2014 IL App (2d) 14-0851-U
No. 2-14-0851
Order filed December 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.N.B., a Minor	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	No. 13-JA-71
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Kendra C., Respondent, Bryan M., Respondent-Appellant.)	)	Honorable
	)	Sarah P. Lessman,
	)	Judge, Presiding.

In re K.D.B., a Minor	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
	)	No. 13-JA-72
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Kendra C., Respondent, Bryan M., Respondent-Appellant.)	)	Honorable
	)	Sarah P. Lessman,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment terminating respondent's parental rights was affirmed where its findings that respondent was an unfit parent and that it was in the minors' best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Bryan M., to be an unfit parent and ruled that it was in the best interests of his minor children, K.N.B. and K.D.B., born in 2010, to terminate his parental rights. The court found that the State proved three grounds of parental unfitness by clear and convincing evidence. On appeal, respondent challenges the finding that he was an unfit parent. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 23, 2013, the State filed petitions to terminate respondent's parental rights, alleging as follows. On February 21, 2012, the trial court adjudicated the minors neglected. On March 13, 2012, the court found that it was in the minors' best interests that they be made wards of the court and granted guardianship of the minors to the Illinois Department of Children and Family Services (DCFS). Respondent was an unfit parent in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) failed to make reasonable progress toward the return of the minors within 9 months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) failed for a period of 12 months to visit the minors (750 ILCS 50/1(D)(n)(i) (West 2012)).

¶ 5 A parental fitness hearing began on December 3, 2013. Jennifer Woods testified as follows. DCFS took custody of the children on May 23, 2011. Woods was the assigned caseworker from November 2011 to February 2012 and from October 2012 to the time of the hearing. In November 2011, respondent was in custody at the Illinois Youth Center in St. Charles, Illinois. In December 2011, he entered a transitional living program in Chicago. That month, Woods had contact with respondent and set up a visit for January 2012. At the January

27, 2012, visit, Woods provided respondent with a service plan and explained it to him. The services required of respondent were the same services he had to complete as part of the transitional living program. Woods provided him with a train pass for his visits, which were in Waukegan, Illinois.

¶ 6 Kathi Felts testified that she was the caseworker from February to October 2012. Between February and April 2012, Felts had contact with respondent on one occasion. A visit was scheduled for February 24, 2012, and respondent tried to bring his paramour to the visit. Felts informed him that he could not bring anyone to the visits, and respondent declined to complete the visit. He had no more visits.

¶ 7 According to Felts, respondent went "on run" from this transitional living program in April 2012. She conducted an unsuccessful "diligent search" into respondent's whereabouts in June 2012. From April to October 2012, Felts had no contact with respondent.

¶ 8 Called to testify a second time, Woods testified that she was reassigned to the case in late October 2012. In November 2012, respondent contacted Woods' agency and left an address and a phone number. Woods tried calling respondent twice, but was unsuccessful. In December 2012 and January 2013, she mailed the service plan to respondent at the address he provided. The first plan was returned. Respondent signed for delivery of the second plan. However, Woods had no contact with respondent until February 2013, after he was taken into custody again at the Illinois Youth Center in St. Charles.

¶ 9 Respondent testified that he lived in the transitional living program in Chicago from November 2011 to April 2012. In the beginning of 2012, he called his caseworker two or three times but received no response. He acknowledged receiving the service plan in early 2012. According to respondent, because he was on parole, he had to obtain permission to attend visits

with the children. When he attended the first visit, he did not have approval. He received a warning from his parole officer. At the second visit in February 2012, respondent "was not allowed in." On cross-examination, respondent admitted that he had only one visit with the children and that he knew which services he was required to complete.

¶ 10 The trial court found that the State proved by clear and convincing evidence that respondent was an unfit parent in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)); failed to make reasonable progress toward the return of the minors within 9 months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and failed for a period of 12 months to visit the minors (750 ILCS 50/1(D)(n)(i) (West 2012)). The court proceeding to a best interests hearing.

¶ 11 Following the best interests hearing, which is not at issue on appeal, the trial court found that the State proved by a preponderance of the evidence that it was in the minors' best interests to terminate respondent's parental rights. Respondent timely appealed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, respondent challenges the trial court's finding that he was an unfit parent. Although he contests all three grounds underlying the court's unfitness finding, we need only address one of those grounds to resolve the appeal. See *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 2 (noting that a single ground is sufficient to support a finding of parental unfitness).

¶ 14 Termination of parental rights under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) is a two-step process. *Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The State first must establish by clear and convincing evidence one ground of parental unfitness from those listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). If the trial court

finds a parent to be unfit, the court must conduct a second hearing to determine, by a preponderance of the evidence, whether it is in the best interests of the minors to terminate parental rights. *B.B.*, 386 Ill. App. 3d at 698. A reviewing court will not disturb a trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, and not based on evidence. *B.B.*, 386 Ill. App. 3d at 697-98.

¶ 15 On appeal, respondent maintains that the court's finding of parental unfitness was against the manifest weight of the evidence. However, with respect to the court's finding that he was an unfit parent in that he failed to visit the minors for a period of 12 months, respondent fails to cite a single authority to support his contention that the duty is not upon him, but the State, to seek and have visitation. In his one-page argument addressing the issue, respondent asserts, without citing authority, that "proof must exist that the reason for the failure to visit was due to Father's actions." He then contends that, "[h]earing no evidence regarding visitation must lead the court to presume that DCFS, without considering whether or not it was in the children's best interest[,] refused to take the children to visit Father." He goes on to ask, "Should DCFS or a caseworker be able to manipulate the system like this?" Respondent raises a straw man and then knocks him down without addressing his fulfillment of his duty to visit the children.

