NOTICE
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2019 IL App (5th) 180550-U

NO. 5-18-0550

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).

In re ADOPTION OF B.D.D.L.	)	Appeal from the
	)	Circuit Court of
(Nancy Hoke and Donald Hoke,	)	Crawford County.
	)	
Petitioners-Appellees,	)	
	)	
v.	)	No. 17-AD-6
	)	
Cynthia Williams and Jonathan D. Lynch,	)	
	)	
Respondents	)	Honorable
	)	Christopher L. Weber,
(Jonathan D. Lynch, Respondent-Appellant)).	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment is affirmed where its finding of parental unfitness was not against the manifest weight of the evidence.

¶ 2 Respondent-appellant, Jonathan D. Lynch, appeals from the circuit court's judgment finding him an unfit parent and terminating his parental rights to his minor son, B.D.D.L. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In June 2011, Jonathan and Cynthia Williams were married in Robinson. Jonathan's son from a previous marriage, C.L., was living with Jonathan at the time. Jonathan, Cynthia, and C.L. subsequently moved to northern Illinois, where Jonathan transitionally worked as a welder at a petroleum refinery. Jonathan and Cynthia's only child, B.D.D.L., was born on October 23, 2011.

¶ 5 Following B.D.D.L.'s birth, Jonathan and Cynthia moved back to Crawford County with both minors and lived in Oblong with her mother and stepfather, the petitioners, Nancy and Donald Hoke. Jonathan, Cynthia, and the minors subsequently moved to Texas, but Cynthia and the children later returned to live with the Hokes. Thereafter, Jonathan also returned to Crawford County, and he, Cynthia, and the minors briefly lived in a house on Allen Street in Robinson. In the fall of 2013, Jonathan again relocated to Texas, and C.L., B.D.D.L., and the Hokes moved into an apartment in Robinson without Cynthia.

¶ 6 In June 2014, in Crawford County case number 14-D-58, Cynthia filed a petition for dissolution of marriage pursuant to the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2014)). When the petition was filed, Jonathan was 33 years old, Cynthia was 24, and B.D.D.L. was 2.

¶ 7 In August 2014, Jonathan and Cynthia entered into a marital settlement agreement, and the circuit court entered a judgment of dissolution of marriage incorporating the same. Pursuant to the court's judgment, the couple was granted joint custody of B.D.D.L., and Cynthia was named the minor's residential parent. It was agreed that both

parents were fit and proper persons to have custody of the minor and that no modification of their custody agreement would be sought "unless significant changes occur in the environment of which the child is being raised or in the conduct of the parties." Recognizing that Jonathan was "oftentimes out of the region," the court awarded him "liberal visitation with the minor child *** at such times as the parties may agree." Jonathan was also ordered to pay Cynthia $100 per week in child support, based on his reported net income of $500 per week.

¶ 8 In November 2014, Cynthia filed a petition to increase Jonathan's child support obligation, but the petition was subsequently abandoned. At some point after the entry of the judgment of dissolution, Cynthia married Damien Williams and moved to Annapolis, which is approximately 15 miles from Robinson.

¶ 9 In early March of 2016, in Crawford County case number 16-OP-16, the Hokes obtained an emergency order of protection against Cynthia and Damien pursuant to the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 *et seq.* (West 2016)). The record on appeal does not include the common law record in 16-OP-16 or transcripts of the proceedings that were held in the case. It appears, however, that when the emergency order was granted, the cause was set for a March 28, 2016, hearing.

¶ 10 On March 16, 2016, in 14-D-58, the Hokes filed a motion to intervene and a petition for parental responsibilities as to the minor. See 750 ILCS 5/601.2(b)(3), 603.5(a) (West 2016). The petition alleged that B.D.D.L. had predominately lived with the Hokes since his birth and had been out of their care and custody for only limited

periods of time. Referencing, *inter alia*, domestic violence, mental health, and substance abuse issues, the petition alleged that Cynthia and Damien posed a harm to the minor child. The petition further alleged that Jonathan lived in Texas and rarely visited B.D.D.L.

¶ 11 The record indicates that on March 21, 2016, notice that a hearing on the Hokes' pleadings in 14-D-58 would be held on March 28, 2016, was ostensibly sent, by non-certified mail, to Jonathan's residence in Sweeny, Texas, and to Cynthia's post-office box in Annapolis. It is disputed whether Jonathan received the notice, but as the circuit court later noted, Cynthia apparently did, as she appeared at the hearing. It is undisputed, however, that neither Jonathan nor Cynthia were properly served with a copy of the Hokes' petition for parental responsibilities, as was statutorily required. See 735 ILCS 5/2-203(a) (West 2016); 750 ILCS 5/410, 601.2(c) (West 2016).

¶ 12 On March 28, 2016, following the scheduled hearing, the circuit court entered a plenary order of protection against Cynthia and Damien in 16-OP-16 and granted the Hokes' motion to intervene in 14-D-58. The court noted that Jonathan failed to appear and set the matter for further proceedings. We note that a transcript of the March 28, 2016, hearing is not included in the record on appeal.

¶ 13 In April 2016, in 14-D-58, Cynthia and the Hokes submitted financial affidavits and participated in court-ordered mediation on the issues of child custody and child visitation. See 750 ILCS 5/602.10(c) (West 2016). The Hokes also completed an online parenting class. In May 2016, the court-appointed mediator filed a report stating that Cynthia and the Hokes had reached a partial agreement as to child visitation.

¶ 14 In June 2016, the circuit court set the cause for a September 2016 hearing on the Hokes' petition for parental responsibilities. In September 2016, the hearing was held, and the court determined that it was in the minor's best interest that the Hokes be granted parental responsibilities and parenting time. Cynthia was granted limited parenting time, and the cause was set for later review. We note that a transcript of the September 2016 hearing is not included in the record on appeal.

¶ 15 In November 2016, in 14-D-58, the circuit court entered a permanent parenting plan and order granting the Hokes primary residential parenting time and decision making responsibility as to the minor. The court granted Cynthia supervised parenting time and ordered that Jonathan "should have no parenting time." The court noted that Jonathan had previously been found to be in default.

¶ 16 On March 15, 2017, in Crawford County case number 17-AD-6, the Hokes filed a petition for adoption and a petition to terminate Cynthia's and Jonathan's parental rights pursuant to the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)). The petition to terminate generally alleged that neither Cynthia nor Jonathan had maintained an interest in B.D.D.L. The circuit court subsequently appointed a guardian *ad litem* (GAL) to represent the child's interests. See 750 ILCS 5/506(a)(2) (West 2016).

¶ 17 On May 9, 2017, Jonathan was served summons on the Hokes' petition for adoption at his home in Texas. On May 26, 2017, Jonathan filed a motion to dismiss the petition, arguing that it failed to comply with numerous pleading requirements of the Adoption Act.

¶ 18 In June 2017, alleging that Cynthia had failed to respond to their petition for adoption, the Hokes moved for a default judgment against her. In July 2017, the Hokes filed an amended petition for adoption alleging that Jonathan and Cynthia were unfit pursuant to sections 1(D)(a), (b), (d), and (n) of the Adoption Act (750 ILCS 50/1(D)(a), (b), (d), (n) (West 2016)). With respect to section 1(D)(n), the Hokes specifically alleged that Jonathan and Cynthia had failed for a period of 12 months "to maintain contact with or plan for the future of the child, although physically able to do so."

¶ 19 On October 11, 2017, following a default hearing, the circuit court entered an order finding Cynthia unfit. On October 20, 2017, Jonathan filed an answer to the Hokes' amended petition for adoption in 17-AD-6 and a motion to vacate the circuit court's November 2016 custody order in 14-D-58. The motion to vacate the order alleged that because Jonathan had not received notice of the underlying pleadings or proceedings and had no knowledge of the order prior to being served with the Hokes' original petition for adoption in May 2017, the order was void. In March 2018, the cause proceeded to a hearing on the Hokes' allegations that Jonathan was unfit, and the following evidence was adduced.

¶ 20 Dr. John Sharma of Crawford Memorial Hospital in Robinson testified that he had been B.D.D.L.'s physician since the minor's birth and that he saw the minor 5 to 10 times a year. Sharma testified that since 2014 or 2015, Nancy had brought B.D.D.L. to all of his scheduled appointments, and Cynthia had not been present. Sharma indicated that he had never met or spoken with Jonathan. Sharma testified that he last saw the minor in December 2017, and the child's dog bite was healing satisfactorily.

