

2012 IL App (2d) 120674-U
Nos. 2-12-0674 & 2-12-0675 cons.
Order filed November 6, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> CHARLOTTE K.L., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 09-JA-2
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Megan K.L.,	)	Anthony V. Coco,
Respondent-Appellant).	)	Judge, Presiding.

<i>In re</i> OLIVER L., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 09-JA-3
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Megan K.L.,	)	Anthony V. Coco,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly found that it was in the minors' best interests to terminate respondent's parental rights.

¶ 2 After finding respondent, Megan K.L., unfit, the trial court terminated her parental rights to minors Charlotte K.L. and Oliver L. Respondent does not appeal the trial court's finding of unfitness but does appeal the order terminating her parental rights.¹ We affirm the trial court's decision terminating respondent's parental rights.

¶ 3 I. BACKGROUND

¶ 4 Oliver was born "substance exposed" on January 23, 2004. Charlotte was born February 21, 2005. The Department of Children and Family Services (DCFS) became involved in December 2008 when respondent was arrested for shoplifting and possession of heroin. The State filed neglect petitions as to both minors in January 2009. The petitions alleged several counts regarding the minors being in an environment injurious to their welfare based on respondent's (and Jeffrey's) drug addictions, drug use in front of the minors, and shoplifting in the presence of the minors. On January 13, 2009, the court found probable cause that the minors were neglected and granted temporary custody to DCFS.

¶ 5 On April 21, 2009, the adjudicatory hearing was continued because respondent was in custody. Two reports to the court indicated that the minors were initially placed with respondent's mother for a few days but then moved to a traditional foster home on January 15, 2009. However, Oliver had tantrums, misbehaved, and did not follow commands, and Charlotte incited friction and was overly affectionate, frequently kissing the other foster child. The (single) foster parent was overwhelmed and had other children living with her. On June 8, 2009, the minors were moved to

¹The parental rights of Charlotte's father, Jeffrey L., were also terminated, and he is not a party on appeal. The pregnancy resulting in Oliver's birth was the result of a sexual assault, and his father is not identified in the record.

a second traditional foster home and seemed to be adjusting well. On August 28, 2009, the minors were adjudicated neglected.

¶ 6 Another report to the court dated September 14, 2009, was presented at a dispositional hearing. The report stated that the minors were receiving counseling and flourishing in the second foster care placement. Though the foster parents had observed attachment issues with both minors, Oliver appeared more engaged and affectionate and followed the foster parents' directives.

¶ 7 The record contains four service plans. For the first two service plans, spanning from January 20, 2010, to January 31, 2011, respondent was rated unsatisfactory but the permanency goal was return home within 12 months. A CASA report to the court dated March 2, 2010, indicated that the minors saw respondent only once the prior month even though visits were scheduled on a weekly basis. It further stated that, according to the foster parent, "both children have relayed specific memories of being present when [natural parents] were stopped by the police. They have described knowledge of a white powder in plastic bags." The report indicated that both minors appeared very happy interacting with their foster family and that the structured household provided stability in their lives. A permanency hearing order dated March 9, 2010, stated that respondent had not made reasonable progress or efforts and that return home within 12 months remained the goal.

¶ 8 The third service plan spanned from January 5, 2011, to July 31, 2011. In a permanency hearing order dated October 12, 2010, the court stated that respondent had not made reasonable efforts or progress, and the goal was changed to substitute care pending court determination of parental rights. Respondent was rated unsatisfactory on the fourth service plan from July 7, 2011, to July 31, 2011. This service plan stated that both children were doing very well and the foster family was committed to providing permanency for the minors.

¶ 9 On May 10, 2011, the State filed a petition to terminate respondent's parental rights to both minors. The petition alleged that respondent was unfit on the following five grounds: (1) failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) continuously engaging in substantial neglect of the minors (750 ILCS 50/1(D)(d) (West 2010)); (3) failing to protect the minors from conditions within their environment injurious to their welfare (750 ILCS 50/1(D)(g) (West 2010)); (4) engaging in other neglect of or misconduct towards the minors (750 ILCS 50/1(D)(h) (West 2010)); and (5) failing to make reasonable efforts to correct the conditions that were the basis for the removal of the minors or to make reasonable progress towards their return within nine months of the neglect adjudication or during any nine-month-period after the neglect adjudication (750 ILCS 50/1(D)(m) (West 2010)). The State then amended the petition to add a count that respondent was depraved (750 ILCS 50/1(D)(i) (West 2010)). The State alleged that respondent's three felony convictions created a rebuttable presumption of depravity.

¶ 10 A CASA report dated August 14, 2011, stated that the caseworker made a visit to the foster parent's home on June 22, 2010. Both minors expressed excitement about an upcoming vacation to Colorado; they enjoyed attending vacation Bible school; and they spoke of their disappointment over a missed visit with respondent. The next visit by the caseworker showed that the minors enjoyed their vacation. They expressed sadness over not seeing respondent for a long time. According to the caseworker, the minors were very happy and comfortable with their foster family. It provided a stable, healthy, and structured environment in which they were flourishing.

