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2014 IL App (4th) 140199-U

NO. 4-14-0199

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 7, 2014

Carla Bender

4th District Appellate

Court, IL

In re: P.L. and L.L., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 08JA118
RICHARD LOGSDON,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in terminating respondent's parental rights.

¶ 2 In March 2014, the trial court found respondent, Richard Logsdon, unfit to parent his minor children, P.L. and L.L., and also found it was in the minors' best interest to terminate respondent's parental rights. Respondent appeals, arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2008, the State filed a petition for adjudication of neglect in the interest of P.L. (born April 21, 2004) and L.L. (born September 14, 2008), naming respondent as the biological father of both minors. The Illinois Department of Children and Family Services (DCFS) pursued the adjudication and disposition of neglect as to both minors, and eventually, the termination of respondent's parental rights, because he (1) had failed to recognize that his wife, L.L.'s mother,

created a risk of harm to L.L., since she had been convicted of murdering one of her older children; and (2) could not prove he had successfully completed sex-offender treatment in 1991, after he pleaded guilty to sexually assaulting two female cousins, aged 6 and 4, when he was 15 years old. Respondent resolved the first issue to DCFS's satisfaction during his individual counseling sessions. However, because the State could not locate records indicating respondent had successfully completed sex-offender treatment in 1991, and because respondent refused to participate in treatment again, the State pursued termination and successfully demonstrated to the trial court that respondent was unfit for failing to make reasonable progress toward reunification with his children. The State also proved to the court's satisfaction it was in the minors' best interest that respondent's parental rights be terminated. Respondent appealed.

¶ 5 This court reversed the trial court's judgment of termination, finding the evidence did not support the court's finding of respondent's parental unfitness. *In re P.L.*, 2011 IL App (4th) 110512-U, ¶ 75. We held the State had failed to produce evidence supporting its assumption the minors were at a risk of harm based on respondent's failure to present proof he had successfully completed sex-offender treatment 20 years ago, when he was 15 years old. *P.L.*, 2011 IL App (4th) 110512-U, ¶ 69. We remanded for further proceedings consistent with our decision. *P.L.*, 2011 IL App (4th) 110512-U, ¶ 75.

¶ 6 On remand, at a May 2012, permanency hearing, the trial court found respondent fit "pursuant to the appellate court mandate" and set the target date of August 10, 2012, as the date the minors would transition to respondent's full-time care. At that time, respondent was consistently attending individual counseling with Todd Smith at Chestnut Health Systems, addressing issues related to his passive-aggressive behaviors, anxiety, and transitioning the minors into his home. He was also attending counseling at ABC Counseling with P.L. when

scheduled to participate. He maintained his employment at Heritage Manor and continued to reside in the same home. As of May 2012, the children had been in foster care for 34 months and each child was doing well in their respective placements. P.L. was in her third placement, having been there since August 2010. L.L. remained in his second placement, having been there since October 2009. (L.L.'s foster parents had both children in their home until giving notice they were unable to care for P.L. Since August 2010, the children have lived separately.) According to Court Appointed Special Advocates (CASA), L.L., who was then three years old, showed some confusion when visiting respondent about his relationship with respondent. CASA suggested L.L. refer to respondent as "Daddy Richard" to help L.L. understand he had a foster dad and a biological dad. P.L., who was then eight years old, had difficulty adjusting to visiting respondent again.

¶ 7 On August 13, 2012, L.L. was transitioned into respondent's home, while P.L. remained in her foster home. DCFS determined the minors should be returned to respondent in "a staggered manner," with P.L. returned after the initial nine-week grading period at school. However, on September 24, 2012, L.L. was returned to foster care after L.L.'s day care provider notified DCFS of "cuts/welts and bruises" on L.L.'s buttocks and genitals when he was brought to day care. The following incident reports had been considered in the decision to place L.L. back into the foster home: (1) August 27, 2012, bruise on bottom left cheek; (2) August 28, 2012, small bruise on right side of face near mouth; (3) August 29, 2012, "three red marks above his genital area"; (4) small bruise above "private area" on left side; and (5) bruise, "the size of a penny," on right upper thigh/bottom area. (There are two photographs under seal in the record of L.L.'s genitals, presumably to demonstrate the documented marks. However, the photographs are black and white, and therefore, it is difficult for this court to discern any discoloration in the

injuries.) DCFS initiated an investigation and the trial court reserved a fitness finding until the investigation was complete.

