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I. BACKGROUND

¶ 4 Tyler is the biological father of Donald B., born May 8, 2010. On April 7, 2020, Donald's biological mother, Meliah McKenzie, and her husband, Zachary McKenzie, petitioners herein, filed a petition for adoption of Donald. The petition alleged that they believed Tyler would consent to the adoption but if he did not, alternatively pled that Tyler evidenced his intent to forgo his parental rights as evidenced by his failure to: (1) visit the minor child since February 22, 2019; (2) communicate with the child, although able to do so and not prevented by any agency or court order; or (3) maintain contact with or plan for the future of the minor child although physically able to do so. The petition further alleged that Tyler failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor child's welfare. Tyler was served with a summons on June 8, 2020, and a guardian *ad litem* (GAL) was appointed on September 3, 2020.

¶ 5 On May 3, 2021, Tyler filed a response to the petition denying a willingness to consent to the adoption. He further claimed that his inability to visit, communicate, or maintain contact was due to impediments caused by petitioners.

¶ 6 The fitness hearing was held on January 13, 2022. Petitioners called seven witnesses to testify. The first witness, Clarendia Taylor, was Donald's first grade teacher. She stated that when Donald was her student in the 2016-2017 school year, there were times when Donald would have behavioral issues. Ms. Taylor stated that she continued to maintain contact with Donald after he left her class and would see him daily since it was a small school. She would see him in the hall or, when she was assistant principal, in her office if behavior issues arose. She stated that in the three years following Donald's completion of first grade, she never had contact with or communicated with Tyler. She stated that if there was ever an issue with Donald, she would contact petitioners. She did not know or recognize Tyler.

¶ 7 Candace Freeman, the principal at Donald's school, testified that she talked to Donald daily in the hallway. She stated there were also occasions when Donald had behavioral issues and she would see him in her office. When she was required to contact Donald's parents, she would contact petitioners. She did not know Tyler and was unaware of Tyler ever contacting her, or any of her staff. She reviewed Donald's file prior to coming to court and stated there was nothing in the file that prohibited Tyler from being contacted by the school or contacting the school himself.

¶ 8 Lisa Leib, who is Donald's grandmother and Meliah's mother, stated that she and Donald had a very close relationship. She would see him between one and three times a week at her home, as well as at Meliah's house. She last communicated with Tyler in June 2018, when she was dropping Donald off at the agreed parenting time exchange location because petitioners had to work late. She did not see Tyler with Donald in 2019, 2020, or 2021. Tyler's last visit with Donald was in February 2019. She was unaware of any contact between Donald and Tyler at Christmas, Donald's birthday, or Easter in 2019, 2020, or 2021. Ms. Leib testified that she attended Donald's school related functions which included his basketball, track, and baseball events. She stated that she attended all of the functions and as long as Donald had been in school, she had never seen Tyler at any of Donald's functions or events.

¶ 9 Tyler was called as an adverse witness. He provided numerous addresses where he lived from the time of Donald's birth to the present, with the majority of those residences lasting about a year. He stated he also had a daughter who was nine years old, and last saw her in 2019 because he was recovering from a broken leg. He was currently unemployed and last worked in 2018.

¶ 10 Tyler stated that the last time he saw Donald was on February 22, 2019. There was a family case, previously in Edgar County, now in Vermilion County, that provided him with parenting time every other weekend. He stated the order therein establishing his parenting time remained in

effect to the best of his knowledge. He agreed there were no protective orders or other document that prohibited him from seeing Donald.

¶ 11 Tyler agreed that his leg was still injured when he had his last visitation. He admitted the injury was incurred from a car accident in which he also received a driving under the influence (DUI) ticket. He agreed that he lost the right to use his license as a result of the DUI conviction. He further admitted driving Donald in 2019 while his Illinois license was suspended.

¶ 12 When asked how many times he attempted to exercise parenting time with Donald, Tyler stated he was unable to or not allowed to see him. Tyler stated that on February 22, 2019, Zachary told him he was never to come back, and he would see him in court. After that, petitioners would not contact him and would not answer his messages, so he was not able to have any kind of contact with Donald or them. Tyler testified that he sent a message in February or the first of March 2019, but it was ignored. He then drove up to the agreed exchange location the next weekend and no one was there. He stated he was driven there and did not personally drive. He agreed that after being denied parenting time, he did not make a police report or go to petitioners' home. He stated he was told to stay away from their house. He did not send anyone else to their house either because of the threats. He did try to reach them by telephone, but his calls were always ignored.