¶ 11 A permanency hearing report dated September 26, 2011, stated that respondent was currently incarcerated and had been since May 2011. The court's November 15, 2011, permanency order

noted that respondent was in jail and had not made reasonable efforts or progress. Following several continuances, the court conducted a hearing on the State's petition to terminate respondent's parental rights on April 17, 2012.

¶ 12 A. Fitness Hearing

¶ 13 Respondent testified first on behalf of the State as follows. She had three children before Oliver and Charlotte were born, and they were living with their respective fathers. With respect to Oliver and Charlotte, respondent admitted that she had had contact with DCFS prior to the instant proceedings. Charlotte and Oliver were present with respondent when she was caught for retail theft at a grocery store in October 2008. They were also present when she was arrested on an outstanding warrant at a gas station in November 2008.

¶ 14 With respect to the instant case, the children were at home with respondent on January 11, 2009, when she was arrested on an outstanding warrant. According to respondent, her husband's parole officer searched their house as part of a compliance check, and empty baggies of heroin were found in a cigarette box on top of the television. Oliver was almost five years old and Charlotte was almost four when they were removed from her care.

¶ 15 Respondent admitted to being a drug addict for the past 4½ years. When she was eight years old, her father forced her to smoke marijuana so that he could sexually abuse her. Respondent tried to stop using drugs numerous times on her own and through a detox center. She also tried to separate from other people using drugs, such as Jeffrey and her father. The initial service plan required her to complete a drug and alcohol assessment to determine what level of services she needed. However, respondent admitted continuing to use drugs and not successfully completing a drug program after the children were removed. Respondent did participate in Stonybrook's

methadone program from September 2010 to April 2011, but left the program because they were raising her dose and because she got “everything out of that program that [she] could have possibly gotten.” She also participated in alcohol and drug programs while she was incarcerated.

¶ 16 After being clean one year, respondent admitted that she had used drugs since leaving Stonybrook; she had relapsed as recently as October 2011. She relapsed when she learned that the State had filed a petition to terminate her parental rights. Though respondent was aware that the goal changed to substitute care pending court termination of parental rights in 2010, the goal was still “pending” at that time.

¶ 17 Respondent was currently incarcerated on an attempted escape charge which resulted when she jumped out of a vehicle that was transferring her to a substance-abuse-treatment facility. She had been incarcerated on this charge since October 26, 2011. Respondent summarized her prior incarceration dates. After her January 2009 arrest, respondent was in custody until July 9, 2009. After that, respondent was in jail from April to June 2010, from May to September 2011, and then she was arrested again in October 2011. During the nine-month period between July 2009 and March 2010, when respondent was not in jail, she missed only one weekly visit with the children. From June to October 2010, she saw the children on a weekly basis. Then, from October 2010 to May 2011, when she was in jail again, she saw them on a monthly basis. Between July 2009 and May 2011, visits changed from weekly to monthly to ease the minors’ transition in the event her parental rights were terminated. She had last seen the minors in May 2011.

¶ 18 Sister Veronica, a caseworker for 20 years and respondent’s caseworker throughout the pendency of her case, testified as follows. She received respondent’s case in January 2009. Respondent had advised Sister Veronica that, because Oliver was born with drugs in his system, he

was placed in foster care after he was born but later returned to her. Respondent and the children also advised Sister Veronica that Jeffrey hit them and, at one point, held a knife to Oliver's throat. Respondent would try to protect the children and herself from Jeffrey's domestic violence.

¶ 19 The overriding concern of respondent's service plan was substance abuse. Once that issue was addressed and respondent was sober, other issues such as counseling and parenting class could be addressed. When respondent was released from custody in July 2009, Sister Veronica gave her a list of drug and alcohol counselors to call to start the intake and assessment process. Shortly thereafter, respondent was referred to Health Alternative Systems (HAS). Respondent and Jeffrey missed six appointments for an initial assessment at HAS. Respondent never received an initial assessment or completed a substance abuse program. In September 2010, Sister Veronica learned that respondent was attending Stonybrook, which was a methadone program. Sister Veronica considered the program to be in compliance with respondent's service plan, and respondent was compliant with the program by receiving clean drug tests. However, she did not satisfactorily complete it because she never received a psychiatric evaluation, as recommended by the Stonybrook counselor, and because she disappeared from the program for two weeks in February and then left the program in April 2011. Sister Veronica confirmed that the program was increasing respondent's dosage of methadone. By June 2011, respondent had never completed a substance abuse assessment or treatment program. As of January 2010, respondent received unsatisfactory ratings for all service plans.

¶ 20 In 2009, Sister Veronica coordinated one or two visits with the children when respondent was in jail. Other visits with the children fell through because the jail oftentimes would not cooperate with the scheduling of visits. Some of the offenses for which respondent was incarcerated were drug

offenses. When respondent was released in July 2009, visits occurred weekly in Sister Veronica's office until about March 2010. From March to June 2010, respondent failed to show up for visits or be in contact with Sister Veronica. Respondent's last visit was in May 2011; after that, she was incarcerated again. Her visits were never unsupervised.

