

NOTICE

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2014 IL App (4th) 140544-U

NO. 4-14-0544

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 20, 2014

Carla Bender

4th District Appellate

Court, IL

In re: A.W. and A.S., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 09JA30
LOUIS WILLIAMS,)	
Respondent-Appellant.)	Honorable
)	John R. Kennedy,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* While the trial court's unfitness finding was not against the manifest weight of the evidence, the best-interest finding was, where the State's evidence was insufficient to prove by a preponderance of the evidence termination was in the children's best interest.

¶ 2 In November 2013, the State filed a petition for the termination of parental rights of respondent, Louis Williams, as to his minor children A.W. (born in 2007) and A.S. (born in 2010). In April 2014, the Champaign County circuit court entered a written order, finding respondent unfit. After a June 2014 hearing, the court concluded it was in the minor children's best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, contending the trial court erred by finding (1) him unfit and (2) it was in the children's best interest to terminate his parental rights. We affirm in part, reverse in part, and remand the cause with directions.

¶ 4

I. BACKGROUND

¶ 5 The April 2009 petition and amended petition for adjudication of neglect alleged A.W. and her half brother, J.S., were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2008)), in that their environment was injurious to their welfare when they reside with Aquelle Stone because the environment exposes the minors to (1) inadequate supervision and (2) substance abuse. An additional count applied only to J.S., whose father is Keith Marrisette. After a May 2009 adjudicatory hearing, the minors were both found neglected based on an injurious environment. In June 2009, the petition was dismissed as to A.W. and respondent. In July 2009, Stone and Marrisette were found unfit to care for J.S., J.S. was made a ward of the court, and the Department of Children and Family Services (DCFS) was appointed his guardian.

¶ 6 In January 2011, respondent suffered a severe brain bleed, which is a type of stroke. Consequently, that same month, the State filed a supplemental petition for the adjudication of neglect and dependency. The petition alleged A.W. was (1) neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)), in that her environment was injurious to her welfare when she resides with Stone because Stone had failed to correct the conditions that resulted in a prior adjudication of parental unfitness to have custody of J.S.; and (2) dependent under section 2-4(1)(a) of the Juvenile Court Act (705 ILCS 405/2-4(1)(a) (West 2010)) by being a minor who was without a parent or guardian to care for her. On March 8, 2011, Stone stipulated to the count against her, and the trial court found A.W. neglected. After a March 15, 2011, hearing, the court found A.W. was dependent as alleged in the supplemental petition. In April 2011, the court found Stone and respondent were unfit and unable to care for A.W. and made her a ward of the court with DCFS as her guardian. As to

respondent, the order noted he suffered a stroke in January 2011 and was not physically and mentally able to parent at that time.

¶ 7 Also, in April 2011, the State filed a second supplemental petition, regarding A.S. The petition listed Stone as the mother and respondent as the putative father. It alleged A.S. was (1) neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2010)), in that her environment was injurious to her welfare when she resides with Stone because Stone had failed to correct the conditions that resulted in a prior adjudication of parental unfitness to have custody of A.W. and J.S.; and (2) dependent under section 2-4(1)(a) of the Juvenile Court Act (705 ILCS 405/2-4(1)(a) (West 2010)) by being a minor who was without a parent or guardian to care for her. Thereafter, based on Stone's and respondent's admissions to the second supplemental petition, the trial court adjudicated A.S. neglected and dependent. In June 2011, the court found Stone and respondent unfit and unable to care for A.S. and made her a ward of the court with DCFS as her guardian. The order noted respondent was unable to care for A.S. due to his medical condition. In October 2011, a paternity test showed respondent was in fact the biological father of A.S.

