

NOTICE

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2014 IL App (4th) 140513-U

NO. 4-14-0513

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 29, 2014
Carla Bender
4th District Appellate
Court, IL

In re: J.E., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 13JA45
MISTY McFARLAND,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Because the respondent forfeited her due-process argument by failing to raise it in the trial court, the appellate court affirmed the court's judgment, which terminated the respondent's parental rights.

¶ 2 In December 2013, the State filed a petition to terminate the parental rights of respondent, Misty McFarland, as to her son, J.E. (born May 13, 2013). Following a February 2014 fitness hearing, the trial court found respondent unfit. In May 2014, the court conducted a best-interest hearing and, thereafter, terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that she was denied due process of law in that the Department of Children and Family Services (DCFS) failed to (1) comply with section 2-10.1 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-10.1 (West 2012)), which required DCFS to file a client-service plan within 45 days of the trial court's May 2013 temporary custody order; and (2) promptly provide her with counseling services. Because we conclude

that respondent has forfeited her arguments, we affirm.

¶ 4

I. BACKGROUND

¶ 5

A. The Events Prompting the State's Motion To Terminate Parental Rights

¶ 6

On May 23, 2013, the State filed a petition for adjudication of wardship, alleging that J.E. was a neglected minor under section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)). Specifically, the State claimed that J.E.'s environment was injurious to his welfare due to respondent's prior juvenile court involvement, wherein she surrendered her parental rights as to her other two children without attaining a finding of parental fitness (Macon County case Nos. 11-JA-96 and 12-JA-24). The State explained that with regard to her two other children, respondent failed to correct issues concerning substance abuse, domestic violence, mental health, parenting, housing, and employment.

¶ 7

At a May 28, 2013, shelter-care hearing, the trial court entered a stipulated temporary custody order, finding that based on respondent's admission, an immediate and urgent necessity required J.E.'s placement in shelter care. The court's temporary custody order also required DCFS to file a client-service plan within 45 days as required by section 2-10.1 of the Juvenile Court Act.

¶ 8

During a July 2013 adjudicatory hearing, the trial court found that J.E. was a neglected minor based on respondent's stipulation to the State's factual basis.

¶ 9

On August 7, 2013, Nathaniel Funte, a DCFS-contracted caseworker, filed a dispositional report. Within his report—under the heading, "client-service plan"—Funte documented that he initiated a July 19, 2013, client-service plan, which had been filed with the trial court on August 7, 2013. (The record does not contain the July 19, 2013, client-service plan.) Funte planned to provide respondent her client-service plan on August 14, 2013, which coincided with

the scheduled dispositional hearing. Respondent was required to successfully complete the following assigned client-service-plan goals: (1) participate in parenting classes, (2) engage in individual counseling and demonstrate enhanced coping skills, (3) complete a substance-abuse assessment and comply with any treatment recommendations, (4) complete a domestic-violence assessment and comply with any treatment recommendations, (5) maintain safe and stable housing, and (6) obtain lawful employment. With regard to the first three goals, Funte reported that he had secured the appropriate referrals, commenting that respondent "appears ready to participate in services."

¶ 10 Following the presentation of argument at an August 14, 2013, dispositional hearing, the court entered a written order, adjudicating J.E. a ward of the court and maintaining DCFS as his guardian.

¶ 11 In December 2013, the State filed a petition to terminate respondent's parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). Specifically, the State alleged that respondent was an unfit parent in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to J.E.'s welfare (750 ILCS 50/1(D)(b) (West 2012)).