¶ 21 Pam B., respondent's mother, testified that she saw what she felt was evidence of Jeffrey's physical abuse of respondent. Pam B. was intimidated by Jeffrey and would not let him in her house unless her husband was home. Respondent would come to Pam B.'s house with bruises and on one occasion, a broken nose. When the children were originally placed with Pam B., Charlotte admitted that she blamed something she did on Oliver to avoid being hit by Jeffrey. Pam B. was aware that in August 2011, respondent was being transported to a rehabilitation center when she got out of the car. Pam B. was not aware that respondent had jumped out of the car and went missing for a couple of days until she turned herself in at a hospital. Based on recent conversations with respondent in jail, Pam B. believed that respondent truly wanted to change and give up drugs.

¶ 22 Court Appointed Special Advocate (CASA) volunteer, Erin M., testified next. Erin was assigned to Oliver and Charlotte's case in January 2009 and met with them every month. Initially, she met with the children at the original foster mother's house, where they remained for about five months. In June 2009, the children were moved to a second foster home with parents Jennifer and Michael. Erin visited the children on June 25, 2009, and recalled that Oliver did not make eye contact, did not listen very well, and needed to be reminded to behave. Charlotte was overly affectionate by kissing other children, which was a problem in daycare. There was a child and family meeting on August 31, 2009, in which the service plans were discussed. Respondent agreed to

comply with the service plan except for counseling for her prior sexual abuse; she said that confronting that made her want to use drugs.

¶ 23 At the first permanency hearing in March 2010, Sister Veronica suggested holding a family and child team meeting after court because everyone was present. The meeting did not occur, however, because respondent and Jeffrey left, saying that they were not prepared.

¶ 24 Erin visited the children at the foster parents' house in April 2010. The children stated that they had not seen respondent (or Jeffrey) for quite a while because their parents had done something "bad" again. A child and family meeting was scheduled for May 10, 2010, but Jeffrey cancelled. On June 10, 2010, Erin observed a positive visit between the children and respondent and Jeffrey. During that visit, Oliver asked respondent why she was in jail. In July 2010, the children left the foster home at 8:30 a.m. for a 10 a.m. visit. However, Jeffrey cancelled the visit at 9:45 a.m., saying he was working and respondent was in the hospital. In August 2010, a visit occurred with Jeffrey's father present, and it was a very nice visit. In September 2010, Oliver was very upset over missing a visit with respondent and Jeffrey, saying "they promised they wouldn't cancel." Erin visited the children at the foster home in November 2010. The children told Erin that they had had a visit with Jeffrey but that respondent was not there because she had gotten a new puppy. She was outside walking the dog during the visit. Jeffrey told the children that respondent was sick, and Erin did not remember the children having a reaction. In May 2011, Erin had another visit with the children at the foster home. The children were very upset over a cancelled visit with respondent. Respondent was allowed only one visit at the jail, and Jeffrey had already visited her.

¶ 25 Jennifer, the children's foster mother, testified as follows. The children first came to live with her and her husband, Michael, in June 2009. Initially, the goal for Oliver, age five, and

Charlotte, age four, was return home. As foster parents, their tasks included meeting the children's medical and dental needs, taking care of them, getting them to school, and going to family meetings. She and Michael also requested that the children receive counseling, and Jennifer drove them to weekly appointments. When Jennifer was filling out paperwork for the counseling, she heard the children say that Jeffrey "hurt" them "a lot" and held a knife to Oliver's throat. In two months (June), it would be three years that the children had lived with them.

¶ 26 Not long after the children first came to live with them, the police came to the door because Oliver had called 911. When asked why he called, he said he wanted to make sure "that it worked and that if he needed help the police would be there." At different times, such as when watching television, the children would describe experiences with respondent and Jeffrey. Within the first month of living there, the children described drugs they had seen in their house. The drugs were white, in little bags, and respondent and Jeffrey referred to it as "medicine." Other times, the children talked about going to a person's house for drugs while they waited in the car. They would wait in the car for a long time and would sometimes sleep in the car. Jennifer and Michael's goal was to make the children feel safe and comfortable and to talk to them freely. They never "drilled" the children about past experiences because the goal was to make them comfortable.

¶ 27 The children also said that respondent would protect them when Jeffrey got mad. She would take them into the bedroom and lock the door until Jeffrey calmed down. On one occasion, Jeffrey broke the children's Christmas presents because they woke up too early. On another occasion, Charlotte lied about writing on the wall and Jeffrey supposedly got angry and threw Oliver to the floor. The children also said that on yet another occasion, Jeffrey held a knife to Oliver's throat.

¶ 28 Jennifer and her husband took the children on a vacation each year. During the summer of 2011, they drove to Colorado to visit Jennifer's parents. On the way, they stopped at a truck stop to use the bathroom, which was close to a cheap hotel. Oliver wanted to know why they were near that hotel, and when Jennifer asked why, he said that that was where his mom and dad would go all the time to buy drugs. Oliver was concerned, so Jennifer and Michael reassured him that they were simply driving to grandma's and grandpa's house in Colorado.

¶ 29 Jennifer believed that the children felt loved by respondent and Jeffrey, and they were always upset when visits were cancelled. Respondent's last visit with them was in May 2011. However, "towards the end," the children stopped asking whether there was going to be a regular visit. Respondent did send letters and cards and some birthday gifts to the children. The children always said that respondent loved Oliver the most and Jeffrey loved Charlotte the most.