¶ 8 In November 2012, a DCFS child protection specialist indicated respondent in the report for abuse and medical neglect of L.L. CASA recommended respondent's fitness be changed to "unfit and unable." On December 12, 2012, the State filed a petition to terminate respondent's parental rights, but this petition was dismissed in February 2013, when the State filed a first supplemental petition for the adjudication of wardship. In the adjudication petition, the State alleged both minors were neglected and abused. Respondent admitted one allegation of neglect relating to the minors' injurious environment based upon respondent's failure to seek medical attention within three days of notification of the "genital bruising and rawness, along with bruising on the buttock" on L.L. Upon respondent's admission, the State dismissed the remaining allegations, which included the allegation the minors were abused by reason that respondent had inflicted physical injury on L.L.

¶ 9 In its May 2013 adjudicatory order, the trial court found both minors neglected by reason of an environment injurious to their welfare. In its July 2013 dispositional order, the court found respondent to be unfit, made the minors wards of the court, and granted custody and guardianship to DCFS.

¶ 10 In November 2013, the State filed a petition to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/0.01 to 24 (West 2012)). The State alleged respondent was an unfit person because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)), (2) failed to protect the children from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2012)), and (3) has an inability to discharge parental

responsibilities due to mental illness, retardation, or developmental disability (750 ILCS 50/1(D)(p) (West 2012)).

¶ 11 In March 2014, the trial court conducted a hearing on the petition to terminate respondent's parental rights. Dr. Linda Lanier, a licensed psychologist, testified for the State. She said she conducted two psychological examinations of respondent, once in February 2009 and a second time in June 2013. She also met with the children's respective therapists after respondent's second examination. After her examination in June 2013, Lanier opined respondent had "very significant impairments in parenting in general." The additional information from the minors' therapists "made it even more clear that he would not be able to parent these children." Respondent suffers from a combination of the following mental conditions: (1) relatively low intellectual level, and (2) "some personality disorder traits that further impair his ability to be empathetic and patient with his children and put their needs first." In addition, she described respondent as (1) having "some slowness," (2) having a "lack of insight," (3) suffering from dependency issues, and (4) being "self-centered" to the exclusion of everyone else's needs. Lanier explained the various issues related to the specific needs of the minors. In particular, she explained L.L. was nonverbal and "very delayed intellectually," with autistic-like behaviors. She recommended "filial therapy" for L.L., which requires a great deal of empathy, understanding, and attention. This type of therapy means the home becomes a therapeutic environment, requiring the parent to be specifically trained. In Lanier's opinion, respondent is incapable of parenting on his own, even if his children were not high-needs children. Lanier testified respondent is not mentally retarded, nor has he been diagnosed with a developmental disability. He most recently demonstrated an intelligence quotient I(Q) of 83.

¶ 12 Lanier stated, in preparation for her February 10, 2009, evaluation of respondent, she had received and reviewed an integrated assessment from DCFS dated October 31, 2008, and a counseling report dated January 29, 2009. Otherwise, she relied upon her clinical interview using several testing tools. For her June 10, 2013, evaluation, Lanier reviewed an integrated assessment dated April 2, 2013, a psychological evaluation by Dr. Michael Shear dated March 24, 2010, and notes from ABC Counseling dated January 3, 2013, relating to L.L. She noted Shear's evaluation "dovetailed completely" with her diagnosis. (In his evaluation, which centered primarily on sex-offender issues, Shear stated respondent was "shown to have been experiencing psychological dysfunction of mild to moderate severity.") For the preparation of her October 2013 addendum, Lanier had spoken with the minors' therapists and the attorneys involved in this case.

¶ 13 Lanier acknowledged "there are parents who parent at [respondent's] IQ level, that parent adequately." In other words, respondent's "intellectual deficit" is "not a strength for him," but it is also not "a stand-alone reason to preclude adequate parenting." In Lanier's opinion, respondent's "mental impairments," combined with his particular personality traits, cause him to be unable to discharge his parental responsibilities. She expects this issue to extend beyond a reasonable period of time, as respondent "has shown no change in the four-year span [she's] known him."

¶ 14 Lanier testified that L.L.'s return to foster care, after having been placed in respondent's home for approximately six weeks, was "very significant" because it demonstrated respondent's inability to meet the minors' needs "in a safe way." In her opinion, respondent's ability to successfully complete his case plan is not telling. Even though respondent appeared for his appointments and participated in counseling and visitations, his parenting skills did not

improve. According to Lanier, respondent had failed to internalize what he had learned in counseling.

¶ 15 The trial court took judicial notice, at the State's request, of various pleadings and orders entered in this case. The State rested. Respondent testified on his own behalf. He began his testimony with information about his full-time employment at Heritage Health nursing home, where he performs maintenance duties. He then advised the trial court he believed he could safely parent the minors. He lives alone and performs all of his household duties independently. He also helps care for his grandparents by taking them to medical appointments, various errands, and the grocery store, as well as preparing their meals approximately twice a week.

