2024 IL App (5th) 231059-U

NO. 5-23-1059

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re HARMONY B., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Jackson County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 20-JA-23
	)	
Lemont B.,	)	Honorable Ella L. Travelstead and
	)	Honorable Christy W. Solverson,
Respondent-Appellant).	)	Judges, presiding.

JUSTICE McHANEY delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The father, Lemont B., was guilty of *laches* for failing to raise the issue of personal jurisdiction while appearing and participating in this case despite the State's improper service by publication. Where the State established both that Lemont B. was an unfit parent by clear and convincing evidence and that Harmony B.'s best interest would be served by termination of his parental rights by a preponderance of the evidence, we affirm the fitness and best interest orders.

¶ 2 Lemont B. (Lemont) is the father of a girl, Harmony B. (H.B.). The Department of Children and Family Services (DCFS)[1] became involved in this case after a hotline report that the child's mother, Destinee J., was abusing methamphetamine in front of H.B. and had various mental health

[1]DCFS utilized the services of local service provider Lutheran Social Services of Illinois in this case. Although not interchangeable, throughout much of this order, we refer to this provider as DCFS.

disorders. Due to Lemont's alleged failure to make reasonable efforts and progress towards the return of H.B., the State filed a motion to terminate his parental rights. After the trial court found that Lemont was an unfit parent, the court concluded that it was in H.B.'s best interest to terminate his parental rights. He appeals from these orders.

¶ 3 I. BACKGROUND

¶ 4 H.B. was born on April 10, 2019. Her father is Lemont, and her mother is Destinee J. (Destinee).[2]

¶ 5 On July 20, 2020, the State filed a petition for adjudication of wardship alleging (1) that H.B. was an abused minor in that there existed a substantial risk of physical injury to her because her mother, Destinee, was a habitual user of methamphetamine and other illicit substances while in H.B.'s presence, and thus Destinee was incapable of adequately and safely parenting H.B. (705 ILCS 405/2-3(2)(ii) (West 2018)) and (2) that H.B. was neglected in that she was in an environment injurious to her welfare because Destinee had been using methamphetamine and acting in an erratic manner, and that DCFS had unsuccessfully attempted to institute a safety plan requiring Destinee to remain drug-free, which resulted in DCFS taking H.B. into protective custody (*id.* § 2-3(1)(b)).

¶ 6 The trial court held the shelter care hearing on July 21, 2020. Destinee was present, and an attorney had been appointed for her. Lemont was not present. The State called Beth Kempfer, a DCFS child protection specialist, to testify. Kempfer was the DCFS employee who responded to Destinee's residence pursuant to the hotline call. She testified that when she arrived, Destinee,

[2]Destinee J. is not a party to this appeal. On October 23, 2023, Destinee J.'s parental rights were terminated.

H.B., A.J.,[3] and Destinee's mother, Angela Ray (Angela), were present. She stated that initially Destinee would not let her inside the house. Once inside, Kempfer testified that "[t]here was a lot of screaming, a lot of cussing *** [and that Angela] was very confused and wanted to know what was going on." After time, she was able to calm Destinee down and explain the allegations and why DCFS sent her to their home. Destinee admitted to drug use. Kempfer testified that she attempted to initiate an intact family safety plan which would have allowed the two children to remain with the mother; however, Destinee would not agree to the requirements—that the children could not be left alone with her and that she would have to demonstrate sobriety. The children were subsequently removed from the home. At the conclusion of the hearing, the trial court found that there was probable cause for the filing of the petition and to believe that H.B. was neglected. The court additionally found that there was an immediate and urgent necessity to support the removal of H.B. from the home and concluded that H.B. should be placed in shelter care and granted temporary custody to DCFS.

¶ 7 On October 7, 2020, the trial court held the adjudicatory hearing. Lemont was not present or represented by counsel. On October 14, 2020, the trial court entered an adjudicatory order finding that H.B. was a neglected minor by clear and convincing evidence, and that it was in her best interest to remain in DCFS's custody.

¶ 8 DCFS filed its dispositional report on October 30, 2020. DCFS reported that Destinee was then in the Jackson County jail, while Lemont was in the Williamson County jail. Integrated assessments had not been completed for either parent. DCFS reported that Lemont purportedly used methamphetamine when not in jail. On October 1, 2020, H.B. was screened and found to be

[3]A.J. was born on March 2, 2018, is H.B.'s older sister, has a different biological father, and is not part of this appeal.

age appropriate in all developmental areas. The permanency goal was to return H.B. home within 12 months.

¶ 9 On November 9, 2020, Destinee filed an appointment of short-term guardian for H.B., which designated her mother, Angela, as H.B.'s guardian. The date of this appointment was January 20, 2020.

¶ 10 The dispositional hearing was set for December 9, 2020. Lemont was not present and was not represented by counsel. Because Destinee's attorney had recently filed a motion to withdraw and new counsel had not yet been appointed, the trial court continued the dispositional hearing. On December 31, 2020, DCFS filed a status report, documenting that on September 14, 2020, Lemont wrote a letter to DCFS signing guardianship of H.B. over to Destinee's mother, Angela.