¶ 8 In November 2013, the State filed a motion to terminate respondent's parental rights as to both A.W. and A.S. The motion also sought to terminate the parental rights of Marrisette as to J.S. Marrisette and J.S. are not parties to this appeal. The motion asserted respondent was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for the children's removal from his care (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward the return of the children within the initial nine months after the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); (3) maintain a reasonable degree of interest, concern, or responsibility for the children's welfare (750

ILCS 50/1(D)(b) (West 2012)) (count III); (4) make reasonable progress toward the return of the children during a nine-month period after the initial nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(iii) (West 2012)), namely March 29, 2012, through December 29, 2012 (count V); and (5) make reasonable progress toward the return of the children during a nine-month period after the initial nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(iii) (West 2012)), namely December 29, 2012, through October 29, 2013 (count VI). (Count IV applied only to Marrissette.)

¶ 9 At the three-day fitness hearing that took place in February and March 2014, the State presented the testimony of the following: (1) William Kohen, the psychologist who performed psychological evaluations of respondent in October 2011 and June 2013; (2) Christine Johnson, a clinical therapist who conducted respondent's second parenting program that began in September 2013; (3) George Cook, who addressed only Marrissette; (4) Ashley Deckert, who addressed only Marrissette; (5) Heidi Reible, parenting group facilitator at Cognition Works who facilitated respondent's first parenting class that began in August 2012; (6) Amanda Davis, caseworker from June 2008 to January 2010; (7) Brianna Coffey, caseworker from July 2012 to November 2012; (8) Katherine Duffin, caseworker from late November 2012 to February 2013; (9) Shelly Timm, caseworker from December 2010 to March 2012; (10) Lynette Gutkowski, caseworker since June 2013; (11) Valerie Bewley, caseworker from November 2009 to July 2010; and (12) Veronica Neuyen, caseworker from February 2013 to June 2013. Also, at the State's request, the trial court took judicial notice of just the prior orders in this case. The only document the State presented was Kohen's resume. Respondent testified on his own behalf and presented the testimony of Jennifer McNair, a family advocate worker at the Family Advocacy Center of Champaign County (Family Advocacy Center). He also presented (1) a February 2014

letter from his physician, Simone Hampton; (2) an Internal Revenue Service Form 1098-T, indicating respondent had paid tuition to Eastern Illinois University in 2013; and (3) 2013 W-2 forms for respondent's employment at the Salvation Army.

¶ 10 As explained later in our analysis, our order only addresses count five, which concerned respondent's actions during the period of March 29, 2012, through December 29, 2012. Thus, we will only set forth the evidence relating to that time period. For the State, that evidence was primarily from Reible and Coffey. We recognize Duffin was a caseworker for a small part of the relevant period, but she did not indicate in her testimony when things took place, such as issues with visitation.

¶ 11 Coffey, the caseworker from early July 2012 through November 2012, testified she had requested proof of respondent's college attendance and he had failed to provide her with that documentation. Coffey had also asked respondent to sign releases of information for his medical documents. Respondent did sign some releases but none related to his neurological services. To the best of her knowledge, he never complied with those releases. Respondent did complete a substance-abuse evaluation. Coffey also discussed with respondent his failure to complete a portion of the psychological evaluation done by Kohen in October 2011. During her time as a caseworker, respondent never completed the missing portion of the psychological exam. Coffey also testified she referred respondent to a parenting class at Cognition Works.

¶ 12 Additionally, Coffey addressed respondent's visitation with the children. While she did not supervise the visits, she did occasionally drop in on a visit. When visitation issues arose and Coffey had to discuss them with respondent, respondent was very resistant to the information. On numerous occasions, "he would become verbally abusive and raise his voice." Respondent would also spend a portion of his visits with the children addressing his concerns

about the children's clothes and hair instead of interacting with the children. During an October 2012 visit, A.S. would not come to respondent when he requested, and he grabbed her arm, which caused her to fall to the floor against the wall. The case aide decided to end the visit, and for awhile, respondent refused to allow the case aide to leave his home.

¶ 13 Reible facilitated the 12-week parenting program at Cognition Works that respondent was in from August to November 2012. While respondent attended all 12 classes, Reible felt respondent's completion was not a successful one, and she had concerns about his ability to parent. Respondent did not complete a weekly homework assignment until his fourth session. During the parenting group, his participation was sporadic, and when he did participate, his participation was sometimes tangential to the topic of discussion. Respondent would also deny he had a reason to be in the program and blame agencies for his problems. Reible was unable to tell if respondent understood the concepts the program was trying to provide him. For example, the homework he did complete did not relate to the material that they were using. Respondent did not offer any examples of how he was using the information he was being told in his interactions with his children. Also, in some sessions, respondent would simply sit in silence with his eyes closed.