¶ 16 Respondent acknowledged L.L. was living with him at the time he incurred the bruising, but respondent does not know what caused the bruises. Respondent also acknowledged responsibility for not seeking medical attention for L.L. when he saw the bruises. He said he did not take L.L. to the doctor because to him, the bruises "didn't look that bad." Respondent said he does not take any medication, does not drink alcohol, and does not use illegal drugs. He quit smoking cigarettes approximately three years ago because L.L. had respiratory syncytial virus. Respondent had requested he be allowed to attend medical visits with the minors, but those requests had been denied. He also said he was not asked to participate in L.L.'s filial therapy.

¶ 17 Respondent said he was not given specific instructions for visitation with the minors or advised of anything he needed to work on. He generally provided the minors with a meal or snack and then they would play games and talk. He tried to teach L.L. things during visits by testing him on colors and counting.

¶ 18 Respondent said he had not seen a case plan "for a while." He knew that attending counseling with Todd Smith was a required goal, which he has been doing for

approximately four years. At one point in counseling, they addressed anger issues, which began the discussion of the bruises on L.L. Respondent said Smith told him they "were done" with counseling because Smith wanted respondent to "take the ownership of the bruises." Respondent denied causing the bruises and told Smith he would not admit to something he did not do.

¶ 19 On cross-examination, the prosecutor asked respondent about L.L.'s bruises. Respondent said, at that time, L.L. was not toilet trained and he would change L.L.'s diaper approximately five times a day. He did not recall specifically that the day care had notified him of the bruising on Thursday, September 20, 2012, but he did not dispute the fact. He said he first noticed L.L.'s injuries "being really bad" when he picked up L.L. from day care on Monday, September 24, 2012. On that day, DCFS personnel met him at the daycare and took L.L. to the hospital. Respondent testified as follows: "I noticed he had some bruises like down around his leg and that, and then he had like some marks on his genitalia area. I talked to the one lady at Deborah T's Daycare and told her about him grabbing himself and that. And she told me that I didn't need to address that, that he's exploring himself."

¶ 20 Respondent said he saw the photographs of the injuries that were taken on Thursday, September 24, 2012, by the day care worker. The photographs were kept under seal but the trial court allowed counsel to break the seal and present them to respondent. (The record before us includes photocopies of the photographs. It is unclear whether respondent was viewing the actual photographs or photocopies of the photographs.) The following exchange occurred:

"Q. Okay. Would you say looking at these pictures, that this is something that required medical attention?

A. Well, yeah, after seeing them like that.

Q. Okay. And yet you did not notice any injuries?

A. I didn't notice them like that, no.

Q. Well, what did they look like?

A. I mean, like I said, there was some bruises and it look like some nail marks there. I mean like I said he liked to grab himself and tug on himself down there when I was changing his diaper.

Q. Would you say that if a parent saw that and their child had those injuries, that that parent could—is safely taking care of that child if a parent didn't take them for medical [attention]?

A. Well, it depends on when the injuries like occur and when the person sees them, if they were exposed fully yet or not.

Q. I'm sorry?

A. Because sometimes it takes bruises a little bit to occur.

Q. Well, this picture was taken Thursday, September 20th. You were notified Thursday, September 20th. When you got that notification, weren't you curious to see what kind of injuries your son had gotten?

A. I was—I know I was also curious when my son come to my care with a broken collarbone before all that, too.

Q. We are talking about this right now. We are not trying to shift blame on something else. We are talking about these injuries to your son on September 20[], 2012. What did you do to find out how he got those injuries?

A. I just asked a couple ladies at daycare if he'd gotten hurt there. And they said that they've seen bruises on him, but they said that he's like a walking barricade.

Q. Did you look at—for those bruises?

A. Huh?

Q. Did you look to see what the injuries were?

A. I didn't know nothing about them really.

Q. They told you on September 20th. You signed a paper acknowledging that you had got notification and that's what was in the adjudicatory report order. So what did you do when somebody—when you got that notification? Did you ever notice any bruising on him before when you changed his diaper?

A. I noticed some small bruises on him, but it didn't look as graphic as what that did."

When asked whether respondent had changed L.L.'s diaper when they got home, respondent acknowledged he had when it was necessary. Respondent repeatedly insisted, upon questioning about whether he noticed the bruises, he had seen the bruises but "they didn't look that bad." Counsel asked if respondent noticed the "chafing and the discoloration and the bleeding." Respondent said: "No, I didn't." Respondent agreed he would have changed his diaper a few times on the evening of Thursday, September 20, 2012, because he had picked him up at day care at approximately 4 p.m., and multiple times over the course of Friday, Saturday, and Sunday. Respondent said L.L. did not seem to be in "any kind of pain or anything when [he] changed his diaper" and cleaned the area. Counsel asked the following:

"Q. [Respondent], wouldn't you say that you did not care for your child as you should have from September 20th until he was taken from you on the 24th by not checking into how he received those gruesome injuries and not taking him for medical care?

