

NOTICE  
Decision filed 10/16/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 140140-U

NO. 5-14-0140

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

<i>In re</i> G.J.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 10-JA-159
	)	
Donald S.,	)	Honorable
	)	David Grounds,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.  
Presiding Justice Welch and Justice Spomer concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The circuit court's determinations that the respondent was unfit and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence.
- ¶ 2 The respondent, Donald S., appeals the judgment of the circuit court of Madison County terminating his parental rights to G.J.S. On appeal, he argues that the circuit court's determinations that he was unfit and that termination of his parental rights was in G.J.S.'s best interests are contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 Initially, we note that pursuant to Supreme Court Rule 311(a)(5) (Feb. 26, 2010), the decision in this case was to be filed on or before August 21, 2014, except for good cause shown. The record reveals that, at Donald S.'s request, the cause was remanded to the circuit court for the appointment of counsel. Donald S. also sought and received an extension of time in which to file his docketing statement, and two extensions of time in which to file his brief. The State sought and was granted an order to produce and file as a supplement to the record the transcripts of the unfitness and best-interests hearings. The State also sought and received an extension of time in which to file its brief. As a result of these delays, briefing was not completed until September 16, 2014. Based on the foregoing, we find that good cause exists for filing our decision in this case after the August 21, 2014, deadline.

¶ 4 **BACKGROUND**

¶ 5 G.J.S. was born on September 7, 2005, to Jenna M. and the respondent, Donald S. Jenna M. is not a party to this appeal.

¶ 6 On June 16, 2010, the State filed a petition pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2008)), alleging that G.J.S. was neglected and abused, and naming Donald S. and Jenna M. as G.J.S.'s parents. The petition alleged that Jenna M. had a substance abuse problem and had left G.J.S. in the care of an indicated sex offender, and that Donald S. had failed to provide any care, support, or concern for G.J.S. Following adjudicatory and dispositional hearings, the circuit court found that G.J.S. was abused and neglected, made her ward of the court, and placed her in the

custody of the Guardianship Administrator of the Illinois Department of Children and Family Services (DCFS).

¶ 7 Permanency orders were entered on June 27, 2011, October 19, 2011, April 30, 2012, and October 30, 2012, each of which found that Jenna M. and Donald S. had failed to make reasonable and substantial progress or reasonable efforts toward returning G.J.S. home.

¶ 8 On November 20, 2012, the State filed a petition for termination of parental rights and for the appointment of a guardian with the power to consent to adoption, alleging that Donald S. and Jenna M. were unfit persons as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). Specifically, the petition alleged that Donald S. and Jenna M. were unfit in that (1) they had failed to make reasonable efforts to correct the conditions that were the basis of G.J.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)), (2) they had failed to make reasonable progress toward the return of G.J.S. within nine months following the adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)), and (3) they had failed to make reasonable progress toward the return of G.J.S. during any nine-month period after the end of the initial nine-month period following the adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)). The petition also alleged that Donald S. was unfit in that he was incarcerated as a result of a criminal conviction at the time the petition for termination was filed, that prior to incarceration he had little or no contact with G.J.S. and provided little or no support for her, and that his incarceration would prevent him from discharging his parental

responsibilities for G.J.S. for a period in excess of two years after the filing of the petition for termination of his parental rights (750 ILCS 50/1(D)(r) (West 2010)).

¶ 9 On July 16, 2013, Jenna M. executed an irrevocable surrender of her parental rights to G.J.S.

¶ 10 The hearing on parental fitness began on September 5, 2013. Donald S. appeared telephonically. Kelly Wrigley testified that she was a child welfare specialist with DCFS and that she had been assigned to G.J.S.'s case. G.J.S had been taken into protective custody in June 2010. Donald S. was incarcerated at the time and remained incarcerated at the time of the hearing. His projected release date was May of 2015.

¶ 11 Wrigley testified that at the beginning of the case she prepared a service plan for Donald S. which required him to engage in any available treatment programs while incarcerated and sign releases so that information could be provided to DCFS showing what services he was receiving. His progress was evaluated every six months. While incarcerated in Pennsylvania, Donald S. signed releases showing that he had completed a cardio-exercise class and had obtained mental health treatment. He had also taken some type of employment training, but he had not provided a certificate of completion. Donald S. was subsequently transferred to Florida, but Wrigley had no information on what treatment services Donald S. had completed since his transfer because he had refused to sign the necessary releases.