¶ 16 Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires an appellant's brief to contain argument supported by citations of the authorities and the pages of the record relied on. "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Where an appellant has failed to support his or her arguments with citations to authority, this court will not

sua sponte research the issues, formulate arguments, and then decide the issues. See *Kic*, 2011 IL App (1st) 100622, ¶ 23 (noting that this court "is not a depository in which the appellant may dump the burden of argument and research"); *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) ("[T]his court will not become the advocate for, as well as the judge of, points an appellant seeks to raise."). Because he has failed to cite any authority, respondent has forfeited his challenge to the court's finding that he was an unfit parent in that he failed to visit the minors for 12 months.

¶ 17 However, forfeiture is a limitation on the parties, not on the reviewing court. *Halpin v. Schultz*, 234 Ill. 2d 381, 390 (2009). This court may overlook a party's forfeiture in order to maintain a sound and uniform body of precedent or where the interests of justice so require. *Halpin*, 234 Ill. 2d at 390. Here, because this case involves termination of respondent's fundamental liberty interest in raising his children, we choose to overlook his forfeiture. See *In re A.L.*, 2012 IL App (2d) 110992, ¶ 14 (discussing parents' fundamental liberty interest in raising their children (citing *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000)).

¶ 18 Even overlooking respondent's forfeiture, we conclude that the finding that respondent was unfit pursuant to section 1(D)(n)(i) of the Adoption Act was not against the manifest weight of the evidence. Section 1(D)(n)(i) of the Adoption Act provides that a parent is unfit where there is evidence that the parent intends to forego his or her parental rights "as manifested by his or her failure for a period of 12 months *** to visit the child." 750 ILCS 50/1(D)(n)(i) (West 2012); *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002). A single ground of parental unfitness under section 1(D) of the Adoption Act is sufficient to support a finding of unfitness. *Julian K.*, 2012 IL App (1st) 112841, ¶ 2.

¶ 19 Respondent testified that he had only one visit with the minors. Woods testified that respondent's visit took place on January 27, 2012. According to Felts, respondent attempted to visit a second time on February 24, 2012. However, when Felts informed him that he could not bring his paramour, respondent declined to complete the visit. According to respondent, he was "not allowed in" when he attempted the second visit.

¶ 20 Thereafter, respondent made no attempts to visit the children. In April 2012, respondent went "on run" from his transitional living program. Shortly thereafter, Felts completed an unsuccessful "diligent search" into respondent's whereabouts. In November 2012, respondent called the agency and provided a phone number and address. However, Woods' two attempts to reach respondent at the phone number were unsuccessful. In December 2012, a service plan that Woods mailed to respondent at the address he provided was returned. In January 2013, Woods mailed a second service plan to the address, and respondent signed for the delivery. Nevertheless, respondent did not contact the caseworker. According to respondent, he was taken into custody at the Illinois Youth Center in St. Charles, Illinois, in February 2013. While in custody, he did not request visitation with the minors.

¶ 21 Respondent's argument that his failure to visit the children was due to the caseworkers' inaction is without merit. Section 1(D)(n)(i) of the Adoption Act provides that, in making the determination that a parent has intended to forego his or her parental rights, "the court may consider but shall not require a showing of diligent efforts by an authorized agency to encourage the parent to perform the acts specified in subdivision (n)." 750 ILCS 50/1(D)(n)(i) (West 2012). Thus, the court was not required to consider the caseworkers' efforts to facilitate visitation.

¶ 22 Moreover, during the majority of the 12-month period at issue, respondent was either living in a transitional living program or "on run" from that program. During the very end of the 12-month period, respondent in custody at the Illinois Youth Center in St. Charles. Respondent did not present any evidence to show that he was unable to visit the children during the time in the transitional living program or when he was "on run" from the program. In fact, his first visit occurred while he was in the program. Respondent chose not to complete his second visit after the caseworker informed him that he could not bring an unauthorized person with him to the visit. He then failed to request any further visits.

¶ 23 Although respondent had to obtain approval from his parole officer and take the train to attend visits, he did not testify that these obstacles impeded his ability to visit the children. If anything, respondent's decision not to attend the second visit, or to request any visits thereafter, suggests that respondent chose not to visit the children, which supports the trial court's unfitness finding. Although defendant was in custody at the Illinois Youth Center during the end of the 12-month period, DCFS has no obligation to arrange for visits with minor children when parents are incarcerated. See *In re Sheltanya S.*, 309 Ill. App. 3d 941, 957 (1999) ("DCFS has no obligation to arrange for visits with minor children at prisons."). Regardless, respondent did not request visitation while he was in custody.

¶ 24 In sum, because respondent failed to visit the children for a period of 12 months following his January 27, 2012, visit (or even following his failed attempt at a second visit on February 24, 2012), the court's finding of parental unfitness pursuant to section 1(D)(n)(i) of the Adoption Act was not against the manifest weight of the evidence. See *G.L.*, 329 Ill. App. 3d at 24 (affirming a finding of parental unfitness pursuant to section 1(D)(n)(i) where the respondent failed to visit the minors for a period of 12 months).

¶ 25 III. CONCLUSION

¶ 26 Based on the foregoing, the judgment of the circuit court of Lake County is affirmed.

¶ 27 Affirmed.