¶ 21 Daniel Baxter testified that he lived in the Hokes' apartment complex in Robinson and had known them for several years. He stated that the Hokes were B.D.D.L.'s caregivers and that B.D.D.L. had always lived with the Hokes. Baxter indicated that he had seen Jonathan one time during one of his visits from Texas. Neighbors Kelly Morehead and Nancy Jo Correll provided similar testimony.

¶ 22 Attorney Rusty Reinoehl of Robinson testified that he was presently representing B.D.D.L. in a personal injury dog bite case that arose in April 2015. He stated that his initial meetings about the case had been with Cynthia and Nancy but that most of his communication had been with Nancy. Reinoehl explained that after speaking with Jonathan once over the telephone, Jonathan had come to his office to sign a fee agreement in October 2015. Reinoehl recalled that Jonathan had been in town visiting B.D.D.L. on his birthday. Reinoehl testified that all subsequent communications regarding the case had been with Nancy.

¶ 23 Teacher's aide Tammy Wisdom testified that B.D.D.L. had attended a pre-kindergarten program in Robinson from 2015 through 2017. During that time, Wisdom saw Cynthia "once or twice" and never had contact with Jonathan. Wisdom testified that Nancy had been very involved in the program and had been a frequent volunteer. Wisdom testified that the minor lived with the Hokes near the school. Special aide Charlene Nagan provided similar testimony and stated that B.D.D.L. was presently enrolled in kindergarten.

¶ 24 Cynthia's half-sister, Amber, testified that, "[f]or the most part," B.D.D.L. had been living with the Hokes "[s]ince the day he was born." She further indicated that the

Hokes had been independently raising the child for years without financial assistance from Cynthia or Jonathan. Amber testified that C.L. had also lived with the Hokes for a period of time. Amber testified that she had attended B.D.D.L.'s birthday and Christmas events in 2016 or 2017 and that neither Cynthia nor Jonathan had been present. Amber testified that to her knowledge, Jonathan had not visited B.D.D.L. since Christmas of 2015 and had not sent him Christmas or birthday cards in 2016 or 2017. Nancy's sister, Brenda Sheahan, provided similar testimony.

¶ 25 Amber specifically denied having ever threatened Jonathan with "legal action unless he stopped trying to contact [her] family." Amber testified that she had not spoken with Jonathan over the telephone since he and Cynthia were married. Amber testified that she did not get along with Cynthia and had not spoken with her for over a year.

¶ 26 Donald testified that he was employed as a truck driver and was generally home every night. He testified that Cynthia, Jonathan, B.D.D.L., and C.L. had lived with him and Nancy in Oblong before moving to Texas, where Cynthia and the minors stayed for about a month before returning. Jonathan later returned to Illinois and he, Cynthia, and the minors lived in a house on Allen Street in Robinson. Donald indicated that when Jonathan moved back to Texas in the fall of 2013, he, Nancy, B.D.D.L., and C.L. had moved into an apartment complex in Robinson without Cynthia. Donald stated that he, Nancy, and B.D.D.L. had been living there ever since.

¶ 27 Donald testified that C.L. had lived with him, Nancy, and B.D.D.L. for over a year before moving to Texas with Jonathan and that C.L. had lived at the apartment before and after Jonathan and Cynthia's divorce. While living with the Hokes, C.L. attended school

in Robinson, and his registered address was the Hokes' address. Donald stated that B.D.D.L. had only visited Cynthia occasionally since the divorce.

¶ 28 Donald testified that in December 2015, Jonathan, Jonathan's father, Jonathan's girlfriend, and C.L. had come to the Hokes' apartment for Christmas activities, and Jonathan had given B.D.D.L. Christmas gifts. Since that time, Jonathan had not seen B.D.D.L., had not sent him any gifts or cards, and had not called the Hokes asking to speak with him. Donald testified that he and Nancy had never received any child support from Jonathan or Cynthia.

¶ 29 Donald testified that prior to December 2015, Jonathan had attended B.D.D.L.'s birthday party at the Hokes' apartment on October 23, 2015. During that visit, Jonathan signed legal paperwork at Reinoehl's office pertaining to the minor's dog bite case. Donald explained that he and Nancy were going to establish a trust for the minor and that Cynthia had been interfering with his and Nancy's efforts to act on the minor's behalf. Jonathan advised Reinoehl that the Hokes could "handle the dog bite case" and had apparently signed documents allowing them to do so.

¶ 30 Donald indicated that the dog bite injury had required B.D.D.L. to spend time in a hospital and to travel to Evansville, Indiana, for numerous follow-up appointments. Donald indicated that after B.D.D.L. was bitten by the dog in April 2015, Jonathan had called one time to check on the child and had not mentioned that he had injured his foot.

¶ 31 Donald indicated that prior to March 2016, B.D.D.L. would sometimes spend the night at Cynthia's residence but that after that time, he and Nancy would not allow it. Donald explained that Damien and Cynthia "were dealing in meth" and doing "bath

salts," that Cynthia was "running and partying," and that Damien was beating her. Donald explained that during that time, he and Nancy had reluctantly allowed Cynthia to move in with them, but she stayed for only two weeks before moving back in with Damien and advising the Hokes that she and Damien intended to assume full-time custody of B.D.D.L. In response, Donald told her that he and Nancy were "not going to let that happen." Donald then called Jonathan and "told him he needed to get his ass up here and take care of [the situation]." In response, Jonathan told Donald that he could not return to Illinois because he "had a broken foot or something." Jonathan told Donald to do whatever needed to be done to prevent the minor from going back to Cynthia's residence.

¶ 32 Donald indicated that he and Nancy had subsequently gone to their attorney's office, where Donald spoke with Jonathan a second time and again sought his involvement in the situation. Donald testified that when he advised Jonathan that he and Nancy were going to obtain an order of protection against Cynthia, Jonathan had "basically said the same thing" that he had said before, *i.e.*, "he couldn't come up right now," so go ahead and "handle it." Donald testified that that was the last time he had spoken with Jonathan and that Jonathan had not tried to contact him since. Donald indicated that he and Nancy would have received calls from Jonathan had he made them.

¶ 33 Donald testified that he and Nancy subsequently obtained an order of protection against Cynthia and Damien and later filed their petition requesting that the circuit court grant them parental responsibilities as to B.D.D.L. Donald testified that Jonathan had been advised that the Hokes were going to have to intervene in the divorce case, but

Donald acknowledged that he had not specifically stated that he and Nancy were going to file the petition for parental responsibilities. Donald further acknowledged that Jonathan had been concerned about the minor returning to Cynthia's home. Donald indicated that at the hearing that resulted in the plenary order of protection against Cynthia and Damien, Cynthia and Damien had not denied the underlying allegations against them, and Cynthia admitted that B.D.D.L.'s child support had not been forwarded to the Hokes.

¶ 34 Nancy testified that other than the periods during which B.D.D.L. had lived with his parents in Texas and Robinson, he had lived with her and Donald his entire life, and they had provided all of his financial support. Nancy estimated that B.D.D.L. had lived with his parents for about a month in Texas and about two months on Allen Street. Nancy testified that C.L. had lived with her and Donald before and after Cynthia and Jonathan's divorce and that C.L. had attended school in Robinson while living at the Hokes' apartment. Nancy testified that Jonathan had taken C.L. back to Texas with him after one of his October visits.

¶ 35 Nancy testified that Jonathan had not seen or spoken with B.D.D.L. since December 2015 and that she had not prevented Jonathan from doing so. Jonathan had never called to see how the minor was doing in school and had never called to check on the minor's dog bite. Nancy acknowledged that Jonathan had called her the night before the hearing wanting to see B.D.D.L. and had left her a voicemail when she did not answer. Nancy testified that other than that call, he had not attempted to contact her since December 2015.

¶ 36 Nancy testified that the last contact she had with Jonathan was in March 2016, when he was advised that B.D.D.L. needed protection from Cynthia. Nancy further indicated that Jonathan had stated that he would call them later to discuss the matter, but he never did. Nancy and Donald subsequently obtained the order of protection and were granted temporary custody of the minor. Cynthia participated in supervised visitations for a while but eventually "just quit showing up." Nancy explained that when she and Donald called Jonathan and advised him about the situation with Cynthia, they had "tried to get him to be a parent." Nancy indicated that they had done the same thing after the minor sustained his dog bite injury. On both occasions, Jonathan had stated that he could not make it back.

