2014 IL App (2d) 140288-U
No. 2-14-0288
Order filed August 26, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re J.M., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 13-JA-475
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Joshua H.,	)	Mary Linn Green,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: In dispositional proceedings following a finding of neglect by the custodial parent, the State did not bear its burden of proving the noncustodial parent unfit, unable, or unwilling to care for the child.

¶ 2 Respondent, Joshua H., appeals from the dispositional order of the trial court granting the Department of Children and Family Services (DCFS) custody and guardianship of respondent's biological son, J.M., who was previously adjudicated neglected. For the following reasons, we vacate and remand for further dispositional proceedings.

¶ 3 I. BACKGROUND

¶ 4 J.M. was born on October 18, 2006. His biological parents are respondent and Lataska. J. Respondent and Lataska were never married and, apparently, have never resided together. J.M. has three half-siblings who were also subject to child protection proceedings in Illinois (but are not part of this appeal): Tr. J. and Ta. J. (both of whose father is Travione J.) and A.M. (whose father is Elijah.M.). J.M. was born in Mississippi, where, together with his half-siblings, he resided for a time with Lataska and Travione. At some point, Lataska moved to Illinois to flee Travione, who at the time was incarcerated for domestic abuse of her. When Travione finished his incarceration, he followed Lataska to Illinois and reestablished a relationship with her. In July 2013, after further physical abuse of Lataska by Travione, DCFS instituted intact services, pursuant to which J.M. and his half-siblings resided with their godparents.

¶ 5 On October 2, 2013, DCFS took protective custody of J.M. and his half-siblings on grounds that Lataska and Travione repeatedly violated their service plans. On October 3, the State filed a neglect petition regarding J.M., alleging that his environment was injurious because Lataska and Travione engaged in domestic violence in his presence. Similar neglect petitions were filed with respect to J.M.'s half-siblings. Initially, J.M. and his half-siblings remained with his godparents, but on November 19, 2013, the children were placed in traditional foster care because of Travione's belligerence toward the godparents.

¶ 6 On October 3, a shelter care hearing was held at which Travione and Lataska appeared. Lataska confirmed that respondent and Elijah were the fathers of J.M. and A.M., respectively, and that both fathers currently lived in Mississippi. The court continued the shelter care hearing so that respondent and Elijah M. could be served with notice. In the meantime, however, the court awarded DCFS temporary custody and guardianship of J.M. and the other children. On

October 4, DCFS caseworker Janet Frawley sent respondent a letter at an address in Jackson, Mississippi, notifying him that protective proceedings were instituted concerning J.M.

¶ 7 On October 10, the court held the continued shelter care hearing. Respondent did not appear. Also, Frawley indicated that he did not respond to her October 4 letter. The court entered a judgment defaulting respondent "for shelter care purposes." The court continued the matter for a pretrial conference on November 13.

¶ 8 A service plan for respondent was instituted on October 16. The plan required, in part, that respondent notify Whittington at least a week in advance of his availability for visitation and that he attend all scheduled visits.

¶ 9 On November 6, 2013, the court clerk sent, by certified mail, a notice to respondent at an address in Terry, Mississippi. Proof of service was filed with the court on November 15.

¶ 10 Anna Whittington, a caseworker with Children's Home and Aid, submitted a report for the November 13 pretrial conference. Whittington noted that she had sent a letter to respondent's last known address in Terry, Mississippi (not the Jackson, Mississippi address to which Frawley sent the October 4 letter) but had not heard from him (Whittington did not give the date of the letter in this report, but indicated in a later report that the letter was sent on November 7). Whittington noted that Frawley also had attempted several times to contact respondent but received no response. Whittington indicated that once she made contact with respondent and confirmed his address, she would request paternity testing.

¶ 11 Respondent did not appear for the November 13 pretrial conference. The State noted that it had served respondent with a summons and would follow up with service by publication. The State also remarked that Lataska and Travione would likely stipulate to neglect. Further, the parties would likely agree on placement with Lataska's great aunt, Mildred Johnson, who resided

in Mississippi, provided a home study could be arranged. The court continued the matter to December 11 for an adjudicatory hearing.

