2017 IL App (4th) 170446-U

NO. 4-17-0446

FILED
November 7, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re K.T., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 16JA24
v.	)	
Amber Taylor,	)	Honorable
Respondent-Appellant).	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: By finding that respondent was an "unfit person" within the meaning of section 1(D)(k) of the Adoption Act (750 ILCS 50/1(D)(k) (West 2016)) and that terminating her parental rights would be in the minor's best interests, the trial court did not make findings that were against the manifest weight of the evidence.

¶ 2 Respondent, Amber Taylor, is the mother of K.T., born February 2, 2015. She appeals the termination of her parental rights. (The trial court also terminated the father's parental rights, but he does not appeal.) Specifically, respondent challenges the court's findings that (1) she was an "unfit person" within the meaning of sections 1(D)(g) and (k) of the Adoption Act (750 ILCS 50/1(D)(g), (k) (West 2016)) and (2) it was in K.T.'s best interests to terminate her parental rights. The record contains evidence that respondent was an "unfit person" within the meaning of section 1(D)(k) and that terminating her parental rights would be in K.T.'s best

interests. (We need not consider the other alleged ground of her unfitness.) Because neither of those findings is against the manifest weight of the evidence, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Fitness Hearing

¶ 5 On May 18, 2017, the trial court held a hearing on the issue of whether respondent was an "unfit person" as alleged in the State's petition to terminate parental rights. (The transcript erroneously says the date of the hearing was May 18, 2016. We know the correct date from the docket sheet.)

¶ 6 At the beginning of the fitness hearing, the assistant State's Attorney announced that, as to respondent, the State would proceed only on paragraphs 8(b) and (c) of its petition. Paragraph 8(b) alleged a failure to protect K.T. from conditions within her environment that were injurious to her welfare. See 750 ILCS 50/1(D)(g) (West 2016). Paragraph 8(c) alleged habitual drunkenness. See 750 ILCS 50/1(D)(k) (West 2016).

¶ 7 The evidence in the fitness hearing was essentially as follows.

¶ 8 1. *The Testimony of April Taylor*

¶ 9 April Taylor, age 30, was respondent's sister, and she admitted she was a reluctant witness, testifying only because a subpoena required her to do so.

¶ 10 At 6:45 a.m. on Saturday, March 19, 2016, Taylor arrived at respondent's house to give her a ride to work, as she had promised to do. She found respondent drunk and passed out upstairs, on her bed, with one-year-old K.T. sitting on the bed beside her. K.T. was mobile and could have gotten to the stairs, and no one else was in the house at the time.

¶ 11 Taylor tried to rouse respondent. She woke up only a little. Taylor then took K.T. to her own residence and telephoned the Bloomington police. She requested that a police officer go to respondent's house and check on her well-being.

¶ 12 This was not the first time Taylor had made this request to the police. When K.T. was about seven months old, a friend dropped K.T. off at Taylor's house because she was concerned that respondent had been drinking. On that occasion as well, Taylor called the Bloomington police and requested that a police officer stop by respondent's house and check on her to make sure she was all right.

¶ 13 So, when Taylor walked into respondent's bedroom the morning of March 19, 2016, she was not shocked to find her passed out from drinking. Respondent had had a drinking problem on and off from about the age of 15. For the previous couple of years, it had been mostly on, or so it seemed to Taylor.

¶ 14 In September 2014, for instance, while respondent was pregnant with K.T., her friends contacted Taylor, and Taylor went to respondent's house and found her intoxicated. There was another instance in February 2015, right after K.T. was born, when Taylor saw respondent intoxicated at a cousin's birthday party. Taylor could tell at the time that respondent was intoxicated: it was apparent from her attitude, her actions, and the slurring of her words.

¶ 15 2. *The Testimony of Todd Walcott*

¶ 16 At 8 a.m. on March 19, 2016, Todd Walcott, a Bloomington detective, went to respondent's house, on West Oakland Avenue, to check on her well-being. The police department had received a call from respondent's sister, who reported she had picked up respondent's infant daughter from the house because she was concerned about respondent's health.

¶ 17 Walcott and his partner, named Wright, knocked on the front door of respondent's house. No one answered. According to the dispatcher, the sister had left the back door unlocked so that the police would be able to get in. Walcott and Wright entered by the back door. They kept calling out for respondent, announcing they were the Bloomington police.