¶ 30 Oliver was born with a condition called hypospadias that required surgery. It was a surgery usually performed at infant stage because it could be painful and there would be no memory of it. After Oliver's surgery, he walked around "very gingerly" for one week. He then had to endure two more surgeries because the first two were not successful. The third surgery was successful.

¶ 31 Respondent testified next on behalf of herself. Respondent met Jeffrey in 2003, and she and her three kids (Elliot, Emily, and Trinity) moved in with him. They got married the next year. Respondent was already pregnant with Oliver as a result of a rape, and he was born in January 2004. Jeffrey was in prison when Oliver was due to be born. Respondent smoked crack to induce labor so that Oliver would be born before Jeffrey's release from prison. This was the only time she ever smoked crack cocaine. As a result, Oliver was born substance exposed. Respondent had found an adoptive family for Oliver to protect him from Jeffrey, who was physically abusive. Jeffrey wanted

to keep the child but was physically abusive to her and Oliver; respondent was afraid of him. Jeffrey threatened to kill her and all of her children.

¶ 32 DCFS removed Oliver in July 2004, after Jeffrey had beat up respondent “really bad.” He choked her until she was unconscious. Respondent attended drug treatment, parenting classes, and individual counseling as part of a safety plan for his return. Charlotte was born in 2005. Respondent began using heroin in 2006 to ease the pain from a severe beating by Jeffrey. Within a matter of days, she was addicted. In 2007, respondent arranged for her other children to live with their fathers to protect them from Jeffrey. Respondent was then arrested in October or November 2008, which was the first time she “really got in trouble” legally.

¶ 33 Respondent disputed receiving a list of service providers for drug treatment from Sister Veronica and stated she never received a referral to attend HAS. Respondent tried to receive drug treatment at the Women’s Treatment Center and Haymaker Center, but they would not admit her without a psychiatric recommendation and until she was free of prescription drugs. Respondent then began treatment at Stonybrook. She dropped out of Stonybrook for two weeks because of a money issue, and then returned to the program when she had money. Her counselor at Stonybrook did not recommend a psychiatric evaluation; he recommended individual counseling. Respondent ended up leaving Stonybrook because she wanted to be drug free.

¶ 34 Respondent participated in many classes while in jail, which were listed in a document dated April 11, 2012. The classes stemmed back to January 2009. While in jail, respondent was also in the process of filing *pro se* documents to separate from Jeffrey. She would not return to him once she was released from custody.

¶ 35 The trial court did not find respondent credible or willing to take responsibility for her actions; everything was someone else's fault. The court found respondent unfit on multiple grounds: the failure to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2010)); the failure to make reasonable efforts to correct the conditions which were the basis for the removal of the minors or to make reasonable progress towards their return within nine months of the neglect adjudication or during any nine-month-period after the neglect adjudication (750 ILCS 50/1(D)(m) (West 2010)); and depravity (750 ILCS 50/1(D)(i) (West 2010)) (respondent's three felony convictions created a rebuttable presumption of depravity which she failed to rebut).

¶ 36 B. Best Interests Hearing

¶ 37 On April 26, 2012, the case proceeded to a best interests hearing. The children's foster father, Michael, testified as follows. Oliver and Charlotte had lived with them almost three years. Oliver was currently eight years old, and Charlotte was seven years old. Michael and Jennifer had two biological children: John, age eight, and Adam, age six. They also had a greyhound dog named Robin.

¶ 38 Michael began by describing Oliver's daily life. For example, that day, Michael had received an e-mail from Oliver's teacher saying he did really well in accelerated reading. Accelerated reading required the student to read a book and be tested on its content. Then, points were awarded. Oliver was one of the first students to reach 50 points. Oliver's picture was posted at school, and Oliver was very proud of this accomplishment, as was Michael. The teacher wrote that Oliver was a very special child. That night, they were going to Oliver's baseball game; he was a catcher. Oliver enjoyed riding his bicycle, playing video games (on a limited basis), and reading at home. Oliver

was very close to John, who was the same age. They enjoyed a lot of the same activities and were always “horsing around.”

¶ 39 As for Charlotte, she was very creative and loved to draw. She was kind and had a very good heart. Charlotte also liked to help out around the house. She was intelligent and did well at school and reading. Charlotte enjoyed her dance class, riding her bicycle, and playing softball. Michael planned to have her take piano lessons, since she did well on his keyboard.

¶ 40 Michael and Jennifer felt like Oliver and Charlotte were their own kids and loved them. Oliver and Charlotte called them “mom” and “dad,” which they started doing on their own. Michael and Jennifer never told the children how to refer to them, it happened naturally. Michael and Jennifer felt good about this. When asked if they would care for the children for the rest of their lives, Michael said he expected to. Michael and Jennifer had cared for other foster children who were returned home. Regardless of whether they could adopt the children, they would love them for the rest of their lives, “no matter what, because they’re part of” their lives.

¶ 41 The children had community with others. Michael and Jennifer had extended family: Michael had three brothers and two sisters; Jennifer had one brother, one sister, and parents, all living in different states. The children had met all of them, and the extended family loved the children just like Michael and Jennifer. Oliver and Charlotte were included in all family events with Michael and Jennifer; they were part of the family. Also, the children had friends. Oliver had a school friend named Tyler and was also friends with the neighbor’s children across the street; they played together a lot. Charlotte talked to her school friend Megan every night for 15 minutes. In addition, Michael and Jennifer were Catholic, and the children were in religious education at church.