¶ 13 Tyler stated he had no proof of the messages or calls because he lost the phones containing the proof. He admitted that after the March 2019 attempt, he made no further attempt to go to the meeting point to pick up Donald, or to see Donald on his birthday or for Christmas in 2019, 2020, or 2021, stating "they would not allow me." The last time he attempted to reach out to Donald was on his birthday in 2020, but he had no proof.

¶ 14 Tyler stated that he regularly saw his son every other week in 2018 prior to his accident. He filed for disability following the accident and was declared disabled by the Social Security

Administration. Funds from his disability payment were attributed to his child support. He stated the disability stemmed from a double compound fracture of his left tibia and fibula. The fracture was treated surgically but the leg became infected, and he required wound vac care. On March 25, 2019, he found out his tibia never healed. He agreed this was around the time he stopped seeing Donald. He was non-weight bearing from April 2019 to July 2020. He had an E. coli bacterial infection in May 2019. Medical personnel put an antibiotic rod in his leg, and he had a PICC line for 30-40 days. He also had another surgery in which half the bone mass was removed from his leg. In July 2019, he underwent another medical procedure where the remainder of the bone mass was removed, and another antibiotic rod was implanted. Around Halloween 2019, the medical personnel were going to put the hardware back in his leg but found his leg was full of infection again. He was given the option to either have his leg amputated or have 4-6 inches of his tibia cut out and try to regrow it. In March 2020, he sought treatment from a different physician and was informed in July 2020 that he would not require an amputation. The delay in obtaining the information stemmed from a change in physicians and the outbreak of COVID. During the entire time Tyler stated he had weight-bearing issues and a lot of pain. He stated he could not work, could not hire an attorney, and had no means of transportation from February 2019 to July 2020. Tyler further stated that after February 2019, Meliah never responded to any of his communications; she never answered any phone call or responded to any text.

¶ 15 Tyler stated that in May 2020 he attempted to serve notice in the family case by putting it in petitioners' mailbox. Zachary was outside with Donald and his sister. As he stopped, Zachary started screaming and yelling at him obscenely, threatening him, and started to approach him. As he drove away, he yelled to Donald that he loved him, had not forgotten about him, and was coming for him. He did not stay because of his fear of Zachary physically confronting him.

¶ 16 Michael Remole testified that he was a licensed professional counselor and ran Gateway Family Services. He stated that he provided psychotherapy services for Donald from February 2019 until July 2020 to address Donald's emotional needs. The treatment stopped in July 2020, because Donald was doing very well. His outbursts at school and home decreased significantly.

¶ 17 Zachary also testified. He stated that he had a conversation with Tyler on February 22, 2019. He stated that Donald was not with him, and, at that time, told Tyler they knew he had been driving Donald with no driver's license, that he could not come and get Donald with no driver's license, and they would be taking him back to court. Tyler did not respond, and Zachary drove away. Zachary stated that both parties stayed in their vehicles, no foul language was used, and his voice was not raised. He stated the conversation lasted 30-40 seconds.

¶ 18 Zachary stated that he, Meliah, and Donald drove to the agreed exchange location twice more in March 2019 in case Tyler had a family member bring him. They waited approximately 20 minutes both times and left when Tyler did not appear. He stated that Meliah did not try to contact Tyler either time because Tyler would use different phone numbers to text and she did not have a valid, working number for him. Zachary testified that from February 2019 to May 2020, he never saw or heard Tyler reach out, try to have contact, or exercise his parenting time with Donald.

¶ 19 Zachary testified that he did not see Tyler again until May 2020 when Tyler drove up as he and the children were playing basketball. Zachary stated that Tyler opened the mailbox, slammed something in the box, and said he had been served. When Tyler was leaving the residence, he said he was coming to get Donald. Zachary testified that the children were terrified, and he told Tyler to keep driving. He averred that he did not raise his voice or walk towards the vehicle. He stated that the kids were in the garage when Tyler yelled at them, and Donald did hear Tyler's message.

¶ 20 Zachary was also unaware of any attempt by Tyler to exercise his parenting time after May 2020. Zachary was unaware of any Christmas presents, birthday presents, Easter presents, or any type of gift from Tyler or his family to Donald beginning in 2019. Nor was he aware of any letters or written correspondence that Tyler attempted to give to Donald. He stated he never denied the child a gift or communication from Tyler brought by a third party on his behalf. He confirmed that Meliah had the same telephone number since 2019 and they still did not have a working phone number for Tyler. Zachary confirmed that Tyler had not had a visit with Donald since February 22, 2019, and there was no visit on that date.