¶ 18 Walcott heard a woman's voice from upstairs, but the voice was so faint he could not make out what she was saying. He and Wright went upstairs and found respondent sitting on a bed. She was so groggy and lethargic that her speech was almost unintelligible. She told them that since 8 p.m. the previous day, she had been drinking heavily and that she had taken several Xanax pills with the alcohol. In Walcott's view, the sister had been justified in her concern about respondent's well-being. There was no question in his mind that respondent was intoxicated and under the influence of drugs—and no one else was in the house. When emergency medical services arrived, respondent was unable to walk down the stairs.

¶ 19 3. *The Testimony of Susan Myers*

¶ 20 In March 2016, Susan Myers was a child protection investigator for the Illinois Department of Children and Family Services (Department). Her job at that time was to investigate hotline reports of child abuse and neglect.

¶ 21 On March 20, 2016, a hotline report came in on K.T., and the report was assigned to Myers the next day. After speaking with April Taylor on the telephone, Myers went to respondent's house and spoke with her face to face.

¶ 22 Respondent told her the following. She had had an alcohol problem since her early twenties. She had been in treatment twice. Recently, she completed an assessment at Chestnut Health Systems (Chestnut). She was still drinking. Around 1 a.m. on March 19, 2016, she took two pills of Xanax, one pill of Sertraline, and another pill the name of which Myers

could not pronounce, and in addition she drank a bottle of wine and seven beers. She was unaware that K.T. had awakened by the time her sister arrived to give her a ride to work. In fact, she had no memory at all of Saturday morning after she consumed the pills and the liquor.

¶ 23 On April 26, 2016, Myers telephoned respondent to let her know she was going to find the report of March 19, 2016, to be "indicated"—in other words, she was going to find "credible evidence" of neglect. 325 ILCS 5/3 (West 2016). The neglect, she explained to respondent, consisted of inadequate supervision and an injurious environment. In this telephone conversation, respondent sounded to Myers as if she were under the influence of alcohol. Her words were slurred. She acted confused. Myers had to repeat explanations. Respondent complained that Myers was just like everyone else who did not want to talk with her. Myers replied that if respondent called back when she was sober, they could talk further.

¶ 24 4. *The Testimony of Jesse Lanphear*

¶ 25 On Sunday, June 19, 2016, around 6 a.m., Jesse Lanphear, a Bloomington police officer, was dispatched to the 900 block of West MacArthur Avenue in response to a report that a woman had been struck by a car. When he arrived, a witness directed him to respondent, who was on the side of the road.

¶ 26 Lanphear asked respondent what had happened and if she was injured. Mostly, her answers made no sense and had nothing to do with his questions. She spoke rapidly, as if in a manic state. Her mood fluctuated abruptly from weeping to not weeping. The odor of alcohol was emanating from her, and the pupils of her eyes were dilated. On the basis of his five years' experience as a police officer, Lanphear concluded that respondent was very intoxicated; he believed she was under the influence of alcohol as well as some other drug. She appeared, however, to be uninjured, and she declined medical treatment.

¶ 27 As for the person who allegedly had run her over, the most Lanphear could learn from respondent was where this person lived. Riding along in the front seat of the squad car, respondent directed him to the house. The alleged perpetrator, Houstine Manns, returned home, and in defiance of Lanphear's instructions, respondent got out of the squad car and approached her in a menacing way. Lanphear got out and grabbed hold of respondent, who resisted. He had to handcuff respondent and put her in the backseat of the squad car, where she began kicking the cage partition. All this strengthened his impression that she was highly intoxicated.

¶ 28 5. *The Testimony of Rebecca Berry*

¶ 29 Rebecca Berry testified that since August 30, 2016, she had been K.T.'s foster parent. (The transcript of the fitness hearing spells Berry's last name as "Berry," but the transcript of the best-interest hearing spells it as "Barry." The record includes a "Courtroom Appearance Sheet," in which she signed her name as "Berry," so that is the spelling we will use.) In addition to K.T., Berry had two other girls in her care: her biological daughter, who was eight, and her adopted daughter, who was 10.

¶ 30 The Baby Fold, an organization contracted by the Department to provide family services in this case, had requested Berry to supervise visitation between respondent and K.T. The first visit was on Christmas 2016. That visit was brief and uneventful.