¶ 42 Regarding visitation, Oliver and Charlotte would get very excited to see respondent and Jeffrey, and they would be disappointed if the visit did not happen. During the last year, a visit with respondent was cancelled when she was in jail. Apparently, respondent was only allowed one visit per day and Jeffrey arrived for a visit before the children. The children were upset and told Michael that they felt that they were not loved anymore because “dad stole” their visit. The children referred to this visit several times afterwards and were “never going to forget that.”

¶ 43 Oliver and Charlotte had grown emotionally in the three years at their home. At first, both of them had trouble telling the truth. Michael told them he would not be happy if they did something wrong, but that they would get in more trouble if they lied. Punishment might include going to their room or not playing with a certain thing. Also, Oliver was withdrawn at the beginning, and Michael recognized that he had been placed with his grandmother and another foster home prior to this placement. Michael thought Oliver still wondered where he was going to stay. Michael told the children that he was going to talk to the judge, who would be deciding where they would live the rest of their lives. Charlotte had expressed a desire to remain with Michael and Jennifer.

¶ 44 The children still loved respondent and Jeffrey unconditionally, and Michael did not want to interfere or “compete with that.” Michael would never discourage them from showing affection for respondent or Jeffrey; it was natural. Oliver and Charlotte still referred to respondent and Jeffrey as their “real mom and dad.” Michael brought drawings from the children to court to give to respondent. Charlotte’s drawing stated that she was sorry that she could not see respondent for a long time, and she asked if respondent could make another visit. Charlotte said she missed and loved both respondent and Jeffrey. Oliver’s drawing said Jeffrey was trying to get the children back, and if the children stayed with the foster family, Jeffrey and respondent could look at the picture.

¶ 45 When the children first came to live with them, Michael said that it was very apparent that “Charlotte was dad’s favorite and Oliver was mom’s favorite.” The children would say this to Michael and Jennifer. Michael and Jennifer would respond that in their house, there would not be favorites, and they both loved Charlotte and Oliver the same.

¶ 46 At the beginning, Oliver and Charlotte talked about their awareness of drugs. Oliver knew how to drive to the house where drugs were sold. Charlotte would shake her hand as though she was holding a little baggy of white powder, and she said respondent referred to it as her medicine. The children said Jeffrey made them smoke cigarettes, and they hated it. When traveling to Colorado one summer, Oliver saw a motel and said that that was place where they went to pick up drugs. Oliver told Michael and Jennifer that they were in a pick-up truck, and either respondent or Jeffrey went inside to buy drugs from a “black man.” They stayed in the truck so long they fell asleep.

¶ 47 Oliver and Charlotte both said there was a time when Charlotte lied about drawing on the wall and blamed Oliver. Jeffrey threw Oliver to the ground. They also talked about respondent taking them into the bedroom and closing the door when Jeffrey would get mad.

¶ 48 Michael believed that both children were now emotionally stable. He explained that there were periods when the children behaved well and then periods when they behaved badly. Michael thought they behaved badly either for attention or to test the boundaries, which was happening less and less. The children felt secure in the boundaries established by Michael and Jennifer, and they were consistent in enforcing them. Michael and Jennifer wanted to adopt Oliver and Charlotte. The children were safe, healthy, and happy living with them.

¶ 49 Oliver and Charlotte did not talk to their natural siblings regularly. Michael wanted Oliver and Charlotte to keep in touch with their maternal grandmother, paternal grandfather, and their

siblings. He and Jennifer would encourage those relationships. With respect to maintaining a relationship with respondent, Michael wanted to see her clean for a long time first. He wanted her to prove that she was in a state that was not detrimental to the children, and it would take a long time for respondent to earn “that right back.” He would leave the decision up to the children but not until they were years older.

¶ 50 Pam B., respondent’s mother, testified on behalf of respondent as follows. After she divorced respondent’s biological father, he had visitation with respondent at his house when she was four years old. Pam B. knew that he had abused respondent when she was 15 or 16 years old, but respondent never told her the abuse started at the age of four. Respondent’s father was convicted, and Pam B. had since remarried.

¶ 51 Prior to Oliver’s birth, respondent and her three children lived with Pam B. and her husband for about one year before meeting Jeffrey in 2003. Pam B. and respondent’s relationship broke down in 2003 when respondent met Jeffrey, a felon with a drug conviction. Respondent then moved in with Jeffrey. Pam B. was very intimidated by Jeffrey and thought that respondent was using drugs because Jeffrey abused drugs. However, Pam B. was not aware that some of respondent’s jail time was the result of using drugs.

¶ 52 Pam B. did not see Oliver until about four months after his birth. She would then see Oliver, and later Charlotte, sometimes two or three times per week. If she did not see respondent and the children, Pam B. assumed that something was wrong at home. Before Charlotte was born, Oliver was removed from respondent’s care and lived with another foster family. Pam B. did not know the reason why and was not aware that he lived with another family from July 2004 to September 2005.

The times Pam B. did see respondent with the children, they always seemed happy; they did not seem afraid of anything. They were loving towards respondent, and respondent was loving towards them.