¶ 14 Respondent's evidence at the fitness hearing focused primarily on his then current situation and 2013. Respondent did note he had been taking classes since 2010 at Parkland College to obtain a degree from Eastern Illinois University, and thus, that would have occurred during the relevant time period.

¶ 15 In April 2014, the trial court entered a written adjudicatory order, finding respondent unfit for his failure to make reasonable progress toward the return of the minor children (1) within the initial nine months after the neglect adjudication (count II); (2) during the

period of March 29, 2012, through December 29, 2012 (count V); and (3) during the period of December 29, 2012, through October 29, 2013 (count VI).

¶ 16 On June 17, 2014, the trial court held the best-interest hearing. The evidence consisted of a best-interest report by Lutheran Social Services of Illinois (caseworker report), a five-page best-interest report by the court appointed special advocate (CASA), and the testimony of respondent. Both reports gave a history of the case and recommended the termination of respondent's parental rights. Additionally, the CASA report described the children's current situation with their mother. It only noted A.W. and A.S. have weekly visits with respondent at the Family Advocacy Center. The report failed to address respondent's current situation and his relationship with the children.

¶ 17 The caseworker report indicated all of respondent's weekly visits with the children at the Family Advocacy Center had gone well with no major concerns. It also noted respondent had maintained stable housing and had a part-time job, which began on May 19, 2014. However, respondent had failed to complete his second parenting class. The report further noted respondent had continued to express that A.W. was under his custody and guardianship per an order in a family court case, and thus it had concerns regarding respondent's ability to understand DCFS's involvement with his family, despite it being explained to him numerous times. Last, the report noted respondent had not moved beyond supervised visits with the children.

¶ 18 Respondent testified he had part-time jobs at both Wendy's and KFC. Respondent also explained his family had moved from Chicago and resided with him in one complex. His family is his support system and could care for the children if he got ill. Respondent noted he was physically able to care for his children. When asked about discipline, respondent noted it was more talking than anything physical. Respondent noted he would like to take the children to

beaches, parks, museums, and family events. Additionally, respondent expressed concern he had no idea how he even got involved in the case. Respondent believed it was Stone getting A.W. from the babysitter by telling the babysitter respondent had died that had led to DCFS involvement. Respondent also noted he had no open case or a complaint against him since the stroke, and thus, he was confused to why he was even in the position that he is in.

¶ 19 During closing arguments, the trial court essentially asked the guardian *ad litem* why, in a situation where custody would be restored to Stone, should respondent's parental rights be terminated. The guardian *ad litem* noted respondent's erratic behavior toward both the children and Stone that, at times, had been dangerous. Additionally, the guardian *ad litem* noted that, at one point, Stone had an order of protection against respondent. She felt it would be very difficult for Stone to arrange visitation with respondent. We note Stone's attorney also argued for the termination of respondent's parental rights.

¶ 20 After hearing the parties' arguments, the trial court made oral findings. It did not believe respondent would ever be able to safely parent the girls. It noted several events of anger toward the children during visitation but did recognize visitation had become less problematic since the visits were taking place at the Family Advocacy Center. The court also believed respondent would always hold a grudge against Stone. It further found respondent would not listen to Stone as to how to exercise his visitation rights because he does not think he should have to do so. The court concluded it was in the children's best interest to terminate respondent's parental rights.

¶ 21 That same day, the trial court entered a permanency order, vacating the court's wardship and DCFS's guardianship, dismissing the petition, and restoring A.W.'s and A.S.'s custody to Stone.