¶ 12 Wrigley testified that Donald S. saw G.J.S. for a brief period when she was a few weeks old and that he had been incarcerated thereafter. Although weekly phone visitation with G.J.S. was scheduled, no phone visitation occurred prior to February of

2013. Wrigley explained that Donald S. was supposed to purchase a prepaid cellular telephone for G.J.S. to facilitate phone visitation, but that he did not do so until February of 2013. Wrigley described Donald S.'s attendance at these visitations as "sporadic." G.J.S.'s foster parents kept a log of the phone calls, and that log reflects that their conversations are difficult for G.J.S. because she does not really know Donald S. G.J.S.'s foster parents also allowed Donald S.'s mother, Janet Hickman, to have telephone visitation with G.J.S. to facilitate a relationship between them. Wrigley also testified that Donald S. sent cards and pictures of cartoon characters for G.J.S. to color.

¶ 13 Wrigley testified that Donald S. had filed numerous appeals of his service plans. He had accused Wrigley of alienating G.J.S. from him and had threatened to have Wrigley and her supervisor fired.

¶ 14 Wrigley testified that Hickman, who lives in Arkansas, contacted her and indicated she was going to come to Illinois but was not sure whether she could make it. Hickman did come to Illinois but a visitation with G.J.S. could not be arranged because G.J.S.'s foster family had other commitments. Wrigley testified that had Hickman made a firm commitment she would have scheduled a visitation with G.J.S.

¶ 15 Donald S. testified that he had been in federal custody since G.J.S. was six weeks old. His projected release date was May 2015. He admitted that 15 months had been added to his sentence for various disciplinary infractions, including assaulting staff. Prior to his federal incarceration he had been incarcerated in Illinois during which time he had visitation with G.J.S. a few times. He was free for a couple of weeks between incarcerations and had lived with Jenna M. and G.J.S. during that time.

¶ 16 In late 2010 he was contacted by Kelly Wrigley and advised that G.J.S. had been taken into protective custody by DCFS. Wrigley also provided him with a service plan. Donald S. testified that since being incarcerated he had completed over 30 programs and classes. Although he initially sent certificates indicating the programs he had completed, he subsequently stopped sending them and began filing appeals from the service plans because he disagreed with how Wrigley was handling G.J.S.'s case and felt that she was trying to alienate her from him.

¶ 17 Donald S. testified that he was awarded telephone visits with G.J.S. in May 2011, but had no phone visits with her until February 2013 because he was not allowed to send G.J.S. a prepaid phone until then. Their phone conversations do not go well because Wrigley and G.J.S.'s foster parents have alienated G.J.S. and not allowed his mother to be part of G.J.S.'s life. He sent hand-drawn pictures and cards to G.J.S.

¶ 18 At the conclusion of the fitness hearing, the circuit court found that the State had proved by clear and convincing evidence that Donald S. was unfit.

¶ 19 The court then proceeded to a best-interests hearing. Wrigley testified that G.J.S. had resided in the same foster home since June 2010. In addition to her foster parents, G.J.S.'s half-brother and two other foster children reside there. G.J.S.'s foster parents had expressed a desire to adopt G.J.S. and had signed permanency commitments. G.J.S. calls her foster parents "mom" and "dad" and is bonded with her foster family. G.J.S. has her own room. She gets straight A's in school. Although her foster father had recently been laid off, Wrigley believed they were able to support her financially. G.J.S. has expressed

a desire to be adopted. Wrigley opined that terminating Donald S.'s parental rights would have no effect on G.J.S. because she considered her foster home as her home.

¶ 20 Donald S. testified that although his prison sentence had been extended because of disciplinary infractions, none of those had occurred since G.J.S. was born. Donald S. believed that it would be in G.J.S.'s best interests for her to be placed with his family, although he acknowledged that G.J.S. had never met them. He did not want G.J.S. to be adopted but believed that his mother should adopt her.