¶ 12 In her report for the December 11 hearing, Whittington noted that she finally made contact with respondent. Whittington explained that she had learned from Elijah that he and respondent lived in the same area in Mississippi and saw each other regularly. Whittington asked Elijah to have respondent contact her, and respondent did so the following day (November 18). Respondent acknowledged that he received Whittington's November 7 letter, but did not contact her earlier because Lataska told him that J.M. would be returned to her care in October 2013. Respondent told Whittington that he currently lived with his mother and wished to take custody of J.M. Respondent claimed that previous paternity testing had proven him to be J.M.'s father. Whittington asked respondent to send her the paperwork or undergo additional paternity testing. Whittington noted that, as of the December 11 report, respondent had yet to send the paternity results.

¶ 13 Respondent appeared at the December 11 adjudicatory hearing. He confirmed a home address in Terry, Mississippi—the same address to which the November 6 notice was sent, but not the same address to which the October 4 DCFS letter was sent. Counsel was appointed for respondent. Counsel stated that he had made a request to the Mississippi health department for documentation of respondent's paternity testing.

¶ 14 Lataska and Travione stipulated to neglect, to which respondent had no objection. The State then presented "a dispositional [order] *** for [A.M.] giving guardianship and custody to her father, [Elijah]." The State asked that the order "be over the State's objection." The court agreed that the order would show the State's objection. Counsel for Travione noted that she was

awaiting a home study on Johnson and hoped that guardianship and custody of Tr. J. and Ta. J. would be granted to Johnson.

¶ 15 Notably, the record contains two home studies conducted by social services workers in Mississippi. The studies give approval of Elijah and Johnson as potential guardians and custodians. Both studies are dated December 6, 2013, but evidently the home study of Johnson was not received before the December 11, 2013, adjudicatory hearing.

¶ 16 The court continued the matter for a dispositional hearing on January 9, 2014, as to the remaining children. The court agreed that respondent need only be available by phone for the January 9 hearing if an agreement on disposition was reached beforehand.

¶ 17 On December 18, 2013, Whittington wrote Mississippi social services officials requesting a home study of respondent.

¶ 18 In her report for the January 9 hearing, Whittington wrote as follows regarding respondent:

> "This worker spoke to [respondent] following court on 12/17/13.[1] *** This worker and [respondent] discussed the importance of *** making the time to visit [J.M.] when in town. This worker informed [respondent] that [J.M.] had been very upset that he was not able to see his father following court as previously scheduled. To this, [respondent] replied, 'Really?', giving this worker the impression that [respondent] did not fully understand the emotional needs of his son."

¶ 19 At the January 9 hearing, respondent did not appear. Based on proof of paternity submitted previously by respondent's counsel, the court adjudicated respondent the father of

[1] There is no record of a December 17, 2013, appearance. Perhaps Whittington meant the December 11 appearance.

J.M. As for respondent's nonappearance, counsel explained that he informed respondent that he did not need to appear. Counsel stated that it had been his understanding that once paternity was established, respondent would be granted custody and guardianship of J.M. Counsel was unaware that there would be a "further challenge" to placement of J.M. with respondent. Counsel moved for a continuance of the dispositional hearing because Mississippi had yet to complete a home study of respondent. The court continued the hearing until February 7.

¶ 20 Whittington submitted no new information for the February 7 hearing. Respondent appeared at the hearing, and the parties discussed the fact that, after numerous calls, Mississippi had yet to complete the home study of respondent. Counsel for respondent asked the court to direct DCFS to conduct its own home study in Mississippi. The court denied this request as it would circumvent the proper statutory channels. The court continued the dispositional hearing to March 5.

¶ 21 In her report for the March 5 hearing, Whittington noted that Mississippi still had not completed the home study for respondent. Whittington was "unable to reach a case manager or supervisor regarding [the] issue." Whittington also wrote the following regarding respondent:

> "On 2/18/14, this worker received a Valentine's Day card for [J.M.] sent by [respondent]. This worker brought this card to [J.M.] at his foster home the following day and observed that [respondent] and many family members had signed the card and included pictures of the extended family for [J.M.]. *** This worker spoke to [respondent] again on 2/26/14 regarding the importance of communicating with this worker regularly, particularly prior to court as this worker would like to be able to arrange parent/child visitation between [respondent] and [J.M.] while [respondent] is in Rockford, IL. This worker reminded [respondent] that following the last court appearance on 2/7/14, it was the second time

> [respondent] had left the courthouse without talking with this worker or making himself available for visitation. [Respondent] indicated that he understood why this was an issue and agreed to inform this worker if he would be attending court prior to the next hearing in order to allow this worker to arrange visitation with [J.M.]."