¶ 31 The next visit was on January 4, 2017, and it was a combined visit and trip to the doctor's office. The daycare had called Berry and suggested that K.T. might have pinkeye. Respondent was supposed to have a visit that day, and Berry called her and proposed that they take K.T. to the doctor's office together. Berry picked up respondent in her car, and as soon as respondent got in, Berry could smell alcohol. She also noticed that respondent had a broken arm. They arrived at the doctor's office, and Berry tried to step back and let respondent be the person

taking care of K.T. Because of her intoxication and her broken arm, however, respondent was unable to do so, and Berry had to take charge.

¶ 32 After leaving the doctor's office, the three of them—Berry, respondent, and K.T.—went out to dinner. In the restaurant, Berry and respondent discussed what K.T. liked to eat and what to order. Respondent ordered the food, but she forgot to order for K.T.

¶ 33 On January 22, 2017, respondent texted Berry that she missed K.T., so Berry picked up respondent for an unplanned visit. Again, respondent smelled of alcohol when she got into the car. This time, Berry had all three children with her. They went out to dinner, and respondent was not making sense. Her speech was slurred. Berry could tell she was not sober. Having never seen an intoxicated person before, the 8-year-old and the 10-year-old asked why respondent was talking that way.

¶ 34 After dinner, they went to Target, and respondent had difficulty walking. She was leaning on the cart and on racks, and she was holding onto poles.

¶ 35 On January 25, 2017, Berry and respondent went together to Hobby Lobby, to buy things for K.T.'s upcoming birthday party. Instead of having separate parties, they had decided to have a party together. Berry had K.T. with her. When respondent got into the car, Berry again could smell alcohol. Again they had conversations that did not quite make sense. There was the same forgetfulness, the same slurred speech.

¶ 36 The birthday party took place on Saturday, January 28, 2017, in the basement of Berry's church. It was a good party, and respondent was in high spirits and was a great help. But again Berry could smell alcohol when she got into the car, and she could tell that respondent was intoxicated.

¶ 37 Either the next day or the Sunday of next week (January 29 or February 5, 2017), Berry picked up respondent to go to church. She had invited respondent to come along. Again there was the odor of alcohol when respondent got into the car. In the church, some of the other parishioners mentioned to Berry that respondent smelled of alcohol.

¶ 38 That Sunday was the last time Berry supervised a visit. She decided to hand over the task of supervising visitation to The Baby Fold. Her reason was this. In her interaction with respondent, she did not think it would be right to remain tactfully silent any longer when respondent showed up for visitation intoxicated. But she did not want to be the one to confront respondent; she did not think she had the training to do so. Besides, she was conflicted. She wanted respondent to see K.T. She wanted K.T. to be reunited with respondent.

¶ 39 On February 10, 2017, there was supposed to be a visitation at The Baby Fold from 6 to 8 p.m., but K.T. was returned to Berry's house early, at 6:15 p.m. The caseworker had canceled the visitation because respondent had showed up intoxicated.

¶ 40 6. *The Testimony of Kelsey Cushing*

¶ 41 Kelsey Cushing was a child welfare specialist at The Baby Fold, and she testified that on February 7, 2017, respondent attended a child and family meeting while under the influence of alcohol, as was evident from the smell of alcohol on her breath and her bloodshot eyes. Nevertheless, the meeting went on, and the intoxication was unmentioned at that time.

¶ 42 On February 13, 2017, or soon thereafter, Cushing received a police report that someone had overdosed at respondent's house on that date. Cushing kept trying to reach respondent by telephone to find out the particulars. At last, on February 15, 2017, respondent answered her call and explained that a friend had invited someone over to her house and that this person had overdosed while respondent was asleep. Cushing warned respondent against

surrounding herself with drug users. She advised against associating with people who might lead her to relapse.

¶ 43 Cushing also testified that on February 21, 2017, respondent tested positive for cocaine. When Cushing confronted her about the test result, respondent denied ever using cocaine in her life.

¶ 44 7. *Judicial Notice of Court Records*

¶ 45 Without objection by the other parties, the State requested the trial court to take judicial notice of the following court records.