¶ 53 When respondent was arrested in January 2009, Oliver and Charlotte stayed with Pam B. and her husband for a few days. Pam B. could not keep them, however, because her mom was sick. So, Pam B. called DCFS, which put her in contact with Sister Veronica. After the children left Pam B.'s care, Sister Veronica discouraged Pam B. from sending cards and letters to them.

¶ 54 Prior to their removal, Oliver and Charlotte had spent a lot of time with their three siblings, who lived with their respective fathers and visited every other weekend. Since the children's removal, Pam B. had had five or six visits with them, three of which included their siblings. Everyone was happy and affectionate. Pictures of visits were introduced into evidence. The last visit in which they were all together was in August 2011.

¶ 55 Pam B. visited respondent in jail every week. Respondent intended to get into the drug rehabilitation program, and Pam B. believed that she was serious this time. Respondent had a good heart and was strong inside, having survived sexual abuse from her biological father and then physical abuse from Jeffrey. At first, respondent did not know how to get out of her situation with Jeffrey, but now she knew what she had to do. Pam B. believed that respondent loved her children but had made some bad choices. She believed that respondent was capable of being a good mother to her children if she got into drug rehabilitation and maybe some job training.

¶ 56 Stephanie Odor, employed at the Du Page County Sheriff's Office, testified as follows. Respondent was admitted to jail in October 2011. Since the middle of November, Odor had escorted respondent to classes four nights a week. The classes included AA, anger management, parenting, and a worship class. Respondent was taking advantage of everything offered at the jail. In addition,

Odor had not had any problems with respondent; respondent had no record of write-ups. Respondent was a peacemaker and even calmed down another inmate at 2 a.m. Odor explained that this was unusual behavior because inmates typically antagonized each other. Respondent also helped new inmates adjust. Odor wrote a letter on behalf of respondent, which was the first time she had done so in the two years she had worked there.

¶ 57 Respondent testified as follows. After Oliver was born in January 2004, respondent went to her biological father's house in July 2004 to get away from Jeffrey. Jeffrey called DCFS, and Oliver was removed from respondent and placed in a foster home. Respondent visited Oliver weekly. Respondent had a service plan requiring her to complete treatment as in the instant case. Respondent completed the services because she wanted Oliver back. He came back in September 2005. After Oliver was returned in September 2005, both children lived with her until they were removed in June 2008. From June to October 2008, DCFS became involved with the children after respondent appeared with them at the Women's Treatment Center. Oliver and Charlotte were placed with Jeffrey's father during that time, and respondent was not allowed unsupervised contact with them. In October 2008, respondent and Jeffrey were with the children at a grocery store. Jeffrey was arrested for retail theft, but respondent was allowed to stay with the children. She was later arrested on a warrant and charged with retail theft. The children were then removed again in January 2009 pursuant to the instant case.

¶ 58 When Oliver and Charlotte were in her care, respondent did not work but stayed home with them. Respondent spent time with the children drawing, going on nature walks, going to the children's museum, singing, and playing instruments. Respondent read to them every night; they were big readers. Respondent fed them, bathed them, and put them to bed.

¶ 59 Two of respondent's other children moved to Texas with their father in 2009, and Oliver and Charlotte saw them about twice a year. Respondent's other child lived with her father in another suburb, and they saw her often. Charlotte and Oliver also saw respondent's mom, Pam B., although not twice per week. Respondent wanted her children to have a close relationship with Pam B. even though she did not. The children loved Pam B., and she loved them.

¶ 60 After respondent was arrested in 2009, she had two visits with the children in jail. After she was released, she saw them every week for one hour, except at the end of March 2010, when she was out of town. Most of those visits took place at a Catholic Charities office. Respondent brought board games and new crayons. During the visits, she sang with them and played basketball with them. They hugged and kissed each other, "like every other family." Respondent told them she loved them. Respondent admitted that she had not seen her children since May 2011, which was mostly her fault for being in jail. She had not had contact with the children since. Respondent also admitted that she had been in jail since the children had been removed with the exception of three or four months.

¶ 61 Respondent knew that Sister Veronica had tried to coordinate one visit at the jail. Respondent later learned that she had tried to arrange many visits. Respondent was never aware of visits ahead of time because she was never told they were coming; it was a surprise. Respondent could not call Sister Veronica from the jail, so she told Jeffrey and her family members to call Sister Veronica to arrange visits.

¶ 62 After a conversation with Sister Veronica in which she learned that she was not getting her children back, no matter what she did, respondent wrote a letter to Oliver and Charlotte. In the letter,

she expressed how much she loved them, how special they were to her, how she would always carry memories of them in her heart, and how her love would go with them wherever they went.

¶ 63 Currently, (May 3, 2012), respondent was still in jail. While in jail, she participated in various classes and introduced letters from her counselors. First, respondent introduced a letter from her addiction counselor at the jail. Respondent initially met the counselor when she was in jail in 2009 and attended his classes. Now, respondent was taking his 12-step AA class again. In the letter, her counselor highlighted the progress she was making. Respondent was also involved in Narcotics Anonymous (NA), another 12-step program, at the jail. Respondent's NA counselor wrote her a letter as well. Respondent also participated in Cocaine Anonymous (CA) and parenting classes. Her parenting class instructor submitted a letter on her behalf, as did her individual counselor and various inmates whom respondent had mentored. In addition, while in jail, respondent sent the children books and tape recordings of her reading books. Respondent also sent letters to Pam B. containing letters for the children.