¶ 11 The dispositional hearing was held on January 20, 2021, by Zoom. Lemont was not present or represented by counsel. The court adjudicated H.B. as a neglected minor, and placed guardianship and custody of H.B. with DCFS.

¶ 12 On May 7, 2021, DCFS filed a permanency hearing report and reported that Lemont was incarcerated and had not participated in an integrated assessment interview. On May 18, 2021, the trial court held a permanency hearing by Zoom. The record does not contain a transcript of this hearing. The court's permanency order dated May 25, 2021, indicates that parties who were present were "indicated" in the order. Under the category of "Father," there is no name, and the order simply states "incarcerated." The order also states that "Father" has no attorney. The court maintained the permanency goal of return home within 12 months.

¶ 13 The trial court held its next permanency hearing on October 19, 2021, by Zoom. The trial court stated on the record that Lemont was not present. The State requested the trial court's permission "to publish on the dad *** who is presently in prison and any other dads whose

whereabouts are unknown." The caseworker "Krydzinsky" then stated: "We'll look at getting someone to go to Menard Correctional Center to see [Lemont], see if he will sign the surrenders." Then, Destinee's mother, Angela, stated to the court that Lemont "agreed to sign surrenders." The trial court then stated that it would have DCFS make the arrangements to obtain the surrenders and granted the State's request for service by publication upon Lemont and any other potential fathers. The permanency order dated October 21, 2021, again indicated that "Father" is incarcerated, and that he had no attorney. On that date, the trial court modified the permanency goal to substitute care pending the court's determination on termination of parental rights.

¶ 14 On October 21, 2021, the State filed a petition for termination of parental rights. The State alleged that Lemont was an unfit person for the following three reasons: (1) he had failed to maintain a reasonable degree of interest, concern, or responsibility as to H.B.'s welfare (750 ILCS 50/1(D)(b) (West 2020)); (2) he had failed to make reasonable progress toward the return of H.B. during any nine-month period following the adjudication of neglect, and specifically between January 1, 2020, and September 30, 2021 (*id.* § 1(D)(m)(ii)); and (3) that Lemont was then incarcerated and had little or no contact with the child and that his incarceration will prevent the parent from discharging his parental responsibilities for the child[4] for a period in excess of two years after the date the petition for termination of parental rights was filed (*id.* § 1(D)(r)).

¶ 15 On November 16, 2021, the trial court held its next permanency hearing. The order entered on November 17, 2021, and filed on December 1, 2021, indicated that Lemont was not present or represented by counsel. The court changed the permanency goal for H.B. to substitute care pending the court's determination on the petition for termination of parental rights and continued custody and guardianship of H.B. with DCFS.

[4]The child referenced in this allegation of unfitness was A.J., not H.B.

¶ 16 On November 23, 2021, an attorney entered his appearance on behalf of Lemont. On December 2, 2021, a certificate of publication from the Carbondale Times was filed, disclosing the legal notice and publication date of November 26, 2021. Lemont B. was included in this published legal notice, which indicated that a hearing on the State's petition to terminate parental rights would be heard on December 14, 2021. For reasons unclear from the record, the hearing was rescheduled for January 25, 2022. The court entered an order of *habeas corpus*, directing the Menard Correctional Center and/or the Jackson County Sheriff's Department to produce Lemont before the court on January 25, 2022. On January 20, 2022, the trial court changed the hearing date to February 15, 2022, and entered a new *habeas corpus* order.

¶ 17 On February 15, 2022, Destinee and Lemont both filed a final and irrevocable consent to H.B.'s adoption by Angela. The terms of the consent form Lemont signed indicated that he entered his "appearance in this action for my child to be adopted by the person or persons specified herein by me and waive service of summons on me in this action only."

¶ 18 On February 15, 2022, the trial court held the fitness hearing and entered an order finding that "any and all unknown fathers" were unfit by clear and convincing evidence. Although the order indicates that testimony was heard, the record contains no transcript of this hearing. The order indicates that Destinee and Lemont had surrendered their parental rights to H.B.

¶ 19 On February 28, 2022, the trial court entered its best interest order finding that it was in H.B.'s best interest to terminate the parental interests of "any and all unknown fathers." Again, the order indicates that testimony was heard, but the record contains no transcript of the best-interest hearing. This order also indicates that Destinee and Lemont had surrendered their parental rights to H.B.

¶ 20 On July 11, 2022, DCFS filed a permanency hearing report, indicating that Lemont had made neither satisfactory progress nor reasonable efforts in this case. DCFS confirmed that when Lemont signed the final and irrevocable consent to H.B.'s adoption by Angela, his parental rights were terminated. DCFS reported that H.B. was then three years old, was defiant, would not follow directives, was developmentally behind for her age, and had serious behavioral issues. DCFS referred H.B. for care with Centerstone. DCFS also noted that in June 2021, Angela had been "indicated" for a substantial risk of physical injury and an environment injurious to H.B.'s health and welfare by neglect. The recommended permanency goal for H.B. was adoption.

¶ 21 The trial court held a permanency hearing on July 12, 2022, by Zoom. Angela testified that H.B. had an appointment for behavioral services. DCFS indicated that a child and family team meeting would soon be set up and would include Angela. The July 14, 2022, permanency order confirmed that the permanency goal was adoption.