¶ 46 In McLean County case No. 12-CF-1209, the State charged that on November 9, 2012, respondent unlawfully possessed amphetamines. On March 28, 2013, she pleaded guilty to that charge. In accordance with the plea agreement, the trial court sentenced her to 24 months' probation. One of the conditions of probation was that she complete rehabilitative treatment by September 28, 2013. On March 13, 2014, the probation department filed a notice of administrative sanctions based on her failure to complete treatment. On March 30, 2015, she was discharged from probation. There is no indication in the court file that she completed the required treatment.

¶ 47 In McLean County case No. 12-DT-691, the State charged that on November 9, 2012, respondent drove while under the influence of drugs. On March 28, 2013 she was sentenced to 24 months' probation.

¶ 48 In McLean County case No. 10-DT-126, the State charged that on February 20, 2010, respondent drove while under the influence of alcohol. A printout showed she had a blood alcohol content of 0.182. A plea agreement, entered on August 25, 2010, stated that she had

completed an alcohol rehabilitation program in March 2010. She was sentenced to 24 months' conditional discharge.

¶ 49 8. *Respondent's Testimony*

¶ 50 Respondent testified she had been in treatment for alcohol or substances 4 or 5 times over the last 10 years and that she had completed almost all of them successfully.

¶ 51 Her attorney asked her:

"Q. So you've been—you would admit that you have an issue with alcohol or substances?

A. Yes.

Q. How long have you had that issue?

A. I mean, I've had issues over the last [10] years, but I think it's progressed a lot more over the last [3 or 4 years].

Q. When [K.T.] was born, were you still having issues with alcohol?

A. Yes.

Q. Did that affect your ability to parent?

A. At times, yes.

Q. Did you ever receive treatment while [K.T.] was in your care?

A. Yes.

Q. Can you describe that to the Court[?]

A. I was still attending treatment groups from before she was born."

¶ 52 As soon as this case commenced, respondent began attending substance-abuse treatment. She had been attending Alcoholics Anonymous meetings throughout the pendency of this case. She had a sponsor.

¶ 53 Around Christmas 2016, however, respondent relapsed. Her attorney asked her:

"Q. Your relapse; can you describe kind of how long you relapsed, the amount that you used, and how long it lasted?

A. Yeah. It was definitely around Christmas time and probably on and off for a week or so.

Q. And when you say on and off, how much did you consume when you did consume?

A. Well, I would probably consume about a fifth of vodka, maybe. What I would do is I would drink that[,] and then I would sober up for a while, and then I would drink again[,] and[,] yeah, after a couple of weeks I finally completely stopped.

Q. What made you stop?

A. Just getting connected back in with my sponsor and attending more [Alcoholics Anonymous] groups. Just getting back into my routine and program.

Q. Since December have you had anything alcoholic to drink?

A. No.

Q. Is there any explanation you can give for why people have testified you showed up to visits smelling like alcohol?

A. No, I cannot. Other—I mean, I don't—I don't know why I would smell like alcohol. Maybe looking intoxicated is my anxiety. When I do have anxiety[,] I do get a little bit nervous and not focused[,] and that's the only thing I can think of."

¶ 54 When asked about her "dirty screen for cocaine in February," respondent denied using cocaine in either 2016 or 2017. She testified the last time she used cocaine was when she was 18. She now was 34.

¶ 55 On cross-examination, the assistant State's Attorney asked respondent:

> "Q. When you relapsed in December, you broke your arm, correct?
>
> A. Correct.
>
> Q. And that's because you were under the influence[?]
>
> A. Yes.
>
> Q. What happened?
>
> A. I was at home[,] and I fell down the stairs. I have a—my bedroom is on the second floor.
>
> Q. And is that the same house you were living in when [K.T.] was removed from your care?
>
> A. Yes."

¶ 56 After the close of evidence and after hearing arguments, the trial court found, by clear and convincing evidence, that both parents were "unfit persons." Specifically, with respect to respondent, the court found paragraphs 8(b) and (c) of the petition to be proved.

¶ 57 B. The Best-Interest Hearing

¶ 58 On May 18, 2017, immediately after the fitness hearing, the trial court held a best-interest hearing. The evidence in that hearing was essentially as follows.