¶ 64 Respondent felt a change inside of herself as a result of the steps she was taking to beat her addiction. She recognized that it would be harder for her "on the outside" after she was released. Respondent desired to be the mother to her children that she was not during her addiction. Although she had tried to get help for her addiction before, it was different this time because she now had a lot more clarity about her problem. Respondent planned to continue counseling for the sexual abuse she had suffered, and she knew she would be accepted for inpatient treatment at the VA center. Respondent would not go back to Jeffrey when she was released; she admitted that the children witnessed Jeffrey physically abusing her. She planned to go back to school and complete her

education. Furthermore, if the children were returned to her, she would want to keep a relationship with the foster parents; they were great people.

¶ 65 After respondent rested, the court granted the State's motion to take judicial notice of some of the documents associated with the children's previous DCFS involvement.

¶ 66 C. Trial Court's Decision

¶ 67 In rendering its decision, the court recognized that terminating respondent's parental rights was "irretrievably destructive to the most fundamental family relationship" and that whenever possible, the children's family ties were to be preserved. Nevertheless, the court decided that it was in the children's best interests to terminate respondent's parental rights. The court reasoned as follows.

¶ 68 Beginning with the credibility of the witnesses, the court found respondent's and Pam B.'s testimony self-serving. In addition to considering what they actually said, the court also considered their demeanor. Pam B. was flustered from time to time, battled with the attorney asking questions, and was impeached. For example, at the best interests hearing, Pam B. testified that respondent's visits at her house with the children happened a lot and were wonderful. Yet, at the fitness hearing, Pam B. testified that she was afraid of Jeffrey and that he was not allowed in her home. Pam B. painted a "far rosier picture" than what the facts ultimately were. Conversely, Michael, the foster father, was "amazingly credible." He was "exceedingly honest to the point of from time to time during the State's case itself as to his very strong understanding of the family bond between the parents and the children." Michael went the extra mile bringing in drawings by the children to give to respondent.

¶ 69 Regarding the various statutory factors to be considered, the court first discussed the physical safety and welfare of the children. There was no doubt that respondent tried to protect her children from Jeffrey when he got out of control. However, she was not always successful in preventing harm to herself and harm to the children. In addition, respondent was not blameless in that Oliver was born with cocaine in his system due to her misguided attempt to induce labor. Respondent also let Jeffrey care for the children, and even allowed her biological father, who had sexually abused her, to care for the children. Conversely, there was nothing but positive evidence as to how the foster family kept the children safe and took care of them. The children were thriving, with Oliver even winning academic awards.

¶ 70 In terms of the children's identity, the court noted that this was not a hearing about whether respondent loved her children. The court believed that she did, but noted that it took a lot more than love to raise children. At the beginning of foster care, Charlotte was clingy and Oliver misbehaved. Since being with Michael and Jennifer, the children were doing well, and these issues had improved. Though respondent tried to develop the children through music and art, they did not stop developing when they were placed into care in January 2009. The court looked at their development since January 2009, and there was no dispute that they were doing wonderfully in foster care.

¶ 71 As for the factor of background and familial ties, the court stated that respondent's biological father and Jeffrey were abusive. Regarding the children's attachments, they were attached to both their parents and their foster family. Though Charlotte was too young for the court to give much weight to her preference for remaining with the foster family, the court noted that she was in a safe, loving, and secure environment where she and Oliver were thriving. The whole family had meshed, so that the children had a safe neighborhood to play in and neighbors to play with, and the foster

family's biological children created one big family. The children's sense of security favored the foster parents.

¶ 72 Next, the court stated that the factor of permanence was "very important." Though respondent had argued at the best interests hearing that the court could refrain from terminating her parental rights and give her an opportunity to prove herself, while the children remained living with the foster parents, the court declined to do so to provide the children permanence. The court noted that respondent was still incarcerated; it was uncertain whether she would be accepted into drug court or go to prison; and there was no guarantee that she would "succeed" and remain clean after she was released. Essentially, the time line of her success was uncertain. As for maintaining a relationship with respondent, the court found Michael's approach of making sure the children would not be at risk to be "right on the mark" and "how that should be handled." The court further noted that Michael and Jennifer wished to adopt Oliver and Charlotte.

¶ 73 In sum, the court concluded:

"[W]hen I take this statute as a whole, when I take these children's need for permanence, when I take the fact that what is in these children's best interest is to continue doing well in school, thriving in their neighborhood, feeling safe, feeling secure, the Court has no choice but to find that the State has proven that it's in the best interest of the children that *** [respondent's] rights should be terminated ***."

¶ 74 After the court found that it was in the children's best interests to terminate respondent's parental rights, it changed the goal to adoption. Respondent timely appealed.

¶ 75

II. ANALYSIS

¶ 76 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.* ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the minors' best interests. *Id.* In this case, respondent does not challenge the trial court's finding that she was unfit. Rather, she appeals only the best interests determination, which is that it was in the children's best interests to terminate her parental rights.