¶ 21 Meliah testified that she had two children: Donald and Macy. She married Zachary in 2016. She stated that she had the same cell phone number since 2012. She confirmed Tyler had the number and used it in the past. She stated she never blocked Tyler from her phone or her social media. She testified that the last time Tyler had parenting time was at the beginning of February 2019. The following weekend, she sent Zachary to meet Tyler to let him know that that they knew Tyler was driving without a driver's license, and they were not going to allow Tyler to continue to pick up Donald without a driver's license. She stated that she did not go to the meeting because she had issues in the past with Tyler and wanted to avoid a confrontation.

¶ 22 Meliah testified that she, Zachary, and Donald presented at the parenting time exchange location twice in March 2019. They waited for Tyler to appear for 20-30 minutes, but he did not appear. Meliah testified that she did not reach out to contact Tyler about the visitations because she did not have a valid phone number for Tyler at that time. After those two attempts in March 2019, they "decided to just not show up anymore." After Zachary and Tyler's meeting, Meliah did not hear from Tyler until March 17, 2020. At that time, she received a text message asking if he could have parenting time because his grandma was passing, and he wanted Donald to see his

grandma. Meliah did not respond to that message because it had been 13 months since Donald had seen Tyler and Donald was doing great. During that time period, Donald's behavior at home and school was greatly improved.

¶ 23 Meliah next received a text message from Tyler in April 2020. At that time, he texted "happy Easter." He did not request parenting time or communication with Donald at that time. She received another text on May 8, 2020, wishing Donald "happy birthday." The message did not request parenting time or visitation with Donald. She received no messages after May 8, 2020.

¶ 24 Meliah stated she was not at home when Tyler came by the house in May 2020. From February 2019 to the present, she never received any cards or mail from Tyler asking about Donald. She never received any gifts for Donald either directly from Tyler or through any of his family members. She never saw Tyler appear or express an interest in wanting to be involved in Donald's school events. She stated that she never told Tyler that she would not comply with his court-ordered parenting time. Meliah received a payment from Social Security for Donald in the fall of 2020. She stated Tyler was never current with his child support obligation and never offered to assist in any financial aspect with the child. He never purchased clothes, shoes, or anything of that nature. During the time period at issue, Donald never requested to communicate with Tyler.

¶ 25 On cross-examination, Meliah stated that she did not have Tyler's mother's phone number. She admitted receiving a text from her on May 8, 2020, telling Donald happy birthday but did not send anything after that time. She also confirmed, upon review of her interrogatories, that Tyler's happy Easter message also stated it would be nice if Meliah "grew up and let him have the minor child." Meliah stated that, when testifying, she forgot about the message from Tyler stating that his grandmother had passed. She did not think that was a significant issue for Donald because he was not close with his great-grandmother. She stated she knew that because "[h]e never talked

about her. He never mentioned her.” Meliah further stated that she never informed Tyler of any of Donald’s medical issues or his behavioral issues at school. She did not believe she had an obligation to tell Tyler these things because he never asked.

¶ 26 Meliah agreed that Tyler’s mother would occasionally pick up Donald. She stated she was familiar with the vehicle and did not look for that vehicle when she, Zachary, and Donald went to the drop off location in March 2019. She stated that the texts she received from Tyler came from different phones, so she did not know what number was his. She admitted she did not try to contact him on any of the numbers.

¶ 27 Thereafter, petitioners rested. Tyler requested a directed verdict, which was denied. Tyler then called four witnesses. The first was Montana Ilazi, who was a friend of Tyler’s grandmother and met Donald four years earlier. Tyler’s counsel then questioned Ms. Ilazi about events prior to February 2019, which drew objections from petitioners’ counsel. The trial court limited the questions to the period after February 2019 for the unfitness portion of the hearing and no further questions were asked of Ms. Ilazi.

¶ 28 Darla Redman, who was Tyler’s mother and Donald’s grandmother, testified that she communicated with Meliah after February 22, 2019, on the same telephone number she always had. Darla testified that she attempted to pick up Donald on the next visitation following the February 22, 2019, message from Zachary, in the same vehicle she previously used to pick up Donald. She stated that she waited 30 minutes, but no one showed. She returned two weeks later to pick up Donald, but no one was there that time either. She did not see Meliah, Donald, or Zachary. She stated that she sent a birthday text to Donald in May 2019. She texted happy birthday and told Donald she loved him. She stated there was no response to her text. She stated that she also texted Donald on his birthday in 2020. That text stated that she hoped and prayed that they

were all doing well during the pandemic and that she loved and missed Donald. She sent another text for his birthday in 2021. That text requested they tell Donald happy birthday, that she loved him, and how much she missed him.