¶ 22 At the March 5 hearing, respondent did not appear. Counsel explained that poor weather inhibited respondent's travel from Mississippi. The court accepted this explanation, noting it was "snowing pretty hard."

¶ 23 The hearing on disposition proceeded in respondent's absence. Whittington was the sole witness. She testified that respondent was still residing in Terry, Mississippi. Respondent has three children besides J.M. from prior relationships. Respondent does not have custody of these three children; they reside with their mothers, and, according to respondent, he visits them on weekends. Whittington had no "proof," however, that such visits occurred. Respondent has never lived with J.M., but Lataska informed Whittington that, before she moved to Illinois, respondent "regularly" visited J.M. Whittington believed, but was not sure, that Lataska moved to Illinois two years before.

¶ 24 Whittington stated that, though respondent has the phone number for J.M.'s foster home, and Whittington has encouraged him to call, the foster parents and J.M. report that respondent has never called. Respondent also has not visited J.M. since he was placed in foster care in October 2013. On one occasion, Whittington arranged for respondent to visit J.M. while he was in Illinois for a court appearance. Respondent, however, left court and returned to Mississippi without contacting Whittington. After this, Whittington asked respondent to advise her in advance when he would be attending court so that she could arrange a visit with J.M. Subsequently, however, respondent attended court without providing notice to Whittington.

Whittington acknowledged the significant distance between Terry, Mississippi, and Rockford, Illinois. She also acknowledged that respondent is employed.

¶ 25 According to Whittington, respondent has never "offered to provide any kind of clothing or food or anything for [J.M.]" or offered the foster parents any other kind of help. Whittington recalled that, subsequent to a conversation in which Whittington stressed the need for better communication with J.M., respondent sent J.M. a "very nice" Valentine's card with pictures of respondent's family. Whittington also noted that respondent has maintained phone contact with her. When they spoke, however, respondent typically did not "ask [for] specifics on how [J.M.] is doing or how he's doing in school." Respondent "has not asked about any of [J.M.'s] needs or cares." Whittington acknowledged that respondent's service plan did contain "information *** about [J.M.], the reason the case came into care, about him, his person."

¶ 26 Whittington testified that respondent denied that he had child support orders in place for any of his children. Asked if respondent made any payments to Lataska for J.M.'s support, Whittington noted that respondent claimed to "send[] money or clothes to the children's mothers directly when they need it." Whittington had no documentation, however, of any contributions by respondent toward his children.

¶ 27 Whittington was asked about respondent's living situation. Respondent reported to Whittington that he resided with his mother and sister but was looking for an apartment to share with his girlfriend, who is the mother of his youngest child. Whittington did not know if respondent had sleeping arrangements available for J.M., had a doctor set up for J.M., or had a school picked out for J.M. Whittington had no idea whether respondent's home was safe for J.M. because no home study had been done. Mississippi officials have told Whittington that the home study was assigned to a social services worker and that it would be completed. After "so

many phone calls" to Mississippi, the study was still not done nor was Whittington given a time frame for its completion.

¶ 28 When Whittington asked J.M. with whom he preferred to reside, he replied that he wished to live with Johnson and visit respondent.

¶ 29 Whittington recommended that respondent not to be given custody and guardianship of J.M. Her recommendation was based on several factors. First, J.M.'s stated preference was to live with Johnson and to have only visitation with respondent. Second, respondent had not visited J.M. since the case was opened. Whittington had no "in-person interaction to base their relationship off of," and there was "no continued communication between [J.M.] and [respondent]." Respondent and J.M. had never resided together, and Whittington perceived a lack of a "strong bond" or an "established relationship" between them. Whittington had "concerns about [J.M.] living with [respondent] full time without any knowledge of what that relationship is like." Asked if the foregoing was the full extent of the reasons for her recommendation, she added:

> "Not the full extent. We don't have a home study so I don't have that additional proof of a safe home. I don't have enough information to base a recommendation that he live with his father."

Whittington acknowledged, however, that she had no present reason to believe that respondent's home was unsafe. Her inability to make a present judgment of safety was due to her "limited information."