¶ 22 On June 18, 2014, the trial court entered a written order, terminating respondent's parental rights. On June 23, 2014, respondent filed a timely notice of appeal from the termination of his parental rights in sufficient compliance with Illinois Supreme Court Rule 303 (eff. May 30, 2008). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency proceedings). Accordingly, we have jurisdiction of this appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 23 II. ANALYSIS

¶ 24 A. Fitness Finding

¶ 25 In this case, the trial court found respondent unfit for failing to make reasonable progress during three different time periods. On appeal, respondent challenges all three bases for his unfitness finding. The State asserts the court's findings were proper.

¶ 26 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2012)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the trial court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the children's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). Here, respondent initially challenges the trial court's finding him unfit.

¶ 27 Since the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001).

Further, in matters involving minors, the trial court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a trial court's conclusion a parent's unfitness has been established by clear and convincing evidence unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). A trial court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 28 In this case, the trial court found respondent unfit under two of the subsections of section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m)(ii), 1(D)(m)(iii) (West 2012)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child to the parent" within a specified nine-month period, depending on the subsection, after an adjudication of a neglected or dependent minor. Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)).

Moreover, they have explained reasonable progress as follows:

" [T]he benchmark for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at

1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a trial court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 29 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her [or his] own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844.

¶ 30 Respondent first argues count V of the motion for termination of his parental rights, failure to make reasonable progress during the nine-month period of March 29, 2009, through December 29, 2009, did not correctly define an applicable nine-month period under section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2012)). However, in *In re Jaron Z.*, 348 Ill. App. 3d 239, 258, 810 N.E.2d 108, 123-24 (2004), the reviewing court held that, under section 1(D)(m)(iii) of the Adoption Act, "a parent's actions for a fitness determination may be examined in light of *any nine-month increment* of time beginning following the expiration of the first nine-month period after the adjudication of neglect." (Emphasis added.) Since the initial nine-month period in A.S.'s case (the later one) would have

expired on March 8, 2012, the March 29, 2012, through December 29, 2012, period was a valid nine-month period under section 1(D)(m)(iii) of the Adoption Act.

¶ 31 We note that, at the beginning of the relevant time period, it had been 14 months since respondent's stroke. The evidence relating to respondent's actions from March 29, 2012, through December 29, 2012, showed respondent failed to comply with several of the requests from his caseworker Coffey, such as provide proof of his college attendance, sign medical releases for his neurological care, and complete the test that he refused to do during the October 2011 psychological examination. More important, Coffey addressed respondent's visitation with the children during the relevant time period. When visitation issues arose and Coffey had to discuss them with respondent, respondent was very resistant to the information and sometimes would become "verbally abusive and raise his voice." Additionally, respondent would spend a portion of his visits with the girls addressing his concerns about the children's clothes and hair instead of interacting with the children. During an October 2012 visit, A.S. would not come to respondent when he requested, and he grabbed her arm, which caused her to fall to the floor against the wall. The case aide decided to end the visit, and respondent initially refused to allow the case aide to leave his home.

¶ 32 From August to November 2012, respondent was in Reible's parenting program at Cognition Works. While respondent attended all 12 classes, Reible felt respondent's completion was not a successful one as she still had concerns about respondent's ability to parent. At first, respondent did not complete the weekly homework assignments. When he did do the assignments, he did them the way he wanted to do them, which did not relate to the material that they were using. During the parenting group sessions, respondent's participation was sporadic. In some sessions, respondent would simply sit in silence with his eyes closed. When he did

participate, his participation was sometimes tangential to the topic of discussion. Respondent would also deny he had a reason to be at the program and blame agencies for his problems. Reible also noted she was unable to tell if respondent understood the concepts the program was trying to provide him since respondent never offered any examples of how he was using the information he was being told in his interactions with his children.

¶ 33 Additionally, the trial court entered two permanency review orders during the relevant time period. In the August 2012 permanency review order, the court found respondent had not made reasonable and substantial progress toward reunification. It also noted respondent required assistance for his own care and had not shown his ability to care for the children. In a November 2012 amended permanency order, the court found respondent had not made both reasonable efforts and reasonable progress toward the minors' return home. The order noted respondent had been inappropriately angry and physically aggressive during visits with the children and the children have become afraid of him. It further stated respondent was only cooperative with services if he felt the service was appropriate.