¶ 37 Nancy indicated that Jonathan had never corresponded with her or Donald by mail and that they had never experienced problems receiving mail at their apartment. Nancy testified that B.D.D.L. had not received any cards or gifts from Jonathan since December 2015. Jonathan had not initiated contact through social media, text messages, or phone calls. Nancy stated that she had never attempted to prevent Jonathan from contacting her, Donald, or B.D.D.L. She indicated that she would have answered Jonathan's calls had he made them.

¶ 38 Nancy testified that Cynthia had told her that Jonathan had sustained an injury at work. Nancy testified that she had not seen Cynthia since October 2016. Nancy testified that Jonathan had never told her that he wanted to assume custody of B.D.D.L. after he recuperated from a surgery.

¶ 39 Nancy testified that B.D.D.L. was her and Donald's first grandchild. She indicated that "in the beginning," it had not been their "goal" to adopt B.D.D.L.; they had only "wanted to enjoy the grandparent time." She explained, however, that "someone had to be a parent" and that Jonathan had been unwilling to do so.

¶ 40 Nancy denied having prevented Jonathan from being aware of the petition for parental responsibilities or having done anything to prevent Jonathan from contacting B.D.D.L. She acknowledged, however, that after obtaining the order of protection against Cynthia and Damien, it had been her intent to try to adopt the minor. Nancy testified that she did not know if Jonathan had received a copy of the petition for parental responsibilities that she and Donald had filed, but she believed that Jonathan had received notice that the cause had been set for a hearing. Nancy denied having instructed Amber to call Jonathan with threats of legal action.

¶ 41 Jonathan testified that he had been living in Sweeny, Texas, since November 2013, and that he works as a welder five to six days a week. He stated that he earns $30 per hour but does not earn vacation time. He stated that he presently resides with his girlfriend and C.L., who was 16. Jonathan testified that his father lives in Missouri. Jonathan acknowledged that he had previously worked at the oil refinery in Robinson, but he explained that he could make more money welding in Texas.

¶ 42 Jonathan testified that he sustained a serious work-related injury to his feet in January 2015 and could not walk or drive for several months. He stated that he dropped a 2000 pound I-beam on his feet, which broke every metatarsal bilateral bone in each one. Following surgery, he was in casts and a wheelchair, and he was placed on light duty

with reduced pay. Jonathan stated that he had been able to assume his regular work duties by August or September of 2015. He was later advised, however, that his feet had not healed correctly, and he underwent an additional surgery in February 2016. By June, July, or August of 2016, he was able to return to his regular work assignments and drive again.

¶ 43 Jonathan indicated that in December 2015, he had advised the Hokes of his upcoming second surgery. He testified that while later recuperating from the surgery, he had spoken with Nancy on the phone and had told her that he wanted to move B.D.D.L. to Texas but would be unable to do so for a while.

¶ 44 Jonathan indicated that he had not spoken with Donald since March 2016. Jonathan maintained, however, that he had had frequent contact with Cynthia since that time. Jonathan testified that despite his and Cynthia's previous "trust issues," by August 2016, they were talking once or twice a week. Jonathan indicated that Cynthia had led him to believe that B.D.D.L. was primarily living with her and Damien and that everything was fine.

¶ 45 Jonathan acknowledged that in March 2016, Donald had advised him about the situation with Cynthia and Damien and that he had spoken with the Hokes while they were at their attorney's office. Jonathan indicated that he thought that Cynthia and the Hokes were having a "family dispute" that might involve "family services," but he did not believe that the Hokes' goal had been to keep B.D.D.L. away from Cynthia. He acknowledged, however, that he knew that the Hokes were seeking to obtain an order of protection against her, and he "figured it was to protect [the minor]." He also indicated

that he was aware that Cynthia had previous drug problems. Jonathan testified that he did not understand what the Hokes had intended to do after the order of protection expired. Jonathan indicated that the Hokes had expressed an interest in assuming custody of B.D.D.L., and "it seemed like [they were] asking permission for something."

¶ 46 Jonathan indicated that during their March 2016 conversation, he had advised the Hokes that he wanted to assume custody of B.D.D.L. and that he had told Nancy the same in a subsequent conversation. Jonathan testified that he had been told that he would subsequently be receiving legal papers in the mail for him to sign and return, but the papers never arrived. Jonathan explained that he knew that the Hokes had wanted to go to court on March 28, 2016, but he had been unaware that they had actually gone. He stated that he had later called Nancy asking about the legal papers, and he could hear B.D.D.L. running around in the background. Jonathan testified that he did not later contact the Hokes or their attorney to check on the status of the situation because he "was still waiting on the papers." He testified that he left a message with the attorney's secretary inquiring about the documents, but no one had gotten back to him. He also called the circuit clerk's office, but "they couldn't give [him] anything."

¶ 47 Jonathan explained that he had not returned to Illinois in March 2016 because he was unable to drive due to his injuries and could not find someone to drive him. He further stated that he had not received notice of the March 2016 hearing on the Hokes' petition for parental responsibilities. Jonathan indicated that had he known that the Hokes had filed a petition for parental responsibilities in March 2016, he would have returned to Illinois and taken B.D.D.L. back to Texas with him.

¶ 48 Jonathan acknowledged that the minor had been staying with the Hokes "quite a bit" when they sought the order of protection against Cynthia in March 2016. Jonathan indicated that in December 2015, Cynthia had led him to believe that B.D.D.L. had been staying at the Hokes' apartment "for school purposes." Jonathan further indicated that in October 2015, he visited the school with Nancy, and the Hokes had advised him that B.D.D.L. had only been living with them on the weekends. Jonathan testified that the Hokes had never asked him for child support.

¶ 49 Jonathan testified that he visited the minor in August 2014 and October 2014. When Jonathan visited B.D.D.L. in October 2015, he took the child to Terre Haute, Indiana, for an overnight trip. Jonathan indicated that whenever he returned to Illinois, he usually visited his father in Missouri.

¶ 50 Jonathan indicated that he had not learned that the minor had been continuously living with the Hokes until he was served summons on their original petition for adoption in May 2017. He acknowledged, however, that he had "some clue" that the minor was not with Cynthia prior thereto. After receiving the adoption petition, he called Cynthia to see if she had recently seen or spoken with B.D.D.L., and she stated that she had not. Jonathan believed that he "was being misled again," so he hung up on her. Jonathan then contacted an attorney and talked to Cynthia an additional "20 or more" times. Jonathan indicated that their communications were limited to whether she had seen or spoken with B.D.D.L.

¶ 51 Jonathan indicated that he had frequently called Cynthia after their divorce was finalized and had sometimes spoken with B.D.D.L. over the phone. Jonathan testified that

he had visited the minor sometime between September and December of 2014 at the home where Cynthia and Damien were residing at the time, but he had not attended B.D.D.L.'s birthday party at the Hokes' in October 2014. Jonathan testified that in October 2015, Cynthia had indicated that she wanted to return to Texas with him, but at the last minute, she had refused to go.

¶ 52 Jonathan acknowledged that when he visited B.D.D.L. at the Hokes' apartment in October and December of 2015, Cynthia had not been present. He acknowledged that when he took the minor to Terre Haute in December 2015, the minor's "backpack of stuff" had come from the child's bedroom at the Hokes' apartment. Jonathan testified that he had sent B.D.D.L. gifts and cards since December 2015 and had checked on him through telephone calls with Cynthia. He further stated that after December 2015, he and Nancy had communicated by phone for several weeks and that he had spoken with the minor in 2016 through Nancy.

¶ 53 Jonathan acknowledged that from December 2015 through August 2016, B.D.D.L. had never been with Cynthia when he contacted her. Jonathan further acknowledged that he had allegedly continued to contact Cynthia even after learning that she had been found unfit. Jonathan testified that he had mailed B.D.D.L. a combination birthday and Christmas package to Cynthia's residence in October 2017.

¶ 54 Jonathan testified that in August 2016, he had driven from Texas to Illinois to visit B.D.D.L. on a weekend but had been unable to see him. Jonathan explained that he had made the trip because "communication [had] stopped for a little while," and he wanted to "find out what was going on." Jonathan testified that after driving over 16 hours straight,

he had gone to the Hokes' apartment in Robinson, but no one answered when he knocked on the door. He further testified that he had "probably sent them a text or tried to call" beforehand, but no one answered or responded. He also tried to call Cynthia, but her phone was not working. Jonathan testified that the phone that he had used at the time had since been destroyed.