¶ 59 1. *The Testimony of Kelsey Cushing*

¶ 60 Cushing testified that before Berry became the foster parent, K.T.'s aunt and uncle, Shannon and Chad Brown, were the foster parents. The Browns, however, grew

uncomfortable with supervising visitation. Communicating with respondent and dealing with her behaviors proved to be too much for them. Besides, they foresaw that this case was probably heading toward adoption, and they wanted a younger family for K.T. So, on August 30, 2016, Berry became the new foster parent, and K.T. had been with her since.

¶ 61 Berry had a single-family house with four bedrooms and a finished basement. K.T. had a bedroom of her own. Cushing had visited the Berry residence and had observed the attachment that K.T. felt to Berry and her two daughters.

¶ 62 K.T. was attached to respondent, too, but Cushing had seen no indication, in the visitation reports, that K.T. had suffered any separation anxiety when visits concluded.

¶ 63 Berry had been providing everything that K.T. needed physically, medically, and emotionally. K.T. had no special needs. She seemed happy and content with Berry, took direction from her, and addressed her as "Mom."

¶ 64 2. *The Testimony of Rebecca Berry*

¶ 65 Berry testified that if K.T. became available for adoption, she intended to adopt her. The adoption would come with a financial subsidy, but even without a subsidy, she still would want to adopt K.T. She was employed and was able to support all three children. K.T. attended day care while she was at work.

¶ 66 Berry's parents, who lived in the area, were supportive of her being a foster parent. They had taken in K.T. as one of their own. K.T. called them "Grandma" and "Baba," and she liked to visit them and run around their lake. Berry also had cousins in town, and there were frequent family events, which K.T. attended.

¶ 67 Once a month, K.T. also visited her former foster parents, the Browns, whether for a Saturday afternoon or a sleepover. She saw her cousins there. As an adoptive mother, Berry

would be willing to allow K.T. to continue seeing respondent. Berry would not be opposed to visits with K.T.'s father, either, but she did not believe she would allow unsupervised contact.

¶ 68 The assistant State's Attorney asked Berry:

> "Q. Do you think it's in [K.T.'s] best interest that she be allowed to be adopted by you and raised in your family?
>
> A. That's what I hope for.
>
> Q. Can you see any benefit to [K.T.] to not be adopted into your family?
>
> A. No. I think that that would be very hard on her."

¶ 69 3. *Respondent's Testimony*

¶ 70 Respondent insisted that, in the past six or seven months, she had come a long way. Her residence was stable. She had lived there for nine years. For the past three months, she had been employed as a cashier at "Pilot."

¶ 71 She testified she had maintained long periods of sobriety. Every week, since December 2016, she had been seeing a counselor at Chestnut, Tory Bevins, for substance-abuse treatment. Since the case began, she had seen a counselor. She also attended Alcoholics Anonymous meetings, had a sponsor, and was "working steps." She believed the counseling was helping.

¶ 72 She visited K.T. once a week for two hours, and the visits went well. K.T. had separation anxiety when the visits ended. She loved K.T. and wanted to raise her.

¶ 73 Respondent's attorney asked her:

> "Q. You understand there's a concern that you cannot parent your child because of your issues with alcohol?
>
> A. I do, yes.

Q. Can you speak to the Court on why they should give you more time to work on that issue?

A. I mean, yeah, being an alcoholic, it is a disease. I didn't ask for this. And I'm not trying to make excuses, but I mean—there is no cure for it, but there is a solution[,] and I go to—I'm in a program that is helping me stay sober and giving me the tools[,] like I say. It has given the support that I need and everything in my life.

And there's millions [and] millions of people that are in this recovery with me[,] and they're—you know, they have families, they have businesses, they have all this going on. So to pinpoint me out like I'm this crazy drunk alcoholic is crazy to me. You're going to take all my rights to my daughter because I have a disease that I'm struggling with, but [I've] also been living in recovery for the last year[,] trying to show everyone that—I mean, just because I'm an alcoholic doesn't mean that I'm not a good person or a good mother or that I don't have the capability to take care of my daughter."

¶ 74 On cross-examination, the assistant State's Attorney asked respondent:

"Q. [Respondent], you testified this morning that in 2010[,] after your DUI[,] you participated in substance abuse treatment, correct?

A. Yes.

Q. And then you said after your arrest in 2012, you, again, participated in substance abuse treatment?

A. Yes.

Q. Your sister testified—I don't know whether we've talked about it with you this morning—that in October 2014[,] while pregnant[,] you did inpatient; is that correct?