¶ 22 On August 17, 2022, Angela filed a motion to intervene in H.B.'s case, asking the court to grant her guardianship of H.B. On October 6, 2022, Angela filed an addendum to her motion to intervene stating that on October 4, 2022, DCFS removed H.B. from her care "without just cause, and without giving [her] any stated reasons for said removal." She asked the trial court to return H.B. to her care.

¶ 23 On October 25, 2022, DCFS filed a permanency hearing report. DCFS indicated that Lemont was then incarcerated in Menard Correctional Center for aggravated unlawful use of a weapon and possession of a controlled substance. Lemont had no contact with H.B. Because DCFS removed H.B. from Angela's care, Lemont's parental rights to H.B. had now been reinstated.[5]

[5]Lemont executed his directed consent in this case by which he agreed to H.B.'s standby adoption by a specified person—Angela Ray, which consent is only valid as to the person specified. 750 ILCS 50/10(A-1)(2) (West 2020). Once DCFS removed H.B. from Angela's care, Angela could not adopt her pursuant to the directed consent, and Lemont's parental rights were reinstated.

DCFS reported that Angela's home was filthy and infested with roaches. Angela had not taken H.B. to any form of school, reduced her monthly therapy sessions, was not following DCFS recommendations, and would not allow DCFS into her home. H.B. was now in a traditional foster placement, was enrolled in Head Start, and was receiving behavioral therapy and seeing a physician. DCFS also reported that the foster parents gave a 14-day notice on October 22, 2022, to DCFS to have H.B. and her sister A.J. removed from their home "due to being unable to bear the stress of the girls' behaviors."

¶ 24 On November 1, 2022, the trial court held a hearing on Angela's motion to intervene. Angela testified that she was the grandmother of H.B. and A.J. and that she had filed the motion to "be heard." She stated that she had been the "foster parent" for more than one year, but that the children were removed from her care, and she was appealing that decision. The guardian *ad litem* called the caseworker supervisor, Lisa Gentry-Britton, who testified that she was familiar with the children and with Angela and her home. On March 2, 2022, when a previous caseworker went to meet H.B. and A.J., the girls slapped the caseworker in the face. The girls had not been enrolled in any educational program as mandated by DCFS. Moreover, Angela had an adult son living in the house who she refused to produce for an interview or fingerprints. DCFS ascertained that Angela's son had mental health diagnoses that she had not disclosed. DCFS informed Angela that her son could not babysit the children, but she was allowing him to do so. DCFS also reported that Angela was sharing medication with the children. When the children were enrolled in an educational program, they attended less than 25% of scheduled school days. Ultimately, due to ongoing concerns about the educational, medical, and psychological needs of the children, DCFS determined that the best interest of H.B. and A.J. required their removal from Angela's care. The State contested Angela's petition to intervene despite the fact that she had been the foster parent

for the children for more than a year, because DCFS had "removed the minor from the foster parent because of a reasonable belief that the circumstances or conditions of the minor are such that continuing in the residence or care of the foster parent will jeopardize the child's health or safety or present an imminent risk of harm to the minor's life." See 705 ILCS 405/1-5(2)(c) (West 2020). At the conclusion of the hearing the trial court denied Angela's petition to intervene.

¶ 25 On November 14, 2022, DCFS filed its next permanency hearing report. H.B. and A.J. were placed in a different traditional foster placement and were doing well. The foster mother was a behavioral analyst, and the foster father was a teacher. H.B. was sleeping through the night and was bathed daily. The trial court held a permanency hearing on November 15, 2022, and entered an order on November 16, 2022, which maintained the permanency goal as substitute care pending determination of termination of parental rights, and continued custody and guardianship of H.B. with DCFS.

¶ 26 On January 10, 2023, the State filed a supplemental petition for termination of parental rights, in which the allegations of the original petition were repeated. The trial court held a hearing on that date at which Lemont was present by video and represented by counsel. During the hearing, Lemont stated that he did not understand the allegations of the petition. The trial court attempted to explain the process to Lemont and told him that he would be able to consult with his attorney before the fitness hearing.

¶ 27 On February 21, 2023, Lemont's attorney filed a motion to continue the fitness hearing because Lemont was submitting his mother and his sister as potential placements for H.B. since DCFS removed Angela as H.B.'s caretaker. On February 22, 2023, the trial court denied the motion to continue.

¶ 28 The trial court held the fitness hearing on March 28, 2023. In his opening statement, Lemont's attorney again asked for a continuance, stating that Lemont was asking the court to consider familial placements for H.B. The State indicated that it would not object. Lemont's attorney clarified that he was asking the court to continue the best-interest hearing, which could provide the time necessary for DCFS to consider the suggested familial placement. The court then proceeded with the fitness hearing.

¶ 29 The State called Amanda Holbrook, a child welfare specialist, who had been the caseworker since August 8, 2022. Holbrook testified that H.B. had been in DCFS care since July 18, 2020. She stated that Lemont has been incarcerated since 2020, and Destinee has been incarcerated since 2021. Holbrook testified that Lemont completed an integrated assessment, but due to his incarceration he had completed no services. Although recently incarcerated, Lemont had not had significant contact with H.B. before he went to prison. Lemont's projected release date was 2030.

¶ 30 Lemont testified that he was currently incarcerated in Menard Correctional Center, which began on May 16, 2020. Prior to incarceration, Lemont testified that he lived with Destinee and H.B. and was involved in her daily care. He stated that he attempted to contact H.B. from prison but was unsuccessful. Lemont was then participating in a program at Menard called Inside Out Dads to learn life and social skills.

¶ 31 At the conclusion of the hearing, the trial court found that Lemont was an unfit person for the following two reasons: (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to H.B.'s welfare (750 ILCS 50/1(D)(b) (West 2020)); and (2) he had little to no contact with H.B. prior to his incarceration and that the incarceration would prevent him from

discharging his parental responsibilities for a period in excess of two years after the filing of the petition (*id.* § 1(D)(r)).

¶ 32 On October 23, 2023, the trial court held the best-interest hearing. The State called three witnesses—DCFS caseworker Amanda Holbrook and both foster parents.

¶ 33 Amanda Holbrook testified that she had been assigned to this case since August 2022, and that during that time she had met with H.B. and her sister, A.J., more than 12 times. She stated that for the past year, both girls have been living in a traditional foster home in northern Illinois. She stated that the home was "gorgeous" with three bedrooms and two bathrooms. She testified that she had witnessed interactions between the girls and the foster parents in this home, and that there were no problems. She described the family as "normal." Both girls were then in school. H.B. was then 4½ years old and enrolled in preschool. Holbrook testified that H.B. was doing well in school and was at or above average in her class. Both girls were involved in dance classes, and the foster parents took them to area museums. While the girls came into this foster home with behavioral disorders, both were doing much better. She stated that the foster parents have expressed their intent to continue to serve as foster parents to the two girls, and if allowed, to adopt them. H.B. had never mentioned her father. Holbrook indicated that the DCFS goal for H.B. was permanency, which the foster parents were willing and able to provide. Overall, Holbrook testified that the children were stable, and that their physical and mental health had improved in this foster care setting. She had spoken to both girls about where they wanted to live, and both girls stated that they wanted to stay in their current home with their foster parents. On cross-examination, Holbrook stated that there was an extended family on the foster father's side, including grandparents. Regarding mental health, Holbrook testified that the children came into foster care having

experienced trauma and required mental health care. As of the date of Holbrook's testimony, neither child required mental health care.

¶ 34 The State next called Andrew L., the current foster father, to testify. He stated that H.B. and A.J. came to their home on October 26, 2022. When the girls arrived, their hair was "in tatters," and their bodies were covered in bumps that were medically diagnosed as scabies. Both girls received medical examinations and treatment for the scabies, which improved. H.B. was diagnosed with an iron deficiency and began taking supplements. Andrew testified that his relationship with H.B. was "beautiful." He stated that when she arrived, she was dependent upon her older sister, but as time passed, she had begun to trust herself more. Andrew testified that upon arrival, the girls referred to him as "dad," but that he did not know if they really knew "the gravity" of that term given their history. However, he indicated that he took the role and title very seriously, stating, "For the rest of my life I will do everything I possibly can to give the girls the absolute best." The girls were enrolled in ballet classes and gymnastics. H.B. was then enrolled in preschool. There were approximately 12 to 16 children in her class, and she had made many friends. He also testified that H.B. indicated her desire to continue living with Andrew and his wife. He testified that if the opportunity to adopt the girls was made available, he would immediately file the necessary paperwork.

¶ 35 The State also called Nicole L., the foster mother, who testified that she, Andrew, and the two girls were always together if the girls were not at school. Nicole stated that she was from Savannah, Georgia, and that she had already taken the girls there to meet the extended family, to see the South, and to go to the ocean. She confirmed that the girls were in dance and gymnastic classes, and that soon they would be enrolled in swimming lessons. The girls were previously enrolled in summer camp opportunities that included soccer. Nicole stated that H.B. had made

friends at preschool. She testified that when the girls first arrived, they were frequently mean to each other. H.B. was prone to crying and would bite, slap, and scratch her sister. After much work, the girls were now best friends. Nicole testified that she is a former special education teacher and is currently a board-certified behavior analyst for children and adults with autism and is also a certified mental health therapist. At that time, she was working on a Ph.D. in infant early child development.

¶ 36 Lemont testified on his own behalf at the best-interest hearing, stating that he had originally given his permission for H.B. to be adopted by Angela, H.B.'s grandmother. After learning that H.B. was removed from her care, he contacted his sister, Montana B., and his mother about possibly providing a home for H.B. He testified that he had reached out to the supervisor at DCFS multiple times about this possibility. "I've been trying from my standpoint, me being incarcerated, trying to do what I can as a father while behind bars." Lemont also called Angela to testify. She stated that H.B. had been in her care even before she was officially designated as a familial foster parent. She stated that she had not seen H.B. since DCFS removed her from the home. She could not provide information about how H.B. was currently doing.

¶ 37 At the conclusion of the hearing, the trial court noted that H.B. was physically safe, happy, and doing well in her foster placement. The court acknowledged that while H.B. had only been in her current foster home for one year, given her young age, that year was a lengthy period in a child's development. The court noted that it had heard nothing but positive improvement for H.B. during that year. The court found that any change to the current placement would have a significant detrimental impact on H.B. After consideration of all statutory and other relevant factors, the trial court found by a preponderance of the evidence that it was in H.B.'s best interest to terminate Lemont's parental rights. The court placed H.B. in the guardianship of DCFS with the authority to

place the children and consent to adoption. The court also modified the permanency goal for H.B. to adoption.

¶ 38 II. ANALYSIS

¶ 39 A. Personal Jurisdiction

¶ 40 On appeal, Lemont first contends that the trial court did not have personal jurisdiction over him because he was never served with process. Although the trial court authorized service on Lemont by publication, we agree that this decision defied logic as it was known by the attorneys representing the State, as well as by DCFS staff, that Lemont was first in the Williamson County jail, and was later sent to Menard Correctional Center. Because Lemont raises this issue for the first time on appeal, the State argues that Lemont is either barred by the doctrine of *laches* or has waived his right to dispute jurisdiction by his participation in this case absent personal service.

¶ 41 Whether a trial court obtained personal jurisdiction is a legal question reviewed on a *de novo* basis. *In re Dar. C.*, 2011 IL 111083, ¶ 60 (citing *In re Detention of Hardin*, 238 Ill. 2d 33, 39 (2010)). If the court lacks personal jurisdiction over a party, "any order entered in the matter is void *ab initio* and, thus, may be attacked at any time." *In re M.W.*, 232 Ill. 2d 408, 414 (2009).

¶ 42 The Juvenile Court Act of 1987 (Act) provides the service of process procedure for a parent. See 705 ILCS 405/2-15, 2-16 (West 2020). After a petition is filed, the trial court is required to issue a summons with a copy of the petition attached. *Id.* § 2-15(1). This summons must be served "by any county sheriff, coroner or probation officer" by leaving a copy with the person named in the summons, or by leaving a copy at his or her usual place of abode with a family member or with any person who lives at the address and is over the age of 10, and then mailing a copy to the person named in the summons. *Id.* § 2-15(4), (5). The statute mandates that personal service must be made at least three days before the scheduled hearing. *Id.* § 2-15(5).

¶ 43 The Act provides two alternatives if personal service cannot be obtained—service by certified mail if personal service was not made "within a reasonable time or if it appears that any respondent resides outside the State" (*id.* § 2-16(1)) or service by publication (*id.* § 2-16(2)). The Act contains specific guidelines for when and how service by publication can be utilized:

> "Where a respondent's usual place of abode is not known, a diligent inquiry shall be made to ascertain the respondent's current and last known address. The Department of Children and Family Services shall adopt rules defining the requirements for conducting a diligent search to locate parents of minors in the custody of the Department. If, after diligent inquiry made at any time within the preceding 12 months, the usual place of abode cannot be reasonably ascertained, or if respondent is concealing his or her whereabouts to avoid service of process, petitioner's attorney shall file an affidavit at the office of the clerk of court in which the action is pending showing that respondent on due inquiry cannot be found or is concealing his or her whereabouts so that process cannot be served. The affidavit shall state the last known address of the respondent. The affidavit shall also state what efforts were made to effectuate service. *** [T]he court may not enter any order or judgment against any person who cannot be served with process other than by publication unless notice by publication is given or unless that person appears." *Id.*

¶ 44 Section 2-16(2) of the Act "contemplates a trial court obtaining personal jurisdiction through service by publication *only* when the State has conducted a diligent inquiry to ascertain the respondent's location and last known address." (Emphasis in original.) *In re Dar. C.*, 2011 IL 111083, ¶ 64. Our legislature did not define the term "diligent inquiry." *Id.* ¶ 65. The Illinois Supreme Court in *In re Dar. C.* quoted caselaw and a dictionary in stating that the standard for a diligent inquiry was " 'that kind of search or investigation which a diligent person, intent on

ascertaining a fact, would usually and ordinarily make' " (*id.* (quoting *In re Sheltanya S.*, 309 Ill. App. 3d 941, 956 (1999))) and " 'characterized by steady, earnest, attentive, and energetic application and effort in a pursuit' " (*id.* (quoting Webster's Third New International Dictionary 633 (1993))). The Illinois Supreme Court concluded in *In re Dar. C.* that the State failed to make a diligent inquiry by merely entering the respondent's name into various computer databases and then mailing letters to addresses located in the databases, and thus, service by publication was inappropriate.

¶ 45 As discussed recently by this court in *In re C.K.*, 2023 IL App (5th) 230012, ¶ 42, DCFS has adopted a procedural manual on the topic of diligent searches, which provides specific directions for this diligent search if service by publication is ultimately necessary. Here, there is no question that DCFS failed to comply with its own procedures before serving Lemont by publication. From almost the beginning of this case, the State and DCFS were aware that Lemont was in the Williamson County jail. By December 2, 2021, when the certificate of publication was filed, Lemont was then listed as being in the Menard Correctional Center, having been admitted on August 3, 2021.[6] If DCFS had followed its own procedures, in-person service was possible in either Williamson County jail or Menard Correctional Center. Thus, we find that the State's attempted service of Lemont by publication was improper. However, this finding does not end our inquiry. We now address the State's argument that Lemont's attack on the adjudicatory and dispositional orders is prohibited by *laches* and/or waiver.

[6]See https://idoc.illinois.gov/offender/inmatesearch.html. Lemont's custody date is listed as May 16, 2020, on the most recent of the two charges for which he was sentenced to prison. His date of incarceration with the Illinois Department of Corrections is listed as August 3, 2021.

¶ 46 1. *Laches*

¶ 47 *Laches* is an equitable defense that serves to bar a party's request for relief when that party unreasonably delayed seeking that relief and that delay prejudiced the rights of the other party. *People ex rel. Department of Human Rights v. Interstate Realty Management*, 2022 IL App (5th) 210161, ¶ 38 (citing *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 51). "Unlike a statute of limitations, *laches* is more than a mere passage of time 'but principally a question of the inequity of permitting the claim to be enforced, an inequity founded upon some change in the condition or relation of the property and parties.' " *Kampmann v. Hillsboro Community School District No. 3 Board of Education*, 2019 IL App (5th) 180043, ¶ 15 (quoting *Pyle v. Ferrell*, 12 Ill. 2d 547, 552 (1958)).

¶ 48 The State must establish *laches* by a preponderance of the evidence. *O'Brien v. Meyer*, 281 Ill. App. 3d 832, 834 (1996). It is not enough for the State to assert *laches* merely based on a delay. *Osler Institute, Inc. v. Miller*, 2015 IL App (1st) 133899, ¶ 23. The defense of *laches* depends upon the facts and circumstances of each case. *Interstate Realty Management*, 2022 IL App (5th) 210161, ¶ 39 (citing *Tillman v. Pritzker*, 2021 IL 126387, ¶ 25). To successfully use *laches*, the State must both show that Lemont lacked diligence in presenting his claim and the State was prejudiced because of the delay. See *Osler Institute, Inc.*, 2015 IL App (1st) 133899, ¶ 23 (citing *Mo v. Hergan*, 2012 IL App (1st) 113179, ¶ 36). The doctrine of *laches* has been applied in parental rights cases. See *In re Jamari R.*, 2017 IL App (1st) 160850; *In re Adoption of Miller*, 106 Ill. App. 3d 1025 (1982); *Rodriguez v. Koschny*, 57 Ill. App. 3d 355 (1978).

¶ 49 In *In re Jamari R.*, the father's identity was unknown at the beginning of the State's case. *In re Jamari R.*, 2017 IL App (1st) 160850, ¶ 6. The "unknown fathers" were served by publication. *Id.* The adjudicatory hearing was held on November 2, 2007, and the dispositional

hearing was held on September 18, 2008. *Id.* ¶¶ 9-10. In February 2014, the State filed its motion to terminate parental rights. *Id.* ¶ 11. At the hearing on the petition, the mother indicated that Keith B. could be the father. *Id.* ¶ 12. The State was granted leave to serve Keith B., and the trial court entered an order for parentage testing. *Id.* ¶¶ 12, 14. The hearing on the State's motion to terminate was held and Keith B.'s parental rights were ultimately terminated in February 2016. *Id.* ¶ 35. Keith B. appealed, arguing that because he was not served, the adjudicatory and dispositional orders were void. *Id.* ¶ 36. In a petition for rehearing of the appellate court's order, the doctrine of *laches* was raised, and the court stated that if *laches* was applied, there would be no need to determine if the adjudication and dispositional orders were void for lack of personal jurisdiction. *Id.* ¶¶ 37, 50. In stating that *laches* could be invoked to preclude Keith B.'s assertion of parental rights, the court noted: " ' "A rule that an individual's right to set aside a judgment entered without jurisdiction over him cannot be cut off by lapse of time (assuming there is such a rule) does not and should not apply to the case where interests exist superior to those of the party whose rights are terminated.' ' " *Id.* ¶ 53 (quoting *In re Adoption of Miller*, 106 Ill. App. 3d at 1030-31, quoting H. Clark, Domestic Relations § 18.10, at 667 (1968)). The orders that result from a parental termination or adoption process are unique because the orders involve "the life of someone other than the contending parties, the child." (Internal quotation marks omitted.) *Id.* "Consideration of whether *laches* applies is indispensable to a just resolution of this appeal because of the superior interests involved." *Id.* ¶ 54. The circumstances of a case involving a child "illustrate the reasonable need to apply [*laches*] to prevent a serious disruption of a stable family unit." *Rodriguez*, 57 Ill. App. 3d at 361-62.

¶ 50 We conclude that the State has established the defense of *laches* in this case. Although Lemont was not personally served, he was aware of, and participated in, this case. The petition

was filed on July 20, 2020. Lemont's participation in this case began when he filed a notarized letter with the court dated September 14, 2020, by which he intended to sign guardianship of H.B. to Angela. An attorney was appointed to represent Lemont on November 16, 2021, and on February 15, 2022, Lemont and his attorney appeared in court. He failed to raise any jurisdictional argument concerning the adjudicatory and dispositional orders at this court appearance. At this hearing, the court confirmed that Lemont understood the paperwork presented and Lemont signed his final and irrevocable consent to H.B.'s adoption by Angela. Counsel was reappointed for Lemont on November 15, 2022, after H.B. was removed from Angela's home. The State served Lemont's attorney with the amended petition to terminate his parental rights. Lemont appeared at the first hearing after the petition was filed via Zoom and his attorney appeared on his behalf in the courtroom. On March 28, 2023, Lemont and his attorney were present in court at the fitness hearing. On October 23, 2023, Lemont and his attorney were present in court for the best-interest hearing. At no point during the proceedings in the trial court did Lemont raise an issue about the trial court's jurisdiction regarding the adjudication and dispositional orders. We conclude that the State has established that Lemont lacked diligence in presenting his claim under the factual circumstances of this case. *Osler Institute, Inc.*, 2015 IL App (1st) 133899, ¶ 23. Moreover, we must consider the prejudice that would result to H.B., who has been stable and thriving in her current foster home. H.B. had not seen Lemont for an extended period, and the case had been open for more than three years. H.B. was attached to her foster parents and had expressed her desire to continue to stay with them. We find that the State has established prejudice by Lemont's lack of diligence in raising this jurisdictional issue and conclude that the State proved the *laches* defense by a preponderance of the evidence. *O'Brien*, 281 Ill. App. 3d at 834. Accordingly, we do not reach the merits of the State's alternate theory of waiver.

¶ 51 B. Termination of Parental Rights

¶ 52 Termination of a parent's rights involves a fundamental liberty interest. *In re Dar. C.*, 2011 IL 111083, ¶ 60 (citing *In re M.H.*, 196 Ill. 2d 356, 363 (2001)). The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2020)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2020)) provide the legal authority for the involuntary termination of parental rights in Illinois. *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 30 (citing *In re J.L.*, 236 Ill. 2d 329, 337 (2010)). Section 2-29 of the Juvenile Court Act provides the procedural basis for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2020). The process mandated involves two hearings. In the first hearing, the State must prove by clear and convincing evidence that the parent is an "unfit person" as defined by the Adoption Act. *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 30 (citing *In re A.J.*, 269 Ill. App. 3d 824, 828 (1994)); 750 ILCS 50/1(D) (West 2020). If the trial court finds that the parent is unfit, the case proceeds to a second hearing where the State must prove, by a preponderance of the evidence, that it is in the child's best interest that the parent's rights be terminated. *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 30 (citing *In re J.L.*, 236 Ill. 2d at 337-38); 705 ILCS 405/2-29(2) (West 2020).

¶ 53 When a parent appeals the trial court's findings that a parent is unfit and that terminating the parental rights is in the child's best interest, the appellate court must not retry the case but, instead, must review the trial court's findings to determine if the findings are against the manifest weight of the evidence. *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 31 (citing *In re A.W.*, 231 Ill. 2d 92, 104 (2008)). The reviewing court gives great deference to the trial court's finding of unfitness because the court had the best opportunity to view and evaluate the parties and their testimony. *Id.* (citing *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006)). Therefore, we do not reweigh the evidence or reassess the credibility of the witnesses on appeal. *Id.* (citing *In re M.A.*,

325 Ill. App. 3d 387, 391 (2001)). "A decision is contrary to the manifest weight of the evidence if the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence presented." *Id.* (citing *In re Vanessa K.*, 2011 IL App (3d) 100545, ¶ 28).

¶ 54 C. Fitness

¶ 55 We first review the evidence to determine if the State met its burden of proving, by clear and convincing evidence, that Lemont was an "unfit person." The trial court determined that the State met its burden of proof on the following bases: (1) that Lemont failed to maintain a reasonable degree of interest, concern, or responsibility as to H.B.'s welfare (750 ILCS 50/1(D)(b) (West 2020)); and (2) that Lemont is currently incarcerated; he had little or no contact with H.B. before he was incarcerated; and his incarceration will prevent him from discharging his parental responsibilities for H.B. for more than two years after the petition was filed (*id.* § 1(D)(r)).

¶ 56 1. *Reasonable Degree of Interest, Concern, or Responsibility*

¶ 57 The language used by our legislature in section 1(D)(b) of the Adoption Act is in the disjunctive, meaning that any one of the three separate segments—interest or concern or responsibility—"may be considered by itself as a basis for unfitness." *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 31 (citing 750 ILCS 50/1(D)(b) (West 2012); *In re Richard H.*, 376 Ill. App. 3d 162, 166 (2007)). To determine if a parent has shown a reasonable degree of interest, concern, or responsibility for a minor's welfare, the court "considers the parent's efforts to visit and maintain contact with the child as well as other indicia, such as inquiries into the child's welfare." *Id.* (citing *In re Daphnie E.*, 368 Ill. App. 3d at 1064. The court can also consider evidence that the parent completed his or her service plan as establishing the parent's interest, concern, or responsibility. *Id.* (citing *In re Daphnie E.*, 368 Ill. App. 3d at 1065). A parent's effort is more important than a parent's success with the service plan objectives. *Id.* (citing *In re Adoption of Syck*, 138 Ill. 2d 255,

279 (1990)). "In this regard, the court examines the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *Id.* (citing *In re Adoption of Syck*, 138 Ill. 2d at 278). "We are mindful *** that a parent is not fit merely because he or she has demonstrated some interest or affection toward the child." *Id.* (citing *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004)). Instead, the court must objectively assess whether the interest, concern, or responsibility is reasonable. *Id.* (citing *In re Daphnie E.*, 368 Ill. App. 3d at 1064).