¶ 30 After hearing the arguments of the parties, the trial court took the matter under advisement. On the court's date for decision, the guardian *ad litem* announced that respondent had been arrested two days before "as part of a drug bust in Mississippi." The State said that it

was not expecting the court to alter its decision based on the limited information the parties had about the arrest. The State was amenable to a continuance until more information could be obtained.

¶ 31 The court proceeded with its decision, noting that the arrest was not a factor. The court said:

> "[T]he State has met its burden and shown that the father, [respondent], is unfit, unwilling, or unable to care for, protect, train or discipline the minor.
>
> There have been no visits, there have been no phone calls to my knowledge, and from all the evidence that I heard, there is no bond between the father and child. There's never been a payment of child support, and it would not be in the child's best interests[,] either[,] to go with someone he doesn't even know. Granted, he's been proven to be the biological father, but we all know it takes more than biology to make a father.
>
> ***
>
> *** One particularly disturbing thing I found was that [respondent] came here two times and never so much as visited the child. It makes one sit and say why. He's been able to make phone calls but hasn't. Hasn't engaged at all in this case. So the child does admit that he would like to visit his father and that's all well and good. I hope his father decides he wants to visit the child. So for those reasons—he simply hasn't engaged at all—the Court finds that he is unfit, unwilling, and unable."

¶ 32 The court issued a written order consistent with its oral ruling. The court placed guardianship and custody of J.M. with DCFS.

¶ 33 Respondent filed this timely appeal.

¶ 34 II. ANALYSIS

¶ 35 Respondent challenges the trial court's dispositional order. He contends that the State did not meet its burden of proving him unfit, unable, or unwilling to care for J.M.

¶ 36 Pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)), once a child is adjudicated abused, neglected or dependent, the court must hold a dispositional hearing, at which

> "the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the health, safety and interests of the minor and the public." 705 ILCS 405/2-22(1) (West 2012).

¶ 37 Among the dispositional alternatives available to the trial court is "place[ment] in accord with Section 2-27" of the Act (705 ILCS 405/2-27 (West 2012)). 705 ILCS 405/2-23(1)(a) (West 2012). Section 2-27(1) of the Act provides that the court may place custody and guardianship of a minor with someone other than the parents, guardian, or legal custodian of the minor if the court determines that those persons

> "are unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or are unwilling to do so, *and* that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents, guardian or custodian ***." (Emphasis added.) 705 ILCS 405/2-27(1) (West 2012).

¶ 38 This language contains a disjunctive requirement to be met before custody may be placed with someone other than the biological parent: first, both parents must be "unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the

minor or are unwilling to do so," and, second, "the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of [either parent]."

¶ 39 "Because biological parents have a superior right of custody to their children, both parents must be adjudged unfit, unable[,] or unwilling to care for the minor before placement with DCFS is authorized." *In re Ryan B.*, 367 Ill. App. 3d 517, 520 (2006); see also *In re C.L.*, 384 Ill. App. 3d 689, 696 (2008) ("[A] a biological parent has superior rights to the State and may step in to parent his or her children when the other parent for some reason can no longer properly exercise his or her parental responsibilities.").

¶ 40 At a dispositional hearing held pursuant to section 2-27, the State has the burden of proving parental unfitness, inability, or unwillingness by a preponderance of the evidence. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 22. The trial court's judgment after a dispositional hearing will be reversed if its findings of fact are against the manifest weight of the evidence or if it committed an abuse of discretion by selecting an inappropriate dispositional order. *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007). A finding is against the manifest weight of the evidence where a review of the record clearly demonstrates that the result opposite to that reached by the trial court would have been the proper outcome. *Id.*

¶ 41 Here, the trial court's stated conclusion on the record was that respondent was "unfit, unwilling, *and* unable" (emphasis added) to care for J.M. In fact, however, all of the court's reasons pertained, at best, to respondent's willingness to care for J.M., not to his fitness or ability. Specifically, the court found that respondent failed to "engage" with J.M., specifically by neglecting to visit or phone him since he was placed in protective custody. The court also noted that there had "never been a payment of child support." The court discerned "no bond"

between respondent and J.M., and believed it would be inadvisable to place J.M. "with someone he doesn't even know."

¶ 42 These findings and conclusions are not supported by the record. First, we fail to see how the trial court came to conclude that respondent "never" made child support payments. Certainly, respondent paid no child support in a formal sense because, as he told Whittington, there were no support orders against him. Respondent did, however, tell Whittington that, when requested, he provided money and clothes to the mothers of his children. Whittington, evidently skeptical, noted that respondent provided no documentation of any such support. Perhaps for this same reason the trial court likewise discounted respondent's claim of support. We cannot imagine, however, why respondent would be expected to keep records of support that was not court-mandated. Moreover, requiring documentary proof from respondent that he provided material support for his children would place the burden on him to prove his dispositional fitness, where in fact the State had the burden under section 2-27 of proving respondent dispositionally *un*fit.

¶ 43 Moving to the visitation matter, we recognize that the record suggests no reason why respondent did not seek visitation on the two occasions he was in Illinois for court appearances, nor why he did not phone J.M. during the five months that he was in foster care. While certainly regrettable, these lapses do not reasonably support the severe conclusion that respondent is *unwilling* to care for J.M. Respondent told Whittington, apparently in their first communication, that he wanted custody of J.M. The trial court and Whittington apparently believed that respondent's subsequent conduct belied his express wish, but the record does not support that inference. There would have been no more effective way for respondent to show disinterest in J.M. than by remaining in Terry, Mississippi, and letting the process go forward in his absence.

Instead, respondent twice travelled to Rockford for court appearances, incurring total roundtrip mileage of 3,280 miles (we take judicial notice of the fact that Terry is 820 miles from Rockford (*see Fennell v. Illinois Central. RR. Co.*, 2012 IL 113812, ¶ 27, n.3)). This significant gesture of commitment was not given due regard by Whittington or the trial court. Also notable was the fact that, according to Lataska, respondent regularly visited J.M. before Lataska moved to Illinois in (according to Whittington's estimate) 2011 (J.M. was born in October 2006). Thus, long before the State became involved with J.M. and set its expectations of how respondent should relate with his son, respondent was maintaining regular contact with him. As the visitations dropped off after Lataska's move to Illinois, we may reasonably infer that distance was the reason. We do not know the full circumstances of respondent's failure to visit J.M. on the two occasions he was in Illinois for court. Respondent did, after Whittington admonished him, recognize there was an "issue" with his lack of visitation. He did not have a third opportunity for a visit in conjunction with court proceedings, as the weather prevented his travel to Illinois for the dispositional hearing.

¶ 44 We note that, following the second trip to Illinois in which he failed to visit J.M., respondent sent him a Valentine's card. Given respondent's prior history with J.M. in Mississippi, the Valentine's card appears not as a feeble, 11th-hour gesture to initiate a relationship, but rather as a meaningful attempt to become reacquainted, and to introduce respondent's family to J.M. In sum, respondent's failure to visit or phone J.M. during the five-month period of his foster care did not somehow negate his express willingness, manifested in concrete actions, to take custody of and care for J.M.

¶ 45 We also cannot find a plausible basis in the record for the trial court's finding that J.M. "doesn't even know" respondent. J.M. was never asked whether and how well he knew

respondent. Apparently, J.M. was acquainted enough with respondent to form a preference to live with Johnson and to have visits with respondent. That acquaintance stemmed, evidently, from respondent's visits with J.M. in Mississippi.

¶ 46 As for J.M.'s preference to live with Johnson, the State does not ascribe any importance to it, and indeed is emphatic that J.M.'s preference did not influence the court's decision. Neither party provides us with any authority that the minor's custodial preference is a factor at a dispositional hearing. Therefore, we do not consider J.M.'s preference for that purpose.

¶ 47 Respondent draws factual parallels between this case and *Ryan B.* We discuss *Ryan B.* with the understanding that "cases involving an adjudication of neglect and wardship are *sui generis*, and each case must be decided on the basis of its own unique circumstances" (*In re Christopher S.*, 364 Ill. App. 3d 76, 88 (2006)).