¶ 55 Jonathan testified that after driving around Robinson for a few hours, he had driven back to Texas, with barely enough gas money to make it back. He explained that he had not gotten a hotel so that he could wait for the courthouse to open on Monday because he had been paying down debt at the time. He could not borrow money from his father in Missouri because he already owed his father money. He had not thought to call Reinoehl to see what he might have known about B.D.D.L.'s situation. Jonathan testified that he had spoken with the Hokes over the phone the following week, and they were on a trip. Jonathan indicated that he had subsequently tried to contact B.D.D.L. by calling the Hokes' phones, but the calls he made were never answered or returned.

¶ 56 Jonathan stated that other than the August 2016 trip, he had not left Texas since December 2015. Jonathan indicated that although he had not seen B.D.D.L. since December 2015, he had spoken with Cynthia over the phone approximately 200 times since then. Jonathan testified that on 90% of the occasions that he had spoken with Cynthia since December 2015, he had also called the Hokes and had spoken with B.D.D.L.

¶ 57 Jonathan testified that he thought that C.L. and B.D.D.L. had been living with Cynthia both before and after their divorce. Jonathan stated that although C.L. had been

at the Hokes' apartment when he picked him up to take him back to Texas, he had assumed that the minor had only been there for the weekend. Jonathan also testified that his father had actually picked C.L. up at the Hokes' apartment. Jonathan indicated that he had agreed to allow C.L. to live with the Hokes for school purposes. Jonathan stated that C.L. had lived with the Hokes for approximately six weeks before they called and advised that it was time to take the child to Texas. Jonathan testified that C.L. had otherwise lived with him since the minor was 15 months old. Jonathan suggested that he and Cynthia had lived in Texas with both minors for approximately 11 months.

¶ 58 Jonathan testified that after B.D.D.L. was bitten by a dog in April 2015, Donald had called him from the hospital asking if he was going to come back to Illinois. Jonathan advised Donald that both of his feet were still in casts. Jonathan indicated that he had spoken with Cynthia, Donald, and Nancy about the minor's injury on several occasions.

¶ 59 Jonathan testified that in the summer or fall of 2016, Amber had called him, telling him to leave her family alone. Amber threatened to file harassment charges against him and then hung up. Jonathan indicated that he had subsequently maintained contact through Cynthia, but B.D.D.L. was never with her. Jonathan testified that he had tried to contact the Hokes from November 2016 through May 2017. After receiving the Hokes' adoption petition in May 2017, Jonathan stopped trying to contact them because he did not know if he "would get in trouble for trying to get ahold of them." He therefore hired an attorney to "find out what was going on."

¶ 60 Jonathan indicated that while recovering from his second surgery in the spring or summer of 2016, he was making plans to have B.D.D.L. visit him in Texas but was

subsequently "blindsided" by the adoption petition that the Hokes filed in May 2017. He also indicated that he did not have the financial ability to hire an attorney until he had been forced to do so.

¶ 61 Jonathan testified that he had paid Cynthia child support until his attorney had told him to stop. Jonathan electronically transferred his child support payments directly to Cynthia. Jonathan stated that although he knew that most of the money was probably not going to B.D.D.L., the court had ordered him to pay it. Jonathan indicated that he had never been concerned when Cynthia had advised him that B.D.D.L. had been with the Hokes because he knew they would take care of him.

¶ 62 In his closing argument to the court, the Hokes' attorney asserted, *inter alia*, that even assuming that all of Jonathan's testimony was true, Jonathan had still failed to maintain a reasonable degree of interest, concern, or responsibility as to B.D.D.L.'s welfare. Counsel argued that other than paying court-ordered child support to Cynthia, Jonathan had "basically" not paid attention to the minor for years. Counsel noted that even after being served with the Hokes' petition for adoption in May 2017, Jonathan had made no effort to return to Illinois prior to the March 2018 hearing. Counsel argued that because Jonathan knew that B.D.D.L. "was in good hands with the Hokes," Jonathan had adopted an "out of sight, out of mind" attitude that reflected unfitness.

¶ 63 When asked for his recommendation, the minor's GAL expressed similar sentiments. The GAL commended Jonathan for making his child support payments but opined that he had failed to display a genuine interest and concern for the minor's

welfare. The GAL opined that a concerned father would not have let years pass by without ever visiting or communicating with his child.

¶ 64 By agreement of the parties, Jonathan subsequently submitted a written argument that the evidence adduced at the hearing did not support a finding that he was unfit. Jonathan maintained, *inter alia*, that had he been given notice that the Hokes had filed a petition for parental responsibilities in March 2016, "he would have sought to take his child to live with him in Texas, a result which the Hokes would, and have, gone to any lengths to prevent." He further stated that he would have participated in the proceedings and "sought to enforce his superior right to custody as opposed to the grandparents." Jonathan argued that his rights had been trampled upon by the proceedings in 14-D-58 and that the custody change should not be allowed to stand. Jonathan urged the court to "correct the miscarriage of justice" by finding him fit and allowing the parties to litigate the issue of custody in 14-D-58.

¶ 65 Jonathan argued that his alleged inability to communicate with the Hokes by telephone could only be attributed to their motive of preventing him from having contact with the minor. Jonathan contended that the circumstances that had precluded him from exercising regular visitation with B.D.D.L. should not be held against him. Stating that he had made timely child support payments, had tried to visit B.D.D.L. in August 2016, and had made "constant attempts" to maintain contact with the minor, Jonathan asserted that he had "shown a considerable degree of interest and concern for the child, *under the circumstances*." (Emphasis in original.)

¶ 66 In May 2018, the circuit court entered a written order finding that Jonathan was an unfit parent for failing to maintain a reasonable degree of interest, concern, or responsibility as to B.D.D.L.'s welfare (see 750 ILCS 50/1(D)(b) (West 2016)) and because he had "evidenced an intent to forego his parental rights as manifested by his failure, for a period of 12 months, commencing in December 2015, to visit with the child [or] communicate with the child, although able to do so and not prevented by an agency or court order from doing so, and by his failure, although physically able to do so, to maintain contact with or plan for the future of the child" (see *id.* § 1(D)(n)(1)). The court noted that it was undisputed that Jonathan had not seen B.D.D.L. since December 2015 and that the few visits Jonathan made after relocating to Texas had been "fairly brief." The court described Jonathan's claim that he had maintained frequent contact with Cynthia through 200 calls since December 2015 as "self-serving" and "questionable." The court stated that Jonathan's claim that he had not received notice of the Hokes' March 2016 pleadings was self-serving as well. The court further indicated that even accepting the claim as true, Jonathan's lack of notice was essentially irrelevant given that before the pleadings were filed, the Hokes had advised him of the need for action concerning the minor's welfare. The court observed that Jonathan's argument conveniently ignored that evidence. The court also noted that "[t]he only evidence adduced at trial about [Jonathan's] inability to travel was from him; there were no medical records admitted or other evidence presented in this regard." The court reasoned that even assuming that he could not have returned to Illinois at the time, Jonathan could have employed legal counsel to represent his interests and ensure that the minor was

protected. Implicitly rejecting Jonathan's testimony that he had called the circuit clerk's office, the court opined that had Jonathan been concerned about the minor's situation after speaking with Donald in March 2016, he could have also attempted to check the court file in 14-D-58, "which is a public record."

¶ 67 The court found that Jonathan's testimony that he had attempted to visit the minor in August 2016 was "dubious." The court determined that from the evidence presented, Jonathan had apparently not spoken with B.D.D.L. since December 2015. The court indicated that it did not believe that Jonathan had attempted to contact the Hokes since that time or that Jonathan was unaware that B.D.D.L. had been continuously living with the Hokes since he moved to Texas.

¶ 68 The court found that Jonathan's suggestion that he had been compelled to move to Texas to find suitable employment was "less than credible." The court observed that Jonathan had permanently relocated to Texas to earn better wages on his own volition and that there are numerous oil refineries across the Midwest, including one in Robinson. The court referenced its personal knowledge of the local refinery and its employment of welders. The court noted that Jonathan had apparently decided to cease being a traveling welder to work a full-time job that did not require frequent travel. The court opined that Jonathan could have found comparable employment in a location that "would have provided him more extended periods of time to spend with the minor." The court further observed that Jonathan had never exercised the right to liberal visitation that he had been awarded pursuant to the marriage settlement agreement and that he had never taken B.D.D.L. to Texas. The court determined that Jonathan "could have and should have

made more efforts to not only see the minor, but to have other forms of contact with the minor." The court noted that Jonathan could have used Skype "or some other form of long distance video contact."

¶ 69 The court observed that Jonathan had not been involved in any of B.D.D.L.'s educational or medical matters since permanently relocating to Texas and that the Hokes had retained attorney Reinoehl to act on the minor's behalf in the dog bite case. The court recognized that Jonathan had paid child support directly to Cynthia "despite her having seldom lived with and/or having cared for the minor child" from 2014 through 2018. The court further noted that despite his obvious increase in income, Jonathan's support payments had not increased. The court also noted that the payment amounts fell far below the statutory guidelines.

¶ 70 When discussing the March 2016 conversations regarding Cynthia's situation with Damien, the court noted that it had taken judicial notice that it had presided over criminal cases in which Cynthia and Damien had been the defendants. The court also indicated that it had taken judicial notice of the case file in 14-D-58 and the case file in 16-OP-16. See Ill. R. Evid. 201(c) (eff. Jan. 1, 2011) ("A court may take judicial notice, whether requested or not."); *People v. Jackson*, 182 Ill. 2d 30, 66 (1998) (noting that "a court will take judicial notice of its own records").

¶ 71 Specifically referencing the November 2016 order that was entered on the Hokes' petition for parental responsibilities in 14-D-58, the court stated that although it had previously found that Jonathan should have no parenting time, Jonathan could not claim that he had been prohibited from having contact with the minor by an order that he had

been unaware of, at a time during which he had made no attempts to contact the child. The court indicated that under the circumstances, what occurred in 14-D-58 was not relevant to the issue of Jonathan's fitness. The court further indicated that even assuming that Jonathan had not received notice of the hearing on the Hokes' petition for parental responsibilities and had not been aware of the court's November 2016 order, those facts had no impact on the other evidence presented for the court's consideration.

¶ 72 Finding, *inter alia*, that the Hokes had lived in the same apartment complex since 2013, that they had invited Jonathan to B.D.D.L.'s birthday and Christmas activities, and that they had specifically requested that Jonathan take action with respect to the minor's welfare in March 2016, the court stated that Jonathan's claims that the Hokes had tried to keep him from having any contact with B.D.D.L. were not credible. The court further stated that other than refusing to take Jonathan's call on the eve of the hearing, it found "no evidence whatsoever that the Hokes [had] frustrated any parental rights that [Jonathan] may have wished to assert." The court thus rejected Jonathan's suggestions that the Hokes had frustrated his contact with the minor and had "unclean hands." The court further found that Cynthia was "adverse" to the Hokes.

¶ 73 In September 2018, the cause proceeded to a best interest hearing, where Jonathan and the Hokes provided additional testimony. Referencing Jonathan's "pending" motion to vacate the circuit court's November 2016 order, Jonathan's attorney argued that the minor's interest would best be served by "reverting back to 14-D-58 so that the parties [could] litigate the custody issue in that case." After hearing and considering the arguments of counsel and the GAL's recommendation that the proposed adoption be

allowed, the circuit court determined that it was in B.D.D.L.'s best interest that Jonathan's and Cynthia's parental rights be terminated and that the Hokes' amended petition for adoption be granted. In October 2018, the court entered written judgment on its rulings, and in November 2018, Jonathan filed a timely notice of appeal.

¶ 74 DISCUSSION

¶ 75 Jonathan argues that the circuit court erred in finding that he was unfit pursuant to sections 1(D)(b) and 1(D)(n) of the Adoption Act. Jonathan asserts, *inter alia*, that in reaching its determination, the court misrepresented facts, relied on irrelevant information, and improperly ignored unrebutted testimony. He further suggests that the court failed to consider the extraordinary efforts that he made and the numerous obstacles that he faced. For the following reasons, we reject all of these claims.

¶ 76 At the outset, we note that the circuit court's order, which is quite lengthy, clearly indicates that the court found that Jonathan was not a credible witness. Because a circuit court's determination of parental unfitness involves factual findings and credibility assessments that the circuit court is in the best position to make, we give great deference to the court's factual findings and credibility determinations. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). We further note that when addressing several issues, the court explicitly rejected Jonathan's testimony and then alternatively assumed, *arguendo*, that Jonathan's claims were true.

¶ 77 On appeal, Jonathan suggests that the circuit court was required to accept his testimony where it was undisputed or unrebutted. He observes, for instance, that although his testimony regarding his work-related injury was undisputed, "the court found it

necessary to note that Jonathan produced no medical records to support his testimony of injury and disability." Jonathan also complains that the court referred to his testimony as "self-serving" but did not refer to Nancy's as such.

¶ 78 "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact" (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)), and "[a] trier of fact is free to accept or reject 'as much or as little' of a witness's testimony as it likes" (*People v. Rouse*, 2014 IL App (1st) 121462, ¶ 46 (quoting *People v. Logan*, 352 Ill. App. 3d 73, 81 (2004)); see also *Lasky v. Smith*, 407 Ill. 97, 106-07 (1950) ("Courts may disregard testimony which is discredited by circumstances as well as by the statements of the witness himself."); *People v. Lenoir*, 125 Ill. App. 3d 260, 263 (1984) (uncontradicted testimony need not be accepted in light of the "common-sense principle that the trier of fact may reject testimony simply because it is incredible and unbelievable")). The trier of fact is in the best position to make factual findings and credibility determinations because it has the opportunity to hear and see the witnesses testifying. *In re Omar F.*, 2017 IL App (1st) 171073, ¶ 37. As a reviewing court, we will not second-guess the circuit court's credibility determinations (*Prignano v. Prignano*, 405 Ill. App. 3d 801, 810 (2010)), and we accordingly decline Jonathan's invitation that we do so.

¶ 79 We further reiterate that the common law record in 14-D-58 is included in the record on appeal, but the common law record in 16-OP-16 is not. As noted, transcripts of the hearings that were held on the Hokes' pleadings in 14-D-58 and 16-OP-16 are not

included in the record, either. Because the appellant has the burden to present a sufficiently complete record to support a claim of error, any doubts arising from the incompleteness of the record will be resolved against the appellant. *In re J.B.*, 2018 IL App (1st) 173096, ¶ 30 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Additionally, "[a]s a reviewing court, we extend all reasonable presumptions in favor of the ruling below, and we will not presume error occurred at the trial level." *In re Marriage of Barnard*, 283 Ill. App. 3d 366, 371 (1996). Absent strong affirmative evidence to the contrary, we rather presume that the circuit court knew the law and applied it properly. *People v. Howery*, 178 Ill. 2d 1, 32 (1997).

¶ 80 "Although the United States Supreme Court and Illinois courts recognize a parent's fundamental right in the care, custody, and control of his or her children, courts also recognize that parental rights must sometimes be terminated." *In re M.H.*, 196 Ill. 2d 356, 362-63 (2001). In Illinois, a proceeding to involuntarily terminate parental rights may be brought under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2016)) or the Adoption Act (750 ILCS 50/1 *et seq*. (West 2016)). *In re M.M.*, 156 Ill. 2d 53, 61 (1993). Where a child has been adjudged abused, neglected, or dependent, a petition for termination of parental rights is filed under the Juvenile Court Act. *Id*. "Generally, all other involuntary termination actions proceed under the Adoption Act." *Id*. Although a nonparent may seek permanent custody of a minor under either of these acts, both "contain strict procedural requirements that embody Illinois' policy that favors parents' superior right to the custody of their own children." *In re E.B.*, 231 Ill. 2d 459, 464 (2008); see also *In re Custody of Menconi*, 117 Ill. App. 3d 394, 396 (1983).

¶ 81 A nonparent may also obtain custody of a minor through a petition for an order of protection filed pursuant to the Domestic Violence Act (see 750 ILCS 60/202, 214(b)(5), (6) (West 2016)) or through a petition for allocation of parental responsibilities filed pursuant to the Marriage Act (see 750 ILCS 5/601.2(b)(3) (West 2016)). Custody awarded to a nonparent under these acts is not permanent, however (see 750 ILCS 5/610.5 (West 2016); 750 ILCS 60/220(b), (e) (West 2016)), and the Adoption Act and the Juvenile Court Act "are the exclusive authority by which parental rights are adjudicated and terminated." *In re Marriage of Rhodes*, 326 Ill. App. 3d 386, 388 (2001); see also *In re Custody of R.W.*, 2018 IL App (5th) 170377, ¶ 55.

