subjectively interested" in D.R.; but "her conduct was not reasonable under all the circumstances." *E.O.*, 311 Ill. App. 3d at 728. Respondent "is not fit merely because she has demonstrated *some* interest in or affection for" D.R.; "her interest, concern, and *responsibility* must be reasonable." (Emphases in original.) *Id.* at 727. The trial court found a breach of that objective standard of parenting, and because we cannot characterize such a finding as arbitrary, we uphold it. See *S.R.*, 326 Ill. App. 3d at 360-61.

¶ 104 B. D.R.'s Best Interest

¶ 105 On August 30, 2018, at the conclusion of the best interest hearing, the trial court found it would be in D.R.'s best interest to terminate respondent's parental rights and for petitioners to remain the plenary guardians of D.R. and to continue having physical custody of her. Respondent challenges that finding, too, as being against the manifest weight of the evidence. See *In re Al. P. v. Angel P.*, 2017 IL App (4th) 170435, ¶ 61. She writes:

"[Respondent] clearly loves her daughter. Further, [respondent] is clearly a capable parent as she has a home and is employed."

¶ 106 But similar observations could be made about petitioners. They love D.R., they have shown themselves to be capable parents, they have a home, and they are employed. A further observation could be made about petitioners that could not be made about respondent: petitioners have been unwavering in their commitment to D.R. Respondent, by contrast, did not appear in the hearing on the petition for plenary guardianship. Also, she signed her "Petition to Discharge Guardianship of Minor" on September 26, 2017, but did not file it until January 8, 2018. Then, on January 23, 2018, she did not show up at the hearing on her own petition. Respondent has appeared halfhearted and vacillating in her efforts to regain custody of D.R. Petitioners, on the other hand, are all in. They have always showed up for D.R., they have always supported her, they have been the only mother and father she has ever known, and their home has been the only home she has ever known. For those reasons, the trial court could have reasonably agreed with what respondent herself told Kristin in her text conversation with her on March 12, 2017: that D.R. would be better off being adopted by petitioners. The best interest finding is not against the manifest weight of the evidence. See *id.*

¶ 107 III. CONCLUSION

¶ 108 For the foregoing reasons, we affirm the trial court's judgment.

¶ 109 Affirmed.