¶ 29 Darla stated that her mother, Edith, was ill in 2020, and there was concern she was going to pass. She knew Tyler sent a message to Meliah with that information. No response to Tyler's message was received. Edith died in April 2021, and another attempt to communicate with Meliah was sent advising her of the passing. She stated that Donald was close to Edith.

¶ 30 Darla stated she did not try to contact Meliah when she waited to pick up Donald because Meliah never answered her phone calls or texts. She disputed counsel's claim that she was not there. Darla stated that other than three birthday messages, she had not reached out to communicate after February 2019 because Meliah would not answer anything she sent her. She stated she had copies of the texts on her phone in the car but did not have the proof at the hearing because she was not allowed to bring her phone into the courtroom.

¶ 31 Tyler's aunt, Deborah Martin, testified about Tyler and Donald's extended family. When Tyler's counsel asked if Donald was close to them, the court sustained petitioners' objection related to the applicable time frame. No further questions were asked of Ms. Martin.

¶ 32 Tyler provided additional testimony; however, the majority of it echoed his previous testimony regarding when he last saw Donald and the lack of response from Meliah to his text messages. He agreed that he had several different numbers and that his phone number might have changed once from February 2019 to March 2020. He stated that he took Donald to butcher hogs on his last visitation.

¶ 33 Tyler explained that the butchering of the hogs was a family event on his father's side. Many of his relatives were there. He stated that Donald had a blast but did not like the smell. Tyler

also testified that, in addition to the Social Security payment, his mother had been paying his child support since December 2019. Thereafter, Tyler rested.

¶ 34 The parties submitted written closing argument. On March 16, 2022, the circuit court issued its order finding that Tyler evidenced his intent to forego his parental rights as manifested by his failure for a period in excess of 12 months to visit the minor child since February 22, 2019. The court found that Tyler’s failure to act was “not caused by any circumstances which were beyond his control” and therefore found Tyler unfit. The court found petitioners failed to prove any of the remaining allegations of unfitness. A best interest hearing was scheduled for July 28, 2022.

¶ 35 On July 6, 2022, the GAL filed its report. The GAL’s report indicated that the GAL spoke with Meliah who provided information regarding her and Zachary, including their date of marriage and employers. Meliah advised the GAL that the Department of Children and Family Services (DCFS) investigated the family in 2012 and the claim was ultimately determined to be unfounded. Meliah stated that Tyler exercised his parenting time regularly until the end of 2015 and thereafter parenting time was sporadic at best. She told the GAL that Tyler lost his driver’s license at some point and had not tried getting Donald for a while. His last visit was in February 2019. In March 2020, he texted her asking if he could take Donald to his grandmother’s funeral. Meliah advised the GAL that she did not think it was appropriate since Donald had not seen Tyler in 13 months. She advised the GAL that Tyler was never current on child support and had not provided for Donald in any way.

¶ 36 The GAL report also noted that the GAL spoke to Tyler after a court hearing. At that time, Tyler was adamant that petitioners were keeping Donald from him, and he had not been able to see Donald since February 2019. He advised the GAL of his 2018 accident and leg injury. They

also spoke about the Vermilion County family case. The GAL noted that she reviewed that file and “noticed that from August 27, 2015, to March 24, 2020, there were no filings, no pleadings, no motions, and no court appearances by either party.” The report indicated that the GAL advised Tyler to provide her with any documentation, *i.e.*, texts, emails, letters, etc., and to contact her office to schedule a conference. Tyler advised that he tried calling her office but was never able to get through and could not leave a voicemail. He was assured that the voicemail worked and accepted messages.

¶ 37 The GAL’s report also indicated that the GAL met with Donald, separately from petitioners, on May 2, 2022. The GAL stated Donald was a sweet kid and talkative. They talked about school, what he liked to do for fun, his family, and his pets. He acknowledged that he last saw Tyler in 2019 and they went to a farm together. The GAL stated that Donald “seemed well adjusted and enjoyed talking about school and activities.”

¶ 38 The GAL’s report indicated that Tyler’s mom, Darla, contacted the GAