

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).

2014 IL App (4th) 140079-U  
NOS. 4-14-0079, 4-14-0080 cons.

**FILED**  
June 13, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: L.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Douglas County
v. (No. 4-14-0079)	)	No. 10JA3
SAMANTHA HENRY,	)	
Respondent-Appellant.	)	
-----	)	
In re: L.H., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-14-0080)	)	
JUSTIN HENRY,	)	Honorable
Respondent-Appellant.	)	William Hugh Finson,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in accepting the parents' respective stipulations as to their unfitness for termination purposes without any factual basis being provided to the court.

¶ 2 On May 2, 2013, the trial court accepted respondents Samantha and Justin Henry's stipulations as to their parental unfitness for termination purposes with regard to L.H. (born February 1, 2010). In January 2014, the court found it was in the best interest of L.H. to terminate respondents' parental rights. Both respondents appeal from the court's decision in this consolidated appeal, arguing the court erred (1) in accepting their stipulations as to their fitness and (2) in denying their (a) motion for a directed finding and (b) motion to dismiss the motion to

terminate their parental rights. The respondents also argue the trial court's decision to terminate their parental rights was against the manifest weight of the evidence. We affirm in part, reverse in part, and remand the case for further proceedings.

¶ 3

## I. BACKGROUND

¶ 4 In March 2010, the State filed a petition for wardship, alleging L.H. was neglected by reason of being in an environment injurious to his welfare (705 ILCS 405/2-3(b) (West 2008)). The petition alleged L.H. was born prematurely and cocaine was detected in his urine. Further, Samantha Henry had cocaine, (nonprescribed) benzodiazepines, and cannabis in her system at the time of L.H.'s birth. In addition, Justin Henry tested positive for cannabis in January 2010.

¶ 5 In September 2010, the parties and the trial court agreed to continue the case under supervision pursuant to section 2-20 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-20 (West 2008)). In November 2010, the State filed a petition to revoke supervision. The court terminated supervision and found L.H. neglected. The court made L.H. a ward of the court and named the Department of Children and Family Services (DCFS) his temporary custodian.

¶ 6 On November 9, 2011, the State filed a motion to terminate respondents' parental rights, alleging they were unfit for a variety of reasons.

¶ 7 At a permanency review hearing on September 28, 2012, the trial court found neither respondent had made reasonable and substantial efforts nor reasonable and substantial progress toward reunification. The court changed the permanency goal to substitute care pending termination of parental rights.

¶ 8 At a fitness hearing in May 2013, the State announced respondents would stipulate they each had failed to make reasonable efforts to correct the conditions requiring removal of L.H. within nine months of adjudication. The following exchange then occurred:

"[TRIAL COURT]: Okay. [Counsel for Samantha Henry], 6(b), as far your client is concerned, states that Samantha is not a fit parent pursuant to Illinois Compiled Statutes, with the citation, in that (b) she has failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor from her within nine months after adjudication of neglected minor under Section 2-3 of the Juvenile Court Act. Is your client prepared to stipulate that if there were a hearing, the State would call witnesses that would substantially show that?

[COUNSEL FOR SAMANTHA HENRY]: Yes, Your Honor.

[TRIAL COURT]: Ms. Henry, do you agree that if there were a hearing on fitness, the State's Attorney could call witnesses that would substantially prove what I just said?

[SAMANTHA HENRY]: Within the first nine months?

[TRIAL COURT]: Nine months, yes.

[SAMANTHA HENRY]: Yes, Your Honor.

[TRIAL COURT]: [Counsel for Justin Henry], with regard to paragraph 7(d), the named father of the minor, Justin Henry, is

not a fit parent pursuant to the statutory citation and his parental rights should be terminated in that he has failed to make reasonable efforts to correct the conditions that were the basis of the removal of the minor from him within nine months after an adjudication of neglected minor under section 2-3 of the Juvenile Court Act. Is your client prepared to stipulate that the State could produce witnesses to show substantially that?

[COUNSEL FOR JUSTIN HENRY]: Your Honor, he is willing to stipulate to the unfitness according to section 7(d). He is not willing to stipulate as a result of it that his parental rights should be terminated.

\*\*\*

[TRIAL COURT]: Mr. Henry, are you agreeing that if there were a hearing on the unfitness issue, Ms. Watson could call witnesses who would testify substantially as alleged in paragraph 7(d)?

[JUSTIN HENRY]: Yes, Your Honor.

\*\*\*

[TRIAL COURT]: Show all the parties stipulate that if there were a hearing, the State could call witnesses who would show unfitness of Samantha Henry as alleged in paragraph 6(b) of the Motion to Terminate Parental Rights and Justin Henry as

alleged in paragraph 7(d) of the Motion to Terminate Parental Rights."