A. Well, like I said, I'll admit that he should have went to the ER or somewhere and got looked at, but, you know, things happen where people don't see things all the way sometimes.

Q. And that was one of the times for you?

A. Sure."

¶ 21 On further cross-examination by the guardian *ad litem*, respondent said he was not able to identify the cause of L.L.'s bruises. He said: "I don't know where he got them at. He didn't get them with me, I know that." Respondent agreed L.L. "went [to the bathroom] in his pants a lot," but he denied that frustrated him. Respondent again testified, when he saw the bruises, "they didn't look that bad." However, he acknowledged the bruises looked "bad" in the photographs, and, had he seen them "looking that bad," he would have taken L.L. to the hospital.

¶ 22 The guardian *ad litem* asked respondent if he knew the definition of "empathy." Respondent stated: "That's where you're actually providing the—like when you can sit there and ideal with their feelings and that." Respondent said he empathizes with the minors. He was asked to define "nurturance." Respondent stated: "That's where you're taking care of them. *** Like you're making sure that whatever needs they have needed to be, that you make those needs met. *** Like if they've got special needs in school or outside of school, just whatever, whatever needs to be done for that child you make sure you do it." Respondent said he believes

he nurtures both minors. He admitted caring for L.L. was not easy based upon his special needs, but he assured the trial court he knew he was capable of dealing with L.L.'s intellectual delays, autistic behaviors, and verbal delays. He said his mother is a special education teacher at Bloomington Junior High, so "she'd be able to help [him] out."

¶ 23 Respondent presented no further evidence. The guardian *ad litem* presented to the court a stipulation regarding the anticipated testimony of L.L.'s foster mother. He advised that, if Patricia Lambert was called to testify, she would read the following statement, dated October 10, 2013:

"[L.L.] continues to experience difficulties after visiting with [respondent]. When [L.L.] returns home, his behavior is unpredictable. He has problems going to sleep. [L.L.] hits the dog and is mean to his sister including hitting her as well. The foster parents do not leave the children alone. Foster parents usually have to hold [L.L.] in their arms for most of the night after a visit."

¶ 24 After the presentation of evidence, the parties presented closing arguments. Thereafter, the trial court announced its decision in open court, finding as follows.

"I agree that Dr. Lanier did specifically find that [respondent] did suffer from mental impairment, personality traits that she talked about. And because of that impairment, combined with his intellectual limitations that she described, she opined and I agree that there's been a demonstration of his inability to discharge parental responsibilities.

Court believes it's also been established that there's sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period. And that I think has been duly supported by Dr. Lanier's testimony that not only did his actions back when he was 15, which were consistent with the personality traits that she described as establishing the mental impairment, show that he's had that condition over a significant period of time. She also testified that based on her evaluation in [20]09 and in [20]13 that he had made no changes in those four years. So, I think that also supports the finding that the inability would extend beyond a reasonable time period.

In this case, we also, I guess, have the not only the suggestion that he can't because of just identifying the condition, we actually have an instance where the children were returned to [respondent] and he clearly was unable to discharge parental responsibilities back in September 2012. His testimony was really a little confusing to the court, but it's clear from the photographs that as at least of Thursday, the 20th, [L.L.] had significant bruising and injury to his genital area. That's demonstrated by the photographs. Without even having to establish where they—where the injuries occurred or how they occurred, they clearly were significant enough Thursday to warrant medical attention. Friday,

Saturday, Sunday, and Monday, that the bruising was still there and the court finds had to be noticed by [respondent] on a daily basis.

And maybe it's partially due to a lack of empathy. Maybe it's the self-centered thing that the doctor talked about. Maybe he was—I don't know, I guess it's somewhat speculation—maybe he was concerned at whether he brought that to the attention of the authorities or took him into the hospital whether [L.L.] and [P.L.] might be removed from his care. But clearly he was not discharging his parental responsibilities in that case. So I think we have something more than just an opinion based on examination. We actually have a demonstration of his inability to discharge his parental responsibilities after the children were returned to him.

So, and the court believes that Dr. Lanier's testimony was at least consistent with all of her reports. There was nothing inconsistent about that. I found her testimony to be compelling. She's certainly well-qualified by experience and education. There's been no evidence presented to rebut her opinion.