¶ 12 During a January 2014 permanency review hearing, the State argued that J.E.'s guardianship should remain with DCFS because respondent had missed "a number of drug screens," failed to attend Alcoholics Anonymous (AA) meetings, and a December 2013 home visit revealed opened beer cans in respondent's home. The State also reported that respondent had missed over 40 hours of visits with J.E. during the reporting period, which the State noted began on August 16, 2013. Respondent argued that the State's timeline was too aggressive and she should be afforded time to comply with her service-plan goals. The trial court, noting respondent's familiarity with DCFS' procedures, changed respondent's goal to substitute care pend-

consider counseling a priority. Funte opined that respondent was just "going through the motions" with regard to her individual counseling sessions. Funte also had concerns about respondent's attendance at AA meetings, noting that some of her documentation (1) was not properly authorized by signature; (2) alleged attendance on days when AA meetings were not held; or (3) alleged attendance on future dates or dates that did not exist—for example, February 31, 2014. Funte added that despite the inconsistencies, he did not believe respondent was having any "drug problems."

¶ 21 J.E. resided with his (1) two biological siblings (ages two and three); (2) maternal grandmother, Shawna Lewis; and (3) 21-year old aunt (respondent's sister). In February 2014, respondent's mother formally adopted J.E.'s two siblings. Funte reported that J.E. is comfortable, happy, and playful with his "foster family." Funte did not have any physical, emotional, or safety concerns regarding J.E.'s placement within the home, noting that J.E. is "cared for and loved." Funte recommended termination of respondent's parental rights to facilitate J.E.'s permanency with his family in the only home he has ever known. Funte acknowledged that Lewis would not prevent respondent from being a part of J.E.'s life. Funte could not recommend the immediate return of J.E. to respondent's care.

¶ 22 Lewis testified consistently with Funte's account of J.E.'s home environment, adding that at some point in the future, she will inform J.E. that respondent is his biological mother. Lewis stated that she would allow respondent contact with J.E. provided respondent did not attempt to override her authority. Lewis confirmed her intention to adopt J.E. if the trial court terminated respondent's parental rights.

¶ 23 Respondent did not present evidence.

¶ 24

b. The Trial Court's Ruling

¶ 25 Following argument, the trial court determined by a preponderance of the evidence that it was in J.E.'s best interest to terminate respondent's parental rights.

¶ 26 This appeal followed.

¶ 27

II. ANALYSIS

¶ 28 Respondent argues that she was denied due process of law in that DCFS failed to (1) comply with section 2-10.1 of the Juvenile Court Act, which required DCFS to file a client-service plan within 45 days of the trial court's May 2013 temporary custody order; and (2) promptly provide her with counseling services. We conclude that respondent has forfeited her arguments.

¶ 29 We first note that in her prayer for relief, respondent urges this court to reverse the trial court's order terminating her parental rights. In doing so, respondent directly challenges the trial court's finding that it was in J.E.'s best interest to terminate her parental rights. See *In re B.B.*, 386 Ill. App. 3d 686, 699, 899 N.E.2d 469, 481 (2008) ("At the best interest stage of termination, the State is required to prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights.").

¶ 30 However, we also note that respondent did not raise the due-process arguments she now makes to this court at any time prior to her May 2014 best-interest hearing. Indeed, not only did respondent fail to provide the trial court an opportunity to adequately address her concerns, respondent affirmatively acted in contradiction of the claims she now raises by knowingly and voluntarily entering an admission at the February 2014 fitness hearing that she was an unfit parent in that she failed to maintain a reasonable degree of interest, concern, or responsibility as to J.E.'s welfare as the State alleged. Moreover, as the aforementioned record in this case shows,

respondent's due-process claims are unconvincing, at best.

¶ 31 As the State correctly notes in its brief, respondent has forfeited her arguments by her failure to raise them. See *In re M.W.*, 232 Ill. 2d 408, 430, 905 N.E.2d 757, 772-73 (2009) (applying the forfeiture doctrine to proceedings governed by the Juvenile Court Act unless the respondent can demonstrate plain error). Because respondent has opted not to file a reply brief to meet her burden of demonstrating why this court should nonetheless address her claims under the plain-error doctrine, we decline to do so *sua sponte*.

¶ 32 Accordingly, we conclude that the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's fitness and best-interest determinations.

¶ 35 Affirmed.