¶ 9 In September 2013, respondent mother filed a motion to dismiss the State's petition to terminate her parental rights. At a hearing on the motion in December 2013, respondent father joined in the motion. The trial court denied the motion to dismiss.

¶ 10 On January 16, 2014, the trial court found it was in L.H.'s best interest to terminate respondents' parental rights.

¶ 11 II. ANALYSIS

¶ 12 We first address respondents' argument the trial court erred in denying their motion to dismiss the State's petition to terminate their parental rights. According to respondents, pursuant to sections 1-5(3) and 2-23(1)(c) of the Juvenile Court Act (705 ILCS 1-5(3) and 2-23(1)(c) (West 2010)), the State's petition should have been dismissed because the court did not admonish respondent parents in the written dispositional order that they must cooperate with DCFS, comply with terms of any service plans, and correct any conditions requiring the child to be in care to avoid termination of their parental rights.

¶ 13 Respondents have failed to establish the trial court erred in denying the motion to dismiss. Respondents base their argument on the absence of the admonitions in the written dispositional order. However, the plain text of sections 1-5(3) and 2-23(1)(c) does not require the admonishments to be in writing. Further, because the record does not contain a transcript of the dispositional hearing, respondents have failed to establish the court did not give the admonishments in question. See *Webster v. Hartman*, 309 Ill. App. 3d 459, 461, 722 N.E.2d 266, 268-69 (1999) ("Regardless of where the burden of proof may lie in the trial court, in this

court, the burden of providing a sufficient record to establish trial court error *always* lies with the party who is claiming that the trial court erred." (Emphasis in original.)).

¶ 14 We next address respondents' argument the trial court erred in accepting the stipulations they made with regard to their unfitness for termination purposes. We must agree.

¶ 15 Based on the United States Supreme Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976), our supreme court in *In re M.H.*, 196 Ill. 2d 356, 368, 751 N.E.2d 1134, 1142-43 (2001), held "due process requires a circuit court to determine whether a factual basis exists for an admission of parental unfitness before it accepts the admission." According to the supreme court, a factual basis determination safeguards against an erroneous deprivation of a parent's fundamental right to parent his children without imposing any increased burden on the State. *Id.* at 368, 751 N.E.2d at 1143.

¶ 16 The trial court in *M.H.*, like the trial court in the case *sub judice*, accepted an admission of unfitness from a parent without hearing any factual basis for the admission. *Id.* at 361, 751 N.E.2d at 1139. Our supreme court noted:

"[W]e believe the procedures, or lack thereof, utilized by the circuit court in this case may lead to an erroneous deprivation of a parent's fundamental rights. A factual-basis requirement ensures that the State has a basis for its allegation of unfitness. In addition, a factual-basis requirement makes certain that a parent's admission of unfitness is knowing and voluntary. \*\*\*

\*\*\*

Clearly, if an admission of neglect must be knowing and

voluntary, then an admission of unfitness must also be knowing and voluntary. The factual basis allows the parent to hear the State describe the alleged facts relating to fitness and gives the parent an opportunity to challenge or correct any facts that are disputed. Without a factual basis, 'there is danger that a parent may understand the State's alleged grounds of unfitness but may not realize that his or her conduct does not fall within those allegations.' [Citation.] Thus, if a parent is not fully informed of the factual basis underlying the State's allegations, the risk is increased that her parental rights will be erroneously terminated because of an ill-advised admission of unfitness." *Id.* at 366-67, 751 N.E.2d at 1141-42) (quoting *In re M.H.*, 313 Ill. App. 3d 205, 215, 729 N.E.2d 86, 94 (2000)).

As a result, the supreme court affirmed the appellate court's judgment which vacated the respondent-mother's admission of unfitness for lack of a factual basis, reversed the order terminating the respondent-mother's parental rights, and remanded the case for a new fitness hearing. *Id.* at 368, 751 N.E.2d at 1143.

¶ 17 The State argues respondents forfeited this argument because they did not file a posttrial motion raising this issue. The State also argues respondents are estopped from taking a position on appeal inconsistent with a position they took in the trial court. However, the State fails to mention, much less distinguish, our supreme court's opinion in *M.H.* As a result, we will not address these arguments any further.

¶ 18 The trial court in this case accepted respondents' respective admissions without any factual basis. Pursuant to *M.H.*, we must vacate both of respondents' stipulations as to their unfitness, reverse the order terminating their parental rights, and remand the case for a new fitness hearing. If either of respondent-parents are found unfit, the court shall conduct a new best-interests hearing. We need not address the other issues raised by respondents.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's denial of respondents' motion to dismiss the State's termination petition, vacate respondents' stipulations as to their unfitness, reverse the order terminating their parental rights, and remand the case for a new fitness hearing for respondent-parents.

¶ 21 Affirmed in part and reversed in part; cause remanded with directions.