¶ 48 In *Ryan B.*, the State filed a petition for wardship in February 2005, alleging that Ryan's custodial parent—her mother, Tina—failed to provide him a safe and nurturing environment. In June 2005, Tina stipulated to neglect, and in July 2005 a dispositional hearing was held, at which the following facts were developed. Ryan's father, the respondent, never lived with Tina after Ryan was born. The respondent was employed overseas between January and April 2004. When he returned, he did not visit Ryan because he did not know Tina's whereabouts. He first learned her address when he was served with a summons in the case in February 2005. Mary French, the caseworker who took over Ryan's case at the end of May 2005, first contacted the respondent in mid-July 2005. The prior caseworker had established no visitation schedule, but left the respondent free to make arrangements with Tina to see Ryan. French believed that, prior to her taking over the case, the respondent was having visitation with Ryan. The respondent, however, clarified that between February 2005 and July 2005, he visited Ryan only once. The

respondent noted that he was currently working third shift at a company where he had been employed since April 2005. He rotated shifts weekly according to a fixed yearly schedule and was willing to visit Ryan or take custody of him if Tina lost custody. The respondent "acknowledged that he really did not know Ryan, but he loved him and very much wished to get to know and bond with him." *Id.* at 519. The respondent was providing child support to Tina. *Id.* French conducted a home study of the respondent's living arrangements and found them acceptable. *Id.*

¶ 49 The trial court ruled that the respondent was " 'unwilling' " to care for Ryan because he " 'ha[d] not exercised relationship &/or regular visits with [Ryan] although no impediments to do so.' " *Id.* The appellate vacated the finding of unwillingness. First, the appellate court disagreed with the trial court over the legal significance of the undeveloped emotional relationship between respondent and Ryan:

> "[T]he evidence established that respondent had not established more than a biological relationship with Ryan prior to the institution of the wardship proceedings. However, this fact, standing alone, did not prove that he was unwilling to provide parental care and guidance for his son. To the contrary, the evidence demonstrated that respondent stood ready, willing, and able to care for his son and to provide parental guidance to him if Tina was found unfit to do so." *Id.* at 520.

¶ 50 The appellate court also determined that the respondent's failure to visit Ryan did not justify the finding of unwillingness:

> "The evidence showed that respondent never lived with Tina after Ryan was born. There was no indication that he even was aware of Ryan's environment prior to the adjudication hearing in June 2005, when Tina stipulated that the State could prove the

> allegations in its petition. Once he received notice of the proceedings, respondent offered to assume custody of his son to shield him from the disruption in his life that would ensue if he were removed from Tina's custody. Tina declined respondent's offer. The evidence also showed that respondent had recently changed jobs, and he had some difficulty coordinating arrangements with Tina in order to exercise visitation with Ryan pending the wardship proceedings. Nevertheless, respondent testified that he had a fixed work schedule for the year that allowed him to spend time with Ryan if regular visits were scheduled. Respondent testified that he loved Ryan, and he wished to take custody of him." *Id.* at 519.

¶ 51 *Ryan B.* emphasizes that the lack of an existing emotional relationship between a child and the noncustodial parent is not, in itself, a bar to placement with that parent. Though, as noted above (*supra* ¶ 45), we question the basis for the trial court's finding that J.M. "doesn't even know" respondent, the absence of such familiarity would not alone justify denying respondent custody of J.M.

¶ 52 Both here and in *Ryan B.*, there was a significant period during the wardship proceedings where visitation between parent and child was nonexistent (this case) or virtually nonexistent (*Ryan B.*) In *Ryan B.*, the appellate court found the lack of visitation excusable due to the respondent's recent job change and difficulty coordinating visits with the mother. No such excuse is evident in this case for respondent's failure to visit, or even phone, J.M. during the five months he has been in foster care. Respondent, did, however, regularly visit J.M. before he moved with Lataska to Illinois, and he showed interest in taking custody of J.M. by travelling over 3,000 miles for court appearances in Illinois. Also significant is that respondent provided support to Lataska without court coercion.

¶ 53 We hold, therefore, that on the record developed thus far the State did not carry its burden of proving respondent unfit, unable, or unwilling to care for J.M. We vacate the trial court's dispositional judgment. On remand, the State may introduce evidence on two currently undeveloped matters that are of potential consequence to the proper disposition of J.M. The first is the home study of respondent, which has yet to be completed. The second is respondent's recent drug arrest, the details of which were vague at the time of the dispositional judgment.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we vacate the judgment of the circuit court of Winnebago County and remand for further proceedings consistent with this order.

¶ 56 Vacated and remanded.