¶ 21 On March 3, 2014, the circuit court entered a detailed order finding that Donald S. was unfit and that termination of his parental rights was in G.J.S.'s best interests. With respect to unfitness, the court found that the State had proved by clear and convincing evidence that Donald S. was unfit based on all four grounds alleged in the petition to terminate. Specifically, the court found that Donald S. had been incarcerated since G.J.S. was a few weeks old and that his projected release date was May 2015; that although his service plan required him to sign releases for information so that progress could be monitored as to any treatment or programs available to him in prison, he signed only a few of the required releases, then refused to sign any more releases because he disagreed with the way DCFS and Wrigley were handling the case; that while he claimed to have completed over 30 programs while in prison, he admitted that he did not provide Wrigley any documentation or seek to have any certificates of completion admitted at the fitness hearing; and that he admitted that his incarceration time had been extended because of his misconduct while in prison.

¶ 22 With respect to G.J.S.'s best interests, the circuit court found that G.J.S. had been in the same foster home since coming into care, that she is strongly bonded with her foster family and refers to her foster parents as "mom" and "dad," and that her half-brother lives with her. The court also found that G.J.S.'s foster home was the only home she has ever known, that her emotional, physical, and psychological needs were being met in her foster home, and that she had expressed her desire to stay in her foster home. The court further found that Donald S. was a stranger to G.J.S. and contact with him threatened the only stability and security G.J.S. knows.

¶ 23 Donald S. appeals.

¶ 24 ANALYSIS

¶ 25 On appeal, Donald S. argues that the circuit court erred in finding that he was an unfit person and that termination of his parental rights was in G.J.S.'s best interests.

¶ 26 The Juvenile Court Act of 1987 establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2010). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 27 One of the grounds upon which Donald S. was found to be unfit was section 1(D)(r) of the Adoption Act, which provides that a person is unfit if the minor is in the temporary custody or guardianship of the DCFS, the parent is incarcerated as a result of a criminal conviction at the time the petition for termination of parental rights is filed, that prior to incarceration the parent has had little or no contact with the minor or provided little or no support for the minor, and that the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for a period in excess of two years after the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(r) (West 2010).

¶ 28 The record establishes that when the petition to terminate parental rights was filed on November 20, 2012, G.J.S. was in the guardianship of DCFS and Donald S. was incarcerated in the federal penitentiary serving a sentence of imprisonment for possession of a firearm by a felon. Both Wrigley and Donald S. testified that his projected release date was May 2015, more than two years after the date the petition to terminate was filed. Donald S. was incarcerated when G.J.S. was born, and he was again taken into custody when she was no more than six weeks old. As a result of these incarcerations, Donald S. spent no more than two weeks with G.J.S. He has had little contact with G.J.S., and admitted that his phone visitations with her were awkward because she did not know him. Under these circumstances, we cannot say that the circuit court's determination that Donald S. was unfit is contrary to the manifest weight of the evidence.

¶ 29 Donald S.'s service plan required him to pursue whatever programs and services were available to him while incarcerated, and to sign releases so that information could

be provided to DCFS showing what services he was receiving and what programs he had completed. After signing releases showing that he had completed a cardio-exercise class and had obtained mental health treatment, Donald S. refused to provide Wrigley or DCFS with any further documentation. The benchmark for measuring a parent's progress toward returning the child encompasses the parent's compliance with the service plan. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). We cannot say that the circuit court's finding that Donald S. was unfit based on his failure to make reasonable progress toward G.J.S.'s return is contrary to the manifest weight of the evidence where the record demonstrates that he refused to comply with his service plan.

¶ 30 If the trial court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, (2) the development of the child's identity, (3) the child's background and ties, including familial, cultural, and religious, (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for

stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2010). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 31 We cannot say that the circuit court's determination that termination of Donald S.'s parental rights is in G.J.S.'s best interests is contrary to the manifest weight of the evidence. Wrigley testified that G.J.S. was bonded with her foster family, the only family she has ever really known. Her foster family provides for her physical, emotional, and psychological needs. G.J.S. has expressed her desire to be adopted by her foster parents, and they have signed permanency commitments to adopt her. Wrigley testified that termination of Donald S.'s parental rights would not affect her because she does not really know Donald S. Although Donald S. expressed his belief that G.J.S. should be adopted by his mother, no evidence was introduced that his mother or anyone else in his family was willing or able to adopt or otherwise care for her.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 34 Affirmed.