¶ 58 Here, the trial court concluded that Lemont did not establish a reasonable degree of interest, concern, or responsibility toward H.B.'s return. At the beginning of this case, Lemont was in the Williamson County jail awaiting trial on felony charges. Thereafter, he was incarcerated at Menard. His estimated parole date is in 2030. Lemont has not been a part of H.B.'s life. At the time of the fitness hearing, the case had been pending for two years and eight months. H.B. was 15 months old when the case was opened, and there was no definitive testimony about the amount of time Lemont spent with H.B. during those 15 months. Lemont was in custody when this case began and had not visited H.B. while he was in jail or prison. The record does not contain service plan objectives for Lemont, and thus, no services were completed.

¶ 59 We must give great deference to the trial court's finding of unfitness as the court was able to evaluate the demeanor and testimony of Lemont and child welfare specialist Amanda Holbrook. *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 31 (citing *In re Daphnie E.*, 368 Ill. App. 3d at 1064). Accordingly, the trial court's finding of unfitness is not contrary to the manifest weight of the evidence. *In re M.I.*, 2016 IL 120232, ¶ 21; *In re Za. G.*, 2023 IL App (5th) 220793, ¶ 31 (citing *In re A.W.*, 231 Ill. 2d at 104).

¶ 60 2. *Incarceration Preventing Discharge of Parental Responsibilities*

¶ 61 As Lemont was incarcerated on the date of the fitness hearing and was not eligible for parole until 2030, there was no question that he was incapable of discharging parental responsibilities. The trial court's finding that Lemont was unfit on this basis was also not contrary to the manifest weight of the evidence.

¶ 62 D. Best Interest

¶ 63 Termination of a parent's rights is a difficult and final step. *In re Adoption of Syck*, 138 Ill. 2d at 274-75. Parents maintain the important right to raise their own children. *Id.* However, when a parent has been declared "unfit," "the parent's rights must yield to the child's best interest." *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002); *In re J.L.*, 236 Ill. 2d at 337-38. The interests of the parent and the child remain concurrent "to the extent that they both 'share a vital interest in preventing erroneous termination of their natural relationship' " until the court declares that the parent is unfit. *In re D.T.*, 212 Ill. 2d 347, 363 (2004) (quoting *Santosky v. Kramer*, 455 U.S. 745, 760-61 (1982)).

¶ 64 At the best-interest hearing, the State must establish proof that termination of a parent's rights is in the child's best interest by a preponderance of the evidence. 705 ILCS 405/2-29(2) (West 2022); *In re D.T.*, 212 Ill. 2d at 366. We review the trial court's best-interest decision with the manifest weight of the evidence standard. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009); *In re S.J.*, 368 Ill. App. 3d 749, 755 (2006). A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *In re Daphnie E.*, 368 Ill. App. 3d at 1072. On appeal from an order terminating a parent's rights, the reviewing court gives great deference to the trial court's decision because the

trial court was in a much better position to see the witnesses and judge their credibility. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000).

¶ 65 "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d at 364. The trial court must analyze several factors within "the context of the child's age and developmental needs" when considering if termination of parental rights serves a child's best interest. 705 ILCS 405/1-3(4.05) (West 2022). Those factors include:

> "(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; and

(j) the preferences of the persons available to care for the child." *Id.*

The trial court is not required to make an explicit finding on each of the best-interest factors. *In re Ca. B.*, 2019 IL App (1st) 181024, ¶ 33 (citing *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19); *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43 (citing *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991)). Another factor the trial court may consider is the likelihood of adoption. *In re Tashika F.*, 333 Ill. App. 3d at 170.

¶ 66 During the best-interest hearing, child welfare specialist Amanda Holbrook testified that H.B. was thriving in her foster placement, was in school, in extracurricular activities, and her earlier behavioral issues were no longer a concern. She was placed with her older sister, A.J. If allowed, the foster parents planned to adopt both girls. H.B. had expressed her desire to remain with her foster parents. Although H.B. had only been in this foster home for one year, she was fully bonded.

¶ 67 The trial court carefully reviewed and considered all best-interest factors before concluding that termination of Lemont's parental rights was appropriate. The record clearly establishes that termination of Lemont's parental rights was the appropriate outcome for H.B. We conclude that the trial court's decision to terminate Lemont's parental rights was not contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002).

¶ 68 III. CONCLUSION

¶ 69 For the foregoing reasons, we affirm the judgments of the circuit court of Jackson County finding that Lemont was an unfit parent, and that the best interest of H.B. required the termination of his parental rights.

¶ 70 Affirmed.