A. Yes.

Q. *** March 28th you started—restarted substance abuse treatment?

A. Yes.

Q. You had completed a round of substance abuse treatment in December 2016?

A. Correct.

Q. Okay. So other than those five episodes, are there others that—

A. No.

Q. Do you have any concerns about the care that [K.T.] is getting from [Berry]?

A. No.

Q. If [K.T.] can't live with you, do you believe that that's a good place for her to live?

A. Yes."

¶ 75 4. *The Trial Court's Findings and Rationale on the Issue of K.T.'s Best Interests*

¶ 76 The trial court found four of the factors in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)) to be "neutral," namely, "the child's wishes and long-term goals" (705 ILCS 405/1-3(4.05)(e) (West 2016)), "the uniqueness of every family and child" (705 ILCS 405/1-3(4.05)(h) (West 2016)), "the risks attendant to entering and being in substitute care" (705 ILCS 405/1-3(4.05)(i) (West 2016)), and "the preferences of the persons

available to care for the child" (705 ILCS 405/1-3(4.05)(j) (West 2016)). But the court found that the remaining factors in section 1-3(4.05) favored the termination of parental rights.

¶ 77 Although the trial court acknowledged that K.T. had "maintained a bond with [respondent]," the court was "really taken by how bonded [K.T. was] in this particular foster family with her two foster sisters and foster mother." See 705 ILCS 405/1-3(4.05)(d) (West 2016) ("the child's sense of attachments"). Another important consideration for the court was that "[K.T.]'s most cognitive months and time ha[d] been with this foster family." See 705 ILCS 405/1-3(4.05)(d)(iii), (v) (West 2016) ("the child's sense of familiarity" and "the least disruptive placement alternative for the child"); 705 ILCS 405/1-3(4.05)(g) (West 2016) ("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").

¶ 78 The trial court continued:

> "So[,] I think the least disruptive placement alternative is probably a little bit of a greater factor here[,] given the amount of time she's been there and the level of bond that she's established in the foster family. The continuity of affection; she's getting affection from three people versus one in the other one, so I guess that slightly favors termination.
>
> I believe that permanency is in most cases the most important factor for the Court to consider. When I look at [respondent], she has struggled with this disease for [10] years. She has been in treatment, now, for the fifth time. And I don't—I she is in denial. I think she is in denial over her alcohol use since Christmas. I think she's in denial over the cocaine positive screen. I don't believe drugs to be a major concern—that was a one-time thing—but she has continued to

use alcohol throughout this case. And it was with the knowledge that she needed to be sober to get her child back. She needed to maintain sobriety, and she couldn't.

The number of incidences is really overwhelming to me; the number of times she's not only had a drink, but the number of time she's had a substantial amount to drink where she just can't control. This is an awful disease, and I feel for her. But I don't have any confidence that she could obtain fitness any time in the foreseeable future[,] given her failed attempts over this long period of time, and her inability to maintain sobriety when she knew that that was absolutely essential to getting [K.T.] returned to her care.

So[,] the Court finds that the State has proven by at least a preponderance of the evidence that it's in the best interest of [K.T.] that the parental rights be terminated."

¶ 79 This appeal followed.

¶ 80 II. ANALYSIS

¶ 81 A. Parental Fitness

¶ 82 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2016)); and (2) it has been proved, by a preponderance of the evidence, that it would be in the best interests of the child to terminate

parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 83 Respondent had not executed a voluntary surrender of her parental rights and a consent to the adoption of K.T. Therefore, the State was required to prove, by clear and convincing evidence, that she was an "unfit person" within the meaning of either of the statutory definitions the State had cited in its petition (750 ILCS 50/1(D)(g), (k) (West 2016)), and then the State had to prove, by a preponderance of the evidence, that it would be in K.T.'s best interests to terminate respondent's parental rights. See *id.*

¶ 84 If the trial court finds the State has carried its burdens of proof as to parental fitness and the child's best interests, we do not reweigh the evidence, but instead we decide whether those findings are against the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 998, 1001 (2004). A finding of unfitness is against the manifest weight of the evidence only if it is "clearly apparent" that the State failed to prove, by clear and convincing evidence, that the respondent was an unfit person. *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 427 (2007). Likewise, a best-interests finding is against the manifest weight of the evidence only if it is "clearly apparent" that the State failed to prove, by a preponderance of the evidence, that terminating the respondent's parental rights would be in the child's best interests. *In re H.S.*, 2016 IL App (1st) 161589, ¶ 34.