¶ 34 Thus, due to all of the concerns about respondent's ability to parent his children, the State established by clear and convincing evidence respondent was not near the return of A.W. and A.S. to his custody during the period of March 29, 2012, through December 29, 2012. Accordingly, the trial court's order finding respondent failed to make reasonable progress during the nine-month period of March 29, 2009, through December 29, 2009, was not against the manifest weight of the evidence.

¶ 35 Because we uphold the trial court's finding that respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(iii) (West 2012)), and because meeting one definition is enough to make him an "unfit person," we need not review the trial

court's findings that he meets additional counts alleged in the termination motion. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 36 B. Children's Best Interest

¶ 37 Respondent also challenges the trial court's best-interest finding. The State contends the court's finding was proper.

¶ 38 During the best-interest hearing, the trial court focuses on "the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2012)) in the context of the children's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the children's physical safety and welfare; the development of the children's identity; the children's family, cultural, and religious background and ties; the children's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the children; the children's own wishes and long-term goals; the children's community ties, including church, school, and friends; the children's need for permanence, which includes the children's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 39 We note a parent's unfitness to have custody of his children does not automatically result in the termination of his legal relationship with them. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State must prove by a preponderance of

the evidence the termination of the respondent's parental rights are in the minors' best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006). This court also reviews a trial court's best-interest determination under the manifest-weight-of-the-evidence standard. See *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). Additionally, we give great deference to the trial court's determination because it has the superior opportunity to observe the witnesses and evaluate their credibility. *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 40 The facts of this case are quite unusual, and the result of the best-interest hearing is particularly troubling for two reasons. One reason is the fact respondent had been granted custody of A.W. by an Illinois court before he suffered the stroke in January 2011. The second is that, at the time of the best-interest hearing, the children were no longer in substitute care as they were back living with Stone. Considering the unique situation before the trial court, the State presented little evidence at the best-interest hearing. The only evidence it presented was the caseworker report and the CASA report. In describing the family's current situation, the CASA report only noted respondent had visitation with the girls. The rest of the section focused solely on Stone and the children. The caseworker report had more information but failed to address respondent's current living situation with his family living in the same complex as him and the bond between him and the children. Objections should have been raised to the reports' glaring inadequacies.

¶ 41 Moreover the caseworker report gave a positive review of respondent's current visitation with the children at the Family Advocacy Center. Despite that review, the report still recommended termination of parental rights and, in doing so, failed to address why such

visitation could not continue if Stone gained or regained custody of the children. Clearly, if a third party was involved, Stone and respondent's ability to get along would not be an issue. From the trial court's oral findings at the best-interest hearing, it appears the main reason for the termination of parental rights was respondent's inability to work out visitation with Stone. Additionally, we note the lack of evidence by the State was highlighted by the trial court's questioning of the guardian *ad litem* during closing arguments. In response to those questions, the concerns noted by the guardian *ad litem* about the safety of the children and Stone were historical, as the caseworker report noted no issues exist with respondent's current visitation with the children and the order of protection involving Stone was issued in 2011.

¶ 42 We recognize the evidence at the best-interest hearing did indicate respondent was difficult to work with because his stroke left him unable to understand and remember things. Everyone involved in the case was clearly frustrated with him. However, we fail to see how that alone establishes by a preponderance of the evidence that termination of his parental rights was in the best interest of A.W. and A.S. The caseworker report showed the children's visits with respondent "go well." As stated, the State presented no evidence those visits could not continue.

¶ 43 Thus, we conclude the State failed to prove by a preponderance of the evidence it was in the best interest of A.W. and A.S. that respondent's parental rights be terminated. Accordingly, the trial court's finding termination was in the children's best interest was against the manifest weight of the evidence.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the Champaign County circuit court's unfitness finding but reverse its finding it was in A.W.'s and A.S.'s best interest to terminate respondent's

parental rights. We remand the cause, so the supervised visitation that existed prior to the termination of respondent's parental rights may be reinstated and such visitation be resumed.

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