So the court finds that paragraph 12(c) of the petition [(respondent suffers from a mental impairment resulting in his inability to discharge normal parental responsibilities)] filed November 20[, 20]13 has been proven by clear and convincing evidence and finds [respondent] to be unfit."

¶ 25 The next day, on March 7, 2014, the trial court conducted a best-interest hearing. The State requested the court take judicial notice "of the entire case file," including the recently filed best-interest reports. Without objection, the court agreed, and the State rested. The DCFS caseworker, Sharyl Rushton, authored the best-interest reports, filing a separate report for each minor. In the report referring to P.L., age 9, Rushton noted P.L. was doing well in her placement. She was involved in soccer, Girl Scouts, and dance. Rushton stated: "Historically, [P.L.] has always wished to return to her father's care. However, after [L.L.] re-entered care, she repeatedly indicated she did not feel safe with her father, and only wished to return to her father's care if [L.L.] did, in order to make sure he was safe. [P.L.] has reported that she also only wishes to have supervised visits with her father." P.L. appeared to have a sense of security and emotional attachment to the family in her current placement. Her current foster parents are willing to adopt her to provide stability and P.L. has expressed her desire to be adopted by them. Additionally, her foster parents have reported their willingness to continue contact between her and [L.L.] P.L. is the youngest of four children (both natural and adopted) in the home. In Rushton's opinion, P.L. should remain in her current foster placement so that she may maintain her current "loving, safe, and nurturing environment that will allow her to reach her full potential." Rushton further opined it is in P.L.'s best interest to terminate respondent's parental rights.

¶ 26 In the report referring to L.L., age 5, Rushton noted L.L. is a "happy loving child whom also happens to have an array of special needs." Rushton stated L.L. "readily identifies with his foster family and seeks comfort and reassurance from them." L.L. is "fully integrated into the family." He has been with this foster family since he was one year old. The foster family meets all of L.L.'s needs on an "on-going basis." L.L. is involved in physical therapy,

occupational therapy, speech therapy, and play therapy. The foster family encouraged his development without "pushing him too hard." In Rushton's opinion, "any other placement would be detrimental to [L.L.'s] growth and development." His foster parents are willing to adopt him to provide him stability and permanency. In Rushton's opinion, L.L. should remain in his current foster placement, and it would be in L.L.'s best interest to terminate respondent's parental rights.

¶ 27 Respondent called Rushton as his witness. She explained that within the first few months of foster placement, P.L. was having difficulties in school and in the foster home. P.L. suffers from attention deficit/hyperactivity disorder. This condition is currently addressed with a different medication than she had been prescribed while in her first foster home. P.L. was "pretty openly defiant" in the home where L.L. continues to reside. In August 2010, the foster parents asked for P.L. to be removed from the home because they did not feel they could meet her needs. They kept L.L. Although DCFS does not like to separate siblings, "it turns out, [P.L.] has done very well," but not until her third foster placement, which is her potential adoptive home.

¶ 28 Rushton explained respondent was not included in L.L.'s filial therapy because, at that time (within the last year), he was not having "extensive" visits with the children and therefore, "it would be contraindicated and confusing for [L.L.]" Respondent was visiting the children for no more than two hours a week, which was not sufficient for filial therapy. On cross-examination, Rushton testified, in her opinion, it would be in both minors' best interest if respondent's parental rights were terminated.

¶ 29 Respondent next called Karen K. Stone, his friend and former day care provider (when L.L. was an infant). Stone said she has been a foster parent for 18 years for more than 40 minors. She described the minors as "happy kids." She said P.L. "was always by daddy's side

when he'd come home from work." Stone said they had "a good bond." She said the children were content, respondent's house was clean, and respondent appeared "to pay attention to his children."

¶ 30 Vickie Logsdon, respondent's former sister-in-law, testified she has witnessed respondent interact with the minors. For L.L., it has been as recently as within the last year. However, she has not seen P.L. since before the case began. Logsdon said respondent would often play Barbie's with P.L. and read books to L.L. Respondent has watched Logsdon's children for her on occasion. Despite the divorce in the family, Logsdon and respondent have remained on good terms. In her opinion, respondent is "a good parent" to his children. She described the three of them together as "happy, smiling, and playful." She said: "There wasn't really any fear or anything that you could see at all."

¶ 31 Derrick Jedlicka, respondent's long time friend, said he has seen respondent interact with his children. Because L.L. was an infant when he was taken into protective custody, Jedlicka's opinions refer primarily to respondent's interaction with P.L. Jedlicka said he has witnessed a mutual bond between P.L. and respondent. When P.L. needed discipline, Jedlicka said he saw respondent talk to P.L. in a calm manner. He said P.L. would listen to respondent and then willingly take direction from him. Jedlicka said respondent spoke of his children "[a]ll the time." In Jedlicka's opinion, the minors were comfortable in respondent's care.