¶ 85 In applying this deferential standard of review, let us begin with the finding of parental unfitness. Because any one of the statutory grounds of unfitness will support a finding that respondent is an "unfit person," we need not review both of the alleged grounds if there is sufficient evidence of one of the grounds. See *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). We will consider the allegation of "[h]abitual drunkenness or addiction to drugs, other than those

prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding." 750 ILCS 50/1(D)(k) (West 2016).

¶ 86 The supreme court has held that "[t]o prove habitual drunkenness" within the meaning of section 1(D)(k) of the Act, the State need not prove "the precise amount and frequency of a parent's drinking." *In re J.J.*, 201 Ill. 2d 236, 250 (2002). The State, however, must prove that the parent "(1) had a fixed habit of drinking to excess, and (2) used alcohol so frequently as to show an inability to control the need or craving for it." *Id.* at 247. What does it mean to drink "to excess?" The supreme court has explained: "While the exact amount of alcohol consumed in any specific instance need not be established, there must be clear and convincing evidence showing that [the parent] suffered significant impairment in [his or] her ability to supervise and parent [his or] her children due to the consumption of alcohol." *Id.* at 251.

¶ 87 Initially, the evidence of (1) and (2) must be limited to the one-year period immediately preceding the filing of the petition to terminate parental rights. *Id.* at 244. Once the State proves, by clear and convincing evidence, that the respondent was habitually drunk during that one-year period, the State then is free to present evidence that the respondent was habitually drunk before or after that period as well. *Id* at 245.

¶ 88 In the present case, the State filed its petition on March 2, 2017. Therefore, the relevant one-year period is March 2, 2016, to March 2, 2017. See *id.*

¶ 89 Respondent does not dispute she had been "drinking in excess" on June 19, 2016, for example, when Lanphear found her on the side of the road. She points out, however, the lack of any evidence "that K.T. was in [her] care at the time of this incident."

¶ 90 Under *J.J.*, however, the question is not whether excessive drinking caused the parent to actually render substandard supervision or parenting to the child on any specific occasion. Rather, the question is whether the parent "suffered significant impairment in [his or] her *ability* to supervise and parent [his or] her children due to the consumption of alcohol." (Emphasis added.) *Id.* at 251. A parent's ability to supervise and parent a child can be significantly impaired due to the consumption of alcohol even when someone else presently is supervising and caring for the child.

¶ 91 Given the evidence in the fitness hearing, a reasonable trier of fact could identify several instances, during the period of March 2, 2016, to March 2, 2017, when the consumption of alcohol had significantly impaired respondent's ability to supervise and take care of K.T. Lanphear and Berry recounted instances when respondent, smelling of liquor, was unable to carry on a coherent conversation. If a parent has had so much to drink that his or her speech is slurred and what he or she is saying makes no sense in the context of the discussion, a reasonable person could regard the parent, at the time, as being significantly impaired in his or her ability to supervise and take care of a child. The same holds true if the parent is staggering around inside Target, leaning on the racks and the shopping cart and holding onto poles. Likewise, if a parent has had so much to drink that he or she is incapable of safely descending a stairway in the home, the parent is in no condition to chase after a one-year-old child and prevent her from tumbling down the stairs. In short, we are unconvinced it is clearly apparent, from the record, that the State failed to prove "a fixed habit of drinking to excess" during the period of March 2, 2016, to March 2, 2017. *Id* at 247.

¶ 92 The second element is that the parent "used alcohol so frequently as to show an inability to control the need or craving for it." *Id.* If, after losing custody of the child because of

excessive drinking, the parent repeatedly attends visitation smelling of liquor and displaying symptoms of intoxication, such as slurred speech and incoherence, it would be a fair inference that the parent suffers from an irresistible craving for alcohol. The parent had to know the importance of being on his or her best behavior and that smelling of liquor in the presence of the foster parent and the caseworker was the ultimate act of self-sabotage. But the need for alcohol overrode all other considerations.

¶ 93 In sum, the finding of habitual drunkenness is not against the manifest weight of the evidence. Accordingly, we defer to that finding. See *R.L.*, 352 Ill. App. 3d at 998.