¶ 77 According to respondent, the trial court's decision terminating her parental rights was against the manifest weight of the evidence. A reviewing court will not disturb the trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65. The reason for this deferential standard is that the trial court is in a superior position to assess the witnesses' credibility and weigh the evidence. *Id.* ¶ 66. A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re William H.*, 407 Ill. App. 3d 858, 866 (2011).

¶ 78 Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-2 *et seq.* (West 2010)), the best interests of the minors is the paramount consideration over which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 79 The Act sets forth the factors to be considered whenever a best interest determination is required, and they are to be considered in the context of the minors' ages and developmental needs:

“(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, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child’s sense of security;

(iii) the child’s sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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;

(j) the preferences of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2010).

Also relevant in a best interests determination is the nature and length of the minors' relationships with their present caretaker and the effect that a change in placement would have upon their emotion and psychological well-being. *In re William H.*, 407 Ill. App. 3d at 871.

¶ 80 Respondent argues that the State did not satisfy its burden of showing by a preponderance of the evidence that it was in the children's best interests to terminate her parental rights. Respondent argues that there was no clinical evidence or bonding assessment regarding the impact on the children of severing her parental rights. While respondent concedes that a bonding assessment or clinical evaluation is not required in every case, she points out that the children lived with her for most of the first half of their lives and still had a strong attachment to her. Citing *In re B.B.*, 386 Ill. App. 3d 686 (2008), respondent argues that the court was uninformed as to the impact on the children of terminating her rights. Respondent also challenges the trial court's weighing of the factors, arguing that it placed too much emphasis on permanence and improperly compared the tranquility of the foster care placement with the turbulence of her life.

¶ 81 In light of the statutory factors, the record supports the trial court's determination that it was in the best interests of the children to be freed for adoption. Prior to the instant case, DCFS had been involved with respondent and the children on numerous occasions. More than once, the children were present when respondent was arrested. During Oliver's life, he had been placed with Jeffrey's father, a traditional foster family, Pam B., and then another traditional foster family before being placed with Michael and Jennifer. Charlotte was born after Oliver but Michael and Jennifer were her third foster placement. When living with respondent, the children's lives were affected by respondent's and Jeffrey's drug purchases, drug use, and the presence of drugs in the home. The children were also affected by Jeffrey's violence towards respondent and them. After the children

were removed in January 2009, respondent was incarcerated the majority of the time. She remained incarcerated throughout the fitness and best interests hearings.

¶ 82 When Oliver was five years old and Charlotte was four, they were placed with Michael and Jennifer. While both children initially had trouble telling the truth and exhibited different behavioral issues, Michael testified that both children had grown emotionally. Michael and Jennifer set clear and consistent boundaries for the children, which made them feel safe and secure. Oliver and Charlotte referred to Michael and Jennifer as “mom” and “dad” on their own. Michael was proud of Oliver’s academic achievements, which Michael and Jennifer encouraged, and Charlotte enjoyed drawing and being creative. Both children had friends, got along well with Michael’s and Jennifer’s biological children, attended church, participated in sports and classes, and were part of Michael’s and Jennifer’s extended family.

¶ 83 As the trial court recognized, permanence was a big factor in this case, given that the children had been living with Michael and Jennifer for three years. Michael testified that Oliver had concerns of where he would be staying and Charlotte had expressed a desire to remain with Michael and Jennifer. Also, Michael and Jennifer felt like Oliver and Charlotte were their own kids. They loved them and wanted to adopt them. While they wanted to protect Oliver and Charlotte from respondent until she had proved herself to be sober, they did not want to interfere with the children’s love for her.

¶ 84 We agree with respondent that the children were bonded to her. But this does not change the fact that they were also very bonded to Michael and Jennifer and thriving there. Postponing the decision to terminate respondent’s parental rights would leave the children in limbo while respondent was incarcerated, while she tried to remain sober once released, and while she divorced Jeffrey. See

In re A.H., 215 Ill. App. 3d 522, 530 (1991) (courts must not allow children to live indefinitely with the lack of permanence inherent in a foster home). In essence, respondent's argument focuses more on her own future ability to regain custody than on the best interests of the children. See *In re D.T.*, 212 Ill. 2d 347, 364 (2004) (once a parent is found unfit, the focus shifts to the child; the parent's interest in maintaining the parent-child relationship must yield to the children's interest in a stable, loving home life); see also *In re T.A.*, 359 Ill. App. 3d 953, 959 (2005) (at this stage of the proceedings, the focus is properly placed on the child, not on the conduct of the parents).

¶ 85 Respondent's reliance on *In re B.B.*, 386 Ill. App. 3d 686, is similarly misplaced. While the reviewing court commended the trial court for ordering *sua sponte* the preparation of a bonding assessment of the parent-child bond in that case, the facts were vastly different. *Id.* at 699-70. There, the parent lived in the same household as the foster parent for many months, and the children had only been separated from their mother for 10 months after placement with a second foster family. *Id.* at 702-03. During that 10-month period, the children were displaying significant emotional responses at being separated from their mother, who was employed, completing services, and struggling to remain substance free. *Id.* at 703. Unlike the situation in *In re B.B.*, Oliver and Charlotte are flourishing in a placement of three years and a placement that could become permanent.

¶ 86 For all of these reasons, the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the judgment of the circuit court of Du Page County terminating respondent's parental rights.

¶ 89 Affirmed.