¶ 32 Susan Logsdon, respondent's aunt, described respondent as "a really good father" because "he always puts their needs before his." She has witnessed him cook for, dress, bathe, read to, and play with the children. She has seen respondent interact with P.L. more than L.L. due to his young age. She said it appeared P.L. enjoyed being with respondent and was comfortable in his company.

¶ 33 Respondent again took the witness stand and said he often worked with L.L. during visits on skills that would help with his developmental delays. Respondent admitted L.L. "got bruises on [his] watch," but he also suffered a broken collarbone, "busted lips," other bruises, and, three to four weeks ago, a bite mark on his left upper leg toward his buttocks. These injuries occurred either at day care or in the foster home. The day care was investigated as a result of L.L.'s broken collarbone. Respondent said the CASA assigned to the case has "repeatedly tried to sabotage [him] as a parent." She walked into his home without knocking, she berated him in the children's presence, and she has interfered at visits by taking P.L. into the other room. Respondent said he was asking the court not to terminate his parental rights.

¶ 34 On cross-examination, respondent described the incident involving L.L.'s broken collarbone. He said "years ago," when he was allowed to have unsupervised visits at his home, L.L. was "acting kind of strange." Respondent said he immediately called the caseworker and told her he thought L.L. was "in a lot of pain or something." She returned to respondent's home and took L.L. to his foster parents, who in turn took him to the hospital, where it was discovered L.L. had a broken collarbone. He said: "They said he supposedly rolled off the couch at Katie's Kids [day care] and did it there." Respondent rested.

¶ 35 After considering the evidence and arguments of counsel, the trial court found as follows:

"I'm mindful that my obligation is not to look out for the best interest of the parent or the foster parents. It's to look out for the best interest of the minors. It gives me no pleasure to have to make these decisions.

First, the court notes the previous finding the court has made that [respondent] suffers from mental impairment which prevents him from discharging his parental responsibilities and that that inability will extend beyond a reasonable period of time. That was the finding the court made yesterday. The court believes that was the correct finding and accurately states the facts and what we are dealing with with this situation.

And, because of that, if you look at the factors in 70[5] [ILCS] 405/1-3 [(West 2012)], virtually all of the factors weigh in favor of termination for each of the children—certainly, the physical safety and welfare of the children. Their sense of attachment, and I think it's clear in the best interest reports that both children are very secure and happy and well-cared for in their current placements and the disruption that would have. I think the children's wishes and long-term goals certainly with [L.L.] is a neutral factor. Based on what [P.L.] has indicated, I think that's—that factor slightly favors termination. I think in this case, the uniqueness of every child certainly comes into play in terms of the high level of need that both of these children have. I think when you have kids with high needs, it raises the bar about what parental responsibilities are required in this case. Dr. Lanier has opined, I think quite correctly and eloquently, about [respondent's] inability to meet those responsibilities.

So, I think that's an important factor. Certainly weighs heavily in favor of termination.

The permanency for the children, again, the court's already made the finding that [respondent's] inability to discharge his parental responsibilities will last beyond a reasonable period of time. These kids deserve permanency. [L.L.] has been in foster care, certainly the foster system, almost his entire life, and [P.L.] I think half of her life virtually has been in foster care. And they both deserve permanency."

¶ 36 The court remarked about the "unfortunate" situation of the minors being separated, but it noted, nonetheless, it was in L.L.'s best interest to remain in his current foster placement rather than to move to a joint placement. After examining the factors and the previous findings, the court determined the State had proved "by at least a preponderance of the evidence that it's in the best interest of both minors that the parental rights of [respondent] be terminated."

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Respondent appeals the trial court's order terminating his parental rights. Specifically, he contends the court's order finding him unfit due to a mental impairment was against the manifest weight of the evidence. He further contends the court's order finding it was in the minors' best interest to terminate his parental rights was against the manifest weight of the evidence. He contends DCFS failed to make reasonable attempts to keep the minors together when respondent was willing to care for them together.

¶ 40 A. The Sufficiency of the Evidence
That Respondent Was an "Unfit Person"

¶ 41 In order to reverse a trial court's finding of unfitness, we must conclude the court's finding was against the manifest weight of the evidence. See *In re D.F.*, 201 Ill. 2d 476, 498 (2002). A finding is against the manifest weight of the evidence only if it is "clearly evident" that the State did not prove, by clear and convincing evidence, that respondent suffers from a mental impairment, mental illness, or mental retardation sufficient to prevent the discharge of normal parental responsibilities. See *In re K.S.T.*, 218 Ill. App. 3d 431, 435 (1991). Or, in other words, the finding is against the manifest weight of the evidence only if the finding is "unreasonable, arbitrary, or not based on the evidence presented" (*D.F.*, 201 Ill. 2d at 498) or where the opposite conclusion is clearly evident (*In re C.N.*, 196 Ill. 2d 181, 208 (2001)).