¶ 94 B. The Best Interests of K.T.

¶ 95 Respondent disputes the trial court's finding that the following statutory factors in section 1-3(4.05) of the Juvenile Court Act of 1987 favored the termination of parental rights.

¶ 96 1. *The Child's Sense of Attachments*

¶ 97 One of the statutory factors a trial court must consider when determining a child's bests interests is "the child's sense of attachments." 705 ILCS 405/1-3(4.05)(d) (West 2016). Respondent cites Cushing's testimony that K.T. was "attached to [respondent]" and that K.T. was "happy the whole time" she visited with respondent in the park.

¶ 98 But the trial court acknowledged that K.T. was attached to respondent. It is just that the court found K.T. to be more attached to her foster mother and her foster siblings. It is not our place to gainsay that factual determination. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 99 2. *The Continuity of Affection for the Child*

¶ 100 In considering "the child's sense of attachments," the trial court must consider, among other sub-factors, "the continuity of affection for the child."

705 ILCS 405/1-3(4.05)(d)(iv) (West 2016). When discussing the continuity of affection, the trial court remarked that K.T. had been "getting affection from three people [in Berry's home] versus one in [respondent's home]." To respondent, that remark had more to do with the "quantity or diversity of affection" than the "continuity of affection."

¶ 101 That is a fair point. Even so, the quantity or diversity of affection surely is relevant to "the child's sense of attachments." 705 ILCS 405/1-3(4.05)(d) (West 2016). A child could feel most secure and most at home surrounded by people with whom the child feels a bond. See 705 ILCS 405/1-3(4.05)(d)(ii), (iii) (West 2016).

¶ 102 3. *The Least Disruptive Placement Alternative*

¶ 103 Another subfactor under "the child's sense of attachments" is "the least disruptive placement alternative for the child." 705 ILCS 405/1-3(4.05)(d)(v) (West 2016). Respondent argues that, "[r]egarding the least disruptive placement alternative for the child, the [trial court] considered the amount of time that *** K.T. had been in foster care to be important. [Citation.] However, K.T. had only been with her current foster family since August 30, 2016, about [nine] months."

¶ 104 True, but the trial court's point was that "[K.T.]'s *most cognitive months and time* ha[d] been with this foster family." (Emphasis added.) Also, the court saw a threat of disruption in respondent's history of relapses.

¶ 105 4. *The Child's Need for Permanence*

¶ 106 When determining the child's best interests, the trial court must consider "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."

705 ILCS 405/1-3(4.05)(g) (West 2016).

¶ 107 Respondent could offer permanence and stability to K.T. only insomuch as she was parentally fit. The trial court was skeptical that respondent "could obtain fitness any time in the foreseeable future[,] given her failed attempts over this long period of time, and her inability to maintain sobriety when she knew that that was absolutely essential to getting [K.T.] returned to her care."

¶ 108 Respondent finds this skepticism to be "troubling[,] considering the evidence." Specifically, she notes:

> "As recently as December [2016], six months earlier, [respondent] was in court, having completed substance abuse counseling and parenting classes. [Citation.] She was attending individual counseling from September to December [2016], and all indications were that she was making significant progress toward a fitness finding. [Citation.]"

¶ 109 A reasonable trier of fact could take the view, however, that genuine progress would consist in the *effectiveness* of these rehabilitative programs that respondent had taken over and over again. In other words, real progress would be maintaining sobriety. The counseling that respondent underwent before December 2016 apparently did not prevent her from repeatedly showing up for visitation intoxicated in January and February 2016. As the trial court observed, "[s]he has been in treatment, now, for the fifth time."

¶ 110 One hopes that, this time, the treatment will have staying power and that respondent will remain permanently sober. That hope, however, is not enough to satisfy K.T.'s need for permanence. Arguably, permanence is more likely, more readily attainable, with Berry, who wants to adopt K.T. This adoption can go forward only if parental rights are terminated.

¶ 111 By finding the termination of respondent's parental rights to be in K.T.'s best interests, the court did not make a finding that was against the manifest weight of the evidence.

¶ 112 III. CONCLUSION

¶ 113 For the foregoing reasons, we affirm the trial court's judgment.

¶ 114 Affirmed.