¶ 82 To terminate a parent's parental rights in a proceeding commenced under the Adoption Act, the circuit court must first find, by clear and convincing evidence, that the parent is unfit. *In re M.M.*, 156 Ill. 2d at 61. If a finding of parental unfitness is made, the court must then determine whether it is in the best interest of the child that the parental rights be terminated. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010). Although section 1(D) of the Adoption Act sets forth numerous grounds upon which a parent may be deemed unfit, a finding adverse to the parent on any one ground is sufficient to support a subsequent termination of parental rights. *In re C.N.*, 196 Ill. 2d 181, 217 (2001).

¶ 83 "Each case concerning parental unfitness is *sui generis*, unique unto itself." *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990). A circuit court's finding that there was clear and convincing evidence of parental unfitness will not be reversed unless the finding is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. "A

finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *Id.*

¶ 84 Pursuant to section 1(D)(b) of the Adoption Act, a parent may be deemed unfit based on his or her failure "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2016). "Because the language of section 1(D)(b) of the Adoption Act is in the disjunctive, any of the three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest or concern or responsibility as to the child's welfare." *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010); see also *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204 (2008).

¶ 85 When determining whether a parent has failed to maintain a reasonable degree of concern, interest, or responsibility, the parent's conduct with respect to the child must be considered in the context of the circumstances in which that conduct occurred (*In re Adoption of Syck*, 138 Ill. 2d at 278), and the relevant question is whether the parent's "then-existing circumstances provide a valid excuse" (*In re M.I.*, 2016 IL 120232, ¶ 29). Nevertheless, "a parent need not be at fault to be unfit," and a parent is not fit merely because she has demonstrated "*some* interest in or affection for her children; her interest, concern, and *responsibility* must be reasonable." (Emphases in original.) *In re E.O.*, 311 Ill. App. 3d 720, 727 (2000); see also *In re M.I.*, 2016 IL 120232, ¶ 30.

¶ 86 When considering whether a parent has failed to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare, the "primary consideration"

is whether the parent exercised his or her right to personal visitation with the child. *In re M.I.*, 2016 IL 120232, ¶ 36.

> "Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence [citations], the parent's poverty [citation], the actions and statements of others that hinder or discourage visitation [citation], and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child [citation]. If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. [Citations.] Also, mindful of the circumstances in each case, a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts." *In re Adoption of Syck*, 138 Ill. 2d at 278-79.

Ultimately, "[i]n a case proceeding under section 1(D)(b) of the Adoption Act, the issue is whether a parent maintained concern, interest and responsibility as to his or her child's welfare that, under the circumstances, was of a *reasonable* degree." (Emphasis in original.) *Id.* at 279-80. "To terminate a particular parent's parental rights, a court must find the negative of the proposition—it must find that there is clear and convincing

evidence that such a level of reasonable interest and concern was not maintained." *Id.* at 280.

¶ 87 Section 1(D)(n) of the Adoption Act provides that a parent may be deemed unfit upon

> "[e]vidence of intent to forgo his or her parental rights, whether or not the child is a ward of the court, (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so[.]" 750 ILCS 50/1(D)(n) (West 2016).

Section 1(D)(n) further provides that "[i]n the absence of evidence to the contrary, the ability to visit, communicate, maintain contact, pay expenses and plan for the future shall be presumed." *Id.*

¶ 88 Section 1(D)(n) establishes a 12-month "time frame within which a parent must perform one or more activities to avoid a finding of unfitness." *Douglas R.S. v. Jennifer A.S.*, 2012 IL App (5th) 110321, ¶ 7. The 12-month period "begins with the parent's last contact or communication with the child because any impediments preventing future contact must have necessarily occurred during or after the last contact or communication with the child." *In re Adoption of H.B.*, 2012 IL App (4th) 120459, ¶ 25. "Thus, in order to rebut a finding of unfitness for intent to forego parental rights, any evidence submitted explaining why the parent has had no contact with the child must have occurred within the 12 months following the parent's last contact with the child." *Id.* Credible evidence

that a parent's ability to contact or communicate with the child was frustrated by "objective impediments" that were beyond the parent's control will preclude a finding of unfitness under section 1(D)(n). *Id.* ¶ 35. We note that like section 1(D)(b) of the Adoption Act, the elements set forth in section 1(D)(n)(1) and subsection (1)(iii) are also phrased in the disjunctive. Consequently, any of the elements may be considered on its own as a basis for unfitness. See *In re C.E.*, 406 Ill. App. 3d at 108.

¶ 89 As previously indicated, in the present case, in addition to finding Jonathan unfit pursuant to section 1(D)(b), the circuit court found that Jonathan was unfit pursuant to section 1(D)(n) subsections (1)(i), (ii), and (iii). However, the Hokes' amended petition for adoption only alleged subsection (1)(iii) as a basis, and "a court may not terminate a parent's rights on grounds not charged in the petition." *In re Michael M.*, 364 Ill. App. 3d 598, 609 (2006). We will therefore only consider whether the court's findings that Jonathan was unfit pursuant to sections 1(D)(b) and 1(D)(n)(1)(iii) were against the manifest weight of the evidence (*id.*), keeping in mind that we may affirm the circuit court's judgment on any basis supported by the record (*In re Visitation of J.T.H.*, 2015 IL App (1st) 142384, ¶ 18).

¶ 90 With respect to section 1(D)(n)(1)(iii), the circuit court concluded that for a 12-month period commencing in December 2015, Jonathan failed to maintain contact with B.D.D.L. or plan for the future of the child, although physically able to do so. See 750 ILCS 50/1(D)(n)(1)(iii) (West 2016). This finding was supported by the evidence that Jonathan had failed to maintain contact with the minor or the Hokes since visiting the child in December 2015. By the time of the fitness hearing, in fact, Jonathan had failed to

maintain such contact for a period of nearly 27 months. The Hokes indicated that during that time, Jonathan had not communicated with them or the child through any means and had not sent the child any cards, gifts, or letters. Although the Hokes contacted Jonathan in March 2016, he did not reciprocate until he called Nancy wanting to speak with the minor the night before the March 2018 hearing. Jonathan claimed that he had maintained contact with the child through Cynthia and Nancy after December 2015 and that some cards and gifts were sent, but the court did not credit his testimony.

¶ 91 With respect to the circuit court's finding that Jonathan was unfit pursuant to section 1(D)(b), the Hokes' evidence established that Jonathan had only lived with the minor for a few months since the child's birth in 2011 and that since moving to Texas in 2013, he had only been in the child's presence for a few days. Although Jonathan paid his court-ordered child support and briefly visited the minor in 2014 and 2015, he never exercised his right to liberal visitation and never brought the child to Texas. The court recognized that Jonathan moved to Texas to pursue better wages but observed that he had voluntarily relocated and could have found suitable work closer to Robinson, which would have given him "much better access to the minor for parenting time."

¶ 92 Jonathan also failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the minor's welfare in situations in which distance was not a factor. After the minor sustained a dog bite injury in April 2015, for example, the injury required hospitalization and extensive medical treatment, but Donald testified that Jonathan had called him only once to monitor the child's progress. Nancy testified that Jonathan had not called her at all. Jonathan claimed that he had spoken with Cynthia, Donald, and

Nancy about the child's injury on several occasions, but the circuit court rejected that claim, finding that there was no evidence that he had any involvement in the minor's medical care concerning the dog bite. Jonathan signed legal papers allowing the Hokes to proceed with the ensuing lawsuit when Cynthia was being uncooperative with their efforts, but he did not otherwise contact Reinoehl and rather let the Hokes deal with the matter. Similarly, in March 2016, when the Hokes advised Jonathan that the minor needed protection from Cynthia and Damien, he told them to do whatever they had to do to prevent her from assuming custody and then made no further inquires or contact until the night before the March 2018 hearing. The evidence thus established that when Jonathan was afforded opportunities to demonstrate a reasonable degree of care, concern, and responsibility as to the minor's welfare under the circumstances, he abdicated his parental responsibilities to the Hokes and otherwise showed indifference. Moreover, as noted, after visiting the minor in December 2015, Jonathan failed to maintain any contact with the child for a period of nearly 27 months.

¶ 93 On appeal, Jonathan offers the same excuses and impediments that the circuit court considered and rejected below. Jonathan claims, for instance, that he had been unable to make contact with the minor after December 2015 because he was unaware that the minor had been living with the Hokes and because his attempts to contact the minor had been frustrated by the Hokes' refusal to respond to his calls. At the hearing, he further claimed that Amber had threatened him with legal action if he tried to contact the Hokes and that he had not contacted them with respect to the proceedings in 16-OP-16 because he had been waiting on legal papers to arrive in the mail. At the same time,

Jonathan also claimed that he had spoken with the minor, through the Hokes, on approximately 180 occasions since last seeing him. Jonathan further suggested that he had maintained additional contact with the minor through Cynthia, who he believed had possession of the child. The court rejected these varying claims, however, and specifically indicated that it did not find Jonathan credible. The court further found that despite Jonathan's contrary intimations, the Hokes had done nothing to discourage or prevent him from having contact with B.D.D.L. As noted, Nancy and Donald both testified that they would have taken phone calls from Jonathan had he made them, and Nancy explained that they had "tried to get him to be a parent" when significant events in the child's life arose.

¶ 94 With respect to Jonathan's belief that the minor had been living with Cynthia, the Hokes' evidence established that except for a few months, the minor had lived with them his entire life. The Hokes explained that Cynthia rarely had possession of the child prior to March 2016 and never had possession of him thereafter. The circuit court observed that Jonathan's belief that the minor was living with Cynthia was apparently based on his claim that he had spoken with Cynthia approximately 200 times since December 2015. The court rejected that claim, however, and observed that all of Jonathan's recent visits with B.D.D.L. had taken place at the Hokes' apartment, where Jonathan had "picked up and returned the minor." We also note that Jonathan testified that when he drove from Texas to check on B.D.D.L. in August 2016, he had gone to the Hokes' apartment to see him. When Jonathan took the minor to Terre Haute in December 2015, the minor's "backpack of stuff" had come from the child's bedroom at the Hokes' apartment.

Moreover, B.D.D.L. and C.L. had both been living with the Hokes before and after Jonathan and Cynthia's divorce and had moved into the Hokes' apartment without Cynthia. Jonathan indicated that he thought that B.D.D.L. and C.L. had been living with the Hokes for school purposes, but he also claimed that the Hokes had told him that B.D.D.L. had only been living with them on the weekends. The circuit court implicitly rejected these varying claims as well. Jonathan complains that "[n]o one ever told him that the child was living on a continuous basis with the Hokes," but under the circumstances, the circuit court could have concluded that he was well aware that such was the case.

¶ 95 Jonathan argues that his ability to visit the child after December 2015 was hampered by his physical inability to drive and that he made an extraordinary effort to visit the child when he drove nonstop from Texas to Illinois in August 2016, when he was able to drive again. The circuit court did not find these claims credible, either, and we note that Jonathan's alleged inability to travel did not preclude him from maintaining contact with the minor through means other than visits. Moreover, the court recognized that while frequent visits with the child were impractical given the distance between them, Jonathan "could have and should have made more efforts to not only see the minor, but to have other forms of contact with the minor."

¶ 96 Suggesting that he was "completely and totally unaware" that the Hokes had been contemplating a custody change in March 2016 or that a custody change had subsequently occurred, Jonathan asserts that had he received proper notice of the proceedings in 14-D-58, he would have appeared, ostensibly through counsel, and could

have effectively prevented the Hokes from commencing their adoption proceeding by asserting his superior right to custody as a natural parent. He claims that had he known that the Hokes had taken "the unusual step of intervening" in 14-D-58, "he would have shown a great deal of interest, concern and responsibility for the child while participating in the custody proceedings" and might have "perhaps obtained custody for himself." As the circuit court indicated when rejecting similar arguments below, however, these assertions must be considered in light of what Jonathan knew in March 2016 and what he failed to do thereafter.

¶ 97 Jonathan's complaints regarding the proceedings in 14-D-58 must be evaluated in light of the evidence that in March 2016, when the Hokes asked him to return to Illinois and protect the minor, he declined to do so and opted to allow the Hokes to act on the minor's behalf. By telling the Hokes to do whatever they needed to do to prevent Cynthia from assuming custody of B.D.D.L., Jonathan essentially relinquished his parental rights and abdicated his parental responsibilities to the Hokes. Because they had no legal authority to prevent Cynthia from removing the minor from their home, they were required to obtain counsel and seek custody of the minor through the court proceedings in 16-OP-16 and 14-D-58. The proceedings in both causes were commenced within weeks of each other, and the orders of protection entered in 16-OP-16 presumably granted the Hokes temporary custody and parental responsibilities with respect to the child. See 750 ILCS 60/214(b)(5), (6) (West 2016). Donald testified that Jonathan had been advised that the Hokes were going to intervene in 14-D-58, but he acknowledged that he had not specifically stated that he and Nancy were going to file a petition for parental

responsibilities. Nancy testified that Jonathan had indicated that he would call the Hokes later to discuss the situation with Cynthia, but he never did. In any event, by his own admission, Jonathan was aware that at the very least, the Hokes were planning to obtain an order of protection against Cynthia, which belies his claim that he was wholly unaware that a change in custody might occur. Jonathan testified that he did not understand what would occur after the plenary order of protection expired, but his failure to contact the Hokes after March 2016 demonstrated a lack of reasonable care, concern, or responsibility under the circumstances that was in no way attributable to his lack of formal service in 14-D-58.

¶ 98 We recognize that because Jonathan was not properly served notice of the proceedings in 14-D-58, whether he received the mailed notice and whether he was aware of the proceedings or not, the order granting the Hokes' motion to intervene and the order granting them parental responsibilities in 14-D-58 were void on due process grounds. See *In re Custody of Ayala*, 344 Ill. App. 3d 574, 583-88 (2003); *White v. Ratcliffe*, 285 Ill. App. 3d 758, 763-64 (1996); *In re J.S.*, 272 Ill. App. 3d 219, 221-24 (1995). The lack of formal notice in 14-D-58 did not void Jonathan's knowledge that the Hokes were taking legal action pertaining to the custody and welfare of the minor, however, and as the circuit court noted, knowing that such action was imminent, Jonathan could have employed counsel to represent his interests or otherwise ensure that the minor was protected. Had he done so, he could have asserted his parental rights against Cynthia's by filing a motion to modify their custody arrangement, thereby eliminating the Hokes' need to intervene.

¶ 99 On appeal, acknowledging that he "was perhaps advised of the problem" with Cynthia, Jonathan suggests that because he "clearly knew that the [Hokes] were taking action" to protect B.D.D.L., no "reasonable person" would have retained their own counsel under the circumstances. That statement itself demonstrates Jonathan's lack of care, concern, or responsibility under the circumstances. Furthermore, even accepting Jonathan's position as reasonable, it would still fail to explain his complete failure to contact the Hokes or the minor until the night before the March 2018 hearing, which in and of itself supported the circuit court's finding of unfitness pursuant to section 1(D)(n)(1)(iii).

¶ 100 We also note that Jonathan is unable to otherwise establish that he was prejudiced by the proceedings in 14-D-58. The proceedings could not have resulted in the termination of Jonathan's parental rights and the proceedings had no bearing on the Hokes' ability to file their adoption petition. The Hokes' adoption action was a parallel proceeding over which the court had independent jurisdiction (see *Lingwall v. Hoener*, 108 Ill. 2d 206, 212-13 (1985)), as was the Hokes' action in 16-OP-16 (see *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627 (1992); *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 487 (1992)). Moreover, the custody rights that the Hokes obtained in November 2016 in 14-D-58 were seemingly no greater than the rights that they had already obtained in March in 16-OP-16, and the rights obtained pursuant to both might well have been held contemporaneously. See 750 ILCS 60/220(b) (West 2016). Additionally, while the orders entered in both cases gave the Hokes formal custody rights, the Hokes had been informally exercising such rights since the minor's birth, and

the custody change that resulted from the proceedings in 16-OP-16 and 14-D-58 reflected the actual arrangement under which the minor had been receiving care without objection for years. Although the November 2016 order entered in 14-D-58 found that Jonathan should have no visitation rights, the order did not create an objective impediment that prevented Jonathan from contacting the minor or the Hokes, and Jonathan has never claimed that it did. He has rather suggested that although he had been willing to allow the Hokes to obtain temporary legal custody of the minor pursuant to the proceedings in 16-OP-16, and although he did not know what would happen to the minor when the orders of protection expired, had he known that the Hokes had filed a petition for parental responsibilities in 14-D-58, he would have obtained counsel and done what the Hokes had asked him to do in the first place, *i.e.*, assert his parental rights against Cynthia's. Again, however, even accepting this position as reasonable, it would still fail to explain his complete failure to contact the Hokes or the minor from March 2016 until the night before the March 2018 hearing.

¶ 101 Ultimately, we agree with the circuit court's observation that given Jonathan's knowledge of what was happening in March 2016 and his subsequent failure to act or inquire, what occurred in 14-D-58 was irrelevant with respect to the issue of whether he was unfit. To the extent that Jonathan requests that we find an "implied harm" because of the fundamental rights at stake in a termination proceeding and the overall importance of the Marriage Act's notice provision, we decline to do so. *In re S.L.*, 2014 IL 115424, ¶ 26. Again, 14-D-58, 16-OP-16, and 17-AD-6 were parallel proceedings, and Jonathan cites no authority in support of his underlying intimation that regardless of whether

prejudice ensued, the judgment entered in 17-AD-6 should not be allowed to stand in light of the due process violation that occurred in 14-D-58. Moreover, given that a void order may be attacked at any time (*Smith v. Hammel*, 2014 IL App (5th) 130227, ¶ 13), such a remedy could readily work to frustrate the "public policy favoring the finality and stability of adoptions" (*In re Adoption of Hoffman*, 61 Ill. 2d 569, 578 (1975)).

¶ 102 Accusing the circuit court of "twisting [the] evidence," Jonathan raises additional arguments through assertions that the court's order finding him unfit contains misrepresented facts and irrelevant information. His claims to that effect are primarily based on passages taken out of context, however, and he fails to explain how any of the information that he argues was irrelevant ultimately affected the court's finding of unfitness.

¶ 103 Jonathan maintains, for example, that the court blamed him for moving to Texas and made itself "an expert in the conduct of the oil refining industry" and "an expert in the availability of welding jobs in various parts of the country." While the court's comments regarding the petroleum industry could be viewed as unnecessary, they were also *obiter dicta*. See *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 41. In context, the court's relevant observation was that Jonathan had voluntarily moved to Texas for better employment when he could have found suitable, albeit less desirable, employment closer to Robinson. The court noted that Jonathan's situation was not analogous to that of a person whose job required him or her to move, such as a member of the military. A parent's voluntary decision to geographically distance himself from his

or her child is something that a court can consider when evaluating the parent's inability to regularly visit the child (see *In re E.O.*, 311 Ill. App. 3d at 727), and we find no error.

¶ 104 Emphasizing that he resides approximately 1100 miles from Robinson, Jonathan suggests that the court unfairly criticized him for failing to take an "active role in the child's medical care." The court's criticism, however, was the lack of evidence that since moving to Texas, Jonathan had "any involvement" in the child's medical care or the decisions that were made with respect to the minor's dog bite injury. This was a fair observation under the circumstances. As indicated, the circuit court could have concluded that Jonathan abdicated his parental responsibilities to the Hokes and failed to show a reasonable degree of care, concern, or responsibility under the circumstances. Moreover, at the fitness hearing, Jonathan's counsel specifically conceded that testimony as to whether Jonathan had attended any medical appointments was something that the court could properly consider when determining whether he had failed to maintain a reasonable degree of interest. Under the doctrine of invited error, a party cannot complain of an alleged error to which that party consented. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004). Jonathan similarly complains that the court noted his lack of involvement in the minor's education. The court could have concluded, however, that despite the distance between them, Jonathan could have made some effort to participate in the child's educational decisions.

¶ 105 Jonathan suggests that the circuit court improperly took judicial notice of the fact that it had presided over criminal cases involving Cynthia and Damien. Jonathan emphasizes that he "had nothing to do with any criminal activity of those individuals."

The court did not state or suggest otherwise. The court referenced the criminal cases when discussing 16-OP-16, which stemmed from the Hokes' allegations that Cynthia and Damien's domestic violence and substance abuse issues posed a harm to the minor. In context, the court was apparently noting its familiarity with the circumstances of the situation, given that it had presided over the proceedings in 16-OP-16.

¶ 106 Jonathan accuses the circuit court of minimizing the evidence that he paid child support. In context, however, the court's observations were fair responses to Jonathan's argument that his payment of child support should be given great weight. As indicated, pursuant to the judgment of dissolution, Jonathan was ordered to pay $100 per week in child support, based on his reported net income of $500 per week. The court recognized Jonathan's proof that he had paid $10,565 of the $18,600 in payments due since the entry of the judgment. The court noted, however, that the payments had gone directly to Cynthia, even though she had not been caring for the child. The court further noted that the payment totals had been inconsistent from year to year and remained nominal in light of Jonathan's estimated income.

¶ 107 Maintaining that the circuit court was biased against him in the present proceedings, Jonathan suggests that the court minimized the fact that his "rights were trampled upon" in 14-D-58 because the court presided over those proceedings as well. By failing to file a motion for substitution of judge prior to the commencement of the fitness hearing in 17-AD-6, however, Jonathan has waived any allegations of bias. *Chesler v. People*, 309 Ill. App. 3d 145, 154 (1999). Waiver aside, we discern no bias in the circuit court's judgment or in the manner in which it addressed Jonathan's arguments regarding

the proceedings in 14-D-58. Jonathan relatedly intimates that the circuit court ignored that the Hokes had deceived him by not "advising him of the legal and custodial realities in order for him to have the opportunity to correct them." As previously indicated, however, the Hokes advised Jonathan of the child's need for protection in March 2016, and when they asked him to take action on the minor's behalf, he effectively relinquished his rights and responsibilities and made no further inquiries. Moreover, the circuit court specifically rejected Jonathan's contention that the Hokes had "unclean hands." As indicated, the issues before the court required it to make numerous credibility determinations, and it clearly found that the Hokes were credible and that Jonathan was not. As previously noted, "[t]he trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court that saw and heard the witnesses." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59.

¶ 108 Jonathan complains that the circuit court unfairly criticized him for not making arrangements to "use Skype or other form of video contact to communicate with his son," because there was no evidence that he "had knowledge of such matters." In context, the court's observation was that despite living in Texas, Jonathan could have made efforts to have meaningful communication with the minor, who was four to six years old during the 27-month period during which Jonathan had no contact with him. This was a fair comment.

¶ 109 Jonathan lastly takes issue with the circuit court's observation that in light of his testimony that he did not know of the November 2016 order finding that he should have no visitation time, he could not use the order as an excuse. Jonathan maintains that

because he never made such a claim, the circuit court's observation was irrelevant. To the extent that the court's observation was directed at its finding that Jonathan was unfit pursuant to section 1(D)(n)(1)(ii), we agree. See 750 ILCS 50/1(D)(n)(1)(ii) (West 2016) (failure for a period of 12 months to communicate with the child although able to do so and not prevented from doing so "by court order"). As noted, the Hokes' amended petition did not allege such a ground. Nevertheless, the observation was otherwise relevant with respect to the court's general observations that what occurred in 14-D-58 did not prejudice Jonathan in 17-AD-6.

¶ 110 When a judge sits as the trier of fact, we must presume that he or she will only consider competent evidence. *In re Jovan A.*, 2014 IL App (1st) 103835, ¶ 42. Here, Jonathan is unable to overcome that presumption. Considered in its entirety, the circuit court's order finding Jonathan unfit demonstrates that the court thoroughly considered the evidence presented for its consideration and gave due consideration to the parties' respective positions. Giving due deference to the court's factual findings and credibility determinations, we cannot conclude that the court's conclusion that Jonathan was unfit pursuant to section 1(D)(b) and (n) is against the manifest weight of the evidence, and we accordingly affirm its judgment.

¶ 111 We lastly note that Jonathan was granted extensions of time to file his brief and the record on appeal, which resulted in a delay in the briefing schedule. He also requested oral argument pursuant to Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), and the parties' arguments were heard on May 9, 2019. Consequently, we find that good cause

exists for issuing our decision after the due date of April 20, 2019. See *In re Lu. S.*, 2017 IL App (5th) 160482, ¶ 7.

¶ 112 CONCLUSION

¶ 113 For the foregoing reasons, the circuit court's judgment entered on the Hokes' amended petition for adoption is hereby affirmed.

¶ 114 Affirmed.