"Under section 1(D)(p) of the [Adoption] Act [(750 ILCS 50/1(D)(p) (West 2012)), the State must produce competent evidence showing the parent has a mental inability sufficient to preclude [him] from discharging normal parental responsibilities. Second, the State must show there is sufficient justification to find the inability will extend beyond a reasonable time period. [Citation.] The standard of proof in a fitness case is clear and convincing evidence. [Citation.] The circuit court's finding of unfitness will not be set aside on review unless contrary to the manifest weight of the evidence. [Citation.] 'The rationale underlying this standard is that the trial court's opportunity to view and evaluate the parties and their testimony is superior to that of a reviewing court. Accordingly, the trial court's findings should be given great deference.' [Citations.] A parent can be unfit without

fault, as '[a] child is no less exposed to danger *** because his parent is unable rather than unwilling to give him care.' [Citation.]" *K.S.T.*, 218 Ill. App. 3d at 435 (quoting *In re Brown*, 86 Ill. 2d 147, 152 (1981), and *In re Devine*, 81 Ill. App. 3d 314, 320 (1980)).

¶ 42 Respondent first argues the State's evidence was insufficient when it relied on the testimony of only one witness, Dr. Linda Lanier, a psychologist who had evaluated respondent on two occasions: February 2009 and June 2013. Lanier testified respondent suffers from a relatively low intellectual level with some *traits* of a personality disorder. Respondent was given an IQ test on two occasions. His IQ was evaluated as 73 in 2009 and 83 in 2013. These results place respondent in the borderline intellectually deficient to low average range. Respondent was not considered mentally retarded, nor did he have an intellectual disability, as those deficiencies require an IQ below 70.

¶ 43 Citing *In re Cornica J.*, 351 Ill. App. 3d 557, 569 (2004), respondent argues his low IQ does not automatically translate into an inability to discharge parental responsibilities. We agree. However, according to Lanier's opinion, his intellectual deficit, coupled with several concerning personality traits, as well as the "special needs" of the minors, result in respondent's inability to discharge normal parental responsibilities for these particular minors.

¶ 44 For example, Lanier testified respondent's personality disorder traits impair his ability to be empathetic and patient with these minors; his thinking is "concrete"; his insight is low; and "he's easily overwhelmed by things that maybe people more average level can easily manage." According to Lanier, respondent was unable to understand that a single parent would face job responsibilities and childcare responsibilities at the same time. He lacked insight on

areas that needed improvement and he did not benefit from constructive criticism. Lanier explained this type of thinking was demonstrated in the last termination proceedings, when respondent refused to believe L.L.'s mother could have caused her older child's death. Respondent did not "benefit[] from the information it seemed was very available to everyone else" regarding her conduct. Three years later, he accepted the information, which according to Lanier, demonstrated his "slowness."

¶ 45 Lanier also opined respondent tends to avoid blame and personal responsibility, and lacks empathy toward the minors. In her report, she said he did "not seem to draw a connection between his choices, behaviors, and actions and the effects on his children." He liked the idea of being a father and expressed his desire to raise his children, but he was unable to name anything he could do differently to improve his parenting. In her report, she opined respondent was dependent on others and he tended to "be overconcerned with minor irrelevancies to distract himself from feelings of anxiety, inadequacy, and anticipated derogation." With regard to his lack of empathy, Lanier noted respondent had a tendency to say inappropriate things to the children without comprehending their feelings. For example, he told P.L. things which caused her to fear foster care. He told her she would be hurt, bad things may happen, and sometimes foster parents mistreat children. His lack of empathy would also prevent him from giving the verbal and physical affection P.L. required.

¶ 46 In terms of L.L., Lanier believed it was significant that L.L. had to return to foster care after being in respondent's care for only six weeks. She believed respondent's lack of empathy and patience manifested itself during the potty-training process with L.L. Due to L.L.'s "profound delays," this process was prolonged. Because L.L. is nonverbal, he requires "filial therapy," which demands "a great deal of empathy to really help the child learn what their

feelings are, learn how to express them verbally. It requires parents to be very, very responsive." Respondent is incapable due to his mental deficiencies and personality characteristics. Lanier reported respondent's personality characteristics tend to be "long-term and chronic."

¶ 47 Lanier based her opinion on two separate evaluations of respondent performed four years apart, two integrated assessments performed three years apart, a 2010 psychological examination by another psychologist (Dr. Shear), and conversations with each child's therapist. In sum, she believed respondent was "capable of routine parenting tasks," but was "not capable of providing the level of parenting that these children require." Respondent's limited intellectual ability and "markedly limited capacity for empathy" suggest he is not able to adequately parent these minors.

¶ 48 Given this evidence, we reject respondent's contention the State failed to establish that his mental deficiencies rendered him unable to parent the minors. In support of his argument, respondent noted the general proposition that not every parent with a mental deficiency is *per se* unfit to be a parent and to maintain custody of his or her children. See *In re A.J.*, 269 Ill. App. 3d 824, 827-28 (1994). In fact, respondent relies heavily on *Cornica J.*, where the court reversed a finding of unfitness and noted that "a low IQ does not automatically translate into an inability to discharge parental responsibilities." *Cornica J.*, 351 Ill. App. 3d at 569. Respondent contends this case is analogous to the *Cornica J.* decision, and this court should similarly reverse the trial court's finding of unfitness.

¶ 49 We disagree. We note cases concerning parental unfitness are *sui generis*, which require a close analysis of unique facts, and thus, factual comparisons to other cases are of little value. See *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Regardless, the *Cornica J.* decision is easily distinguishable. In that case, like the case *sub judice*, the State's evidence primarily rested

on the testimony of a single psychologist. *Cornica J.*, 351 Ill. App. 3d at 558. While the psychologist diagnosed the respondent father with an IQ score of 69 and depression, the psychiatrist's findings were contradicted by the four witnesses who testified on behalf of the respondent father. *Cornica J.*, 351 Ill. App. 3d at 568, 570. The appellate court noted the contradictory testimony as factors necessitating a reversal of the finding of unfitness. *Cornica J.*, 351 Ill. App. 3d at 570.

¶ 50 Although, the State relied primarily on only one witness, the "single psychologist" in this case actually conducted two clinical interviews years apart and made observations consistent with another psychologist's opinion. Further, it is L.L.'s "profound delays" and P.L.'s "special needs" that exacerbate the limitations of respondent's ability to discharge parental responsibilities due to his mental impairments. Clearly, the situation in this case is much different than *Cornica J.* No evidence in *Cornica J.* tended to demonstrate the minors there experienced the level of need required by the minors here. In light of these facts, we must find there was sufficient support for the trial court's finding that respondent was unfit under section 1(D)(p) of the Adoption Act. We certainly cannot say an opposite conclusion is clearly evident. *C.N.*, 196 Ill. 2d at 208.

¶ 51 B. The Best Interest of P.L. and L.L.

¶ 52 Respondent next contends "DCFS ignored their own regulations designed to keep siblings together" and "didn't utilize their unique social[-]work skills to teach the foster parents to deal with every day childhood behaviors and didn't have the guts to tell the court of its regulations. Instead they allowed P.L. to be moved at the whim of the foster parents; this was not in P.L.'s or L.L.'s best interests." Respondent argues termination of his parental rights necessarily results in the separation of the siblings, which, he claims, is not in their best interest.

¶ 53 After the trial court determines a parent is unfit, it must next determine whether it is in the minors' best interest to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *D.T.*, 212 Ill. 2d at 366. The court's finding will not be disturbed unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 54 At this stage, the paramount consideration is the best interests of the minors, not the parent. *In re T.A.*, 359 Ill. App. 3d 953, 959 (2005). The trial court must consider the following factors, in the context of the minors' ages and developmental needs, in determining whether to terminate parental rights:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments ***;

* * *

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 55 Here, the record demonstrates each minor is thriving in their respective foster home. According to the caseworker, both minors have developed a strong bond with their foster parents. Further, the respective foster parents are able to effectively provide the care necessary to address each minors' specific and individual needs. Most importantly, each minors' foster parent has expressed their willingness to adopt and make the minor in their care permanent members of their family.

¶ 56 Conversely, the record demonstrates respondent is unable, at this time or in the near future, to provide the minors with permanency. Respondent's mental deficiency or impairment affects him in such a way as to render him incapable of carrying out parental duties for these particular minors due to their specific needs. The trial court noted it considered the relevant statutory factors, finding that "virtually all" weigh in favor of termination. The court cited the "unfortunate" situation of the minors being separated, but weighed this consequence, in light of the remaining circumstances of this case, in favor of termination. Because both minors are thriving in their respective foster-care environments and respondent cannot provide permanency to the minors in the foreseeable future, we conclude the court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we affirm the trial court's judgment.

¶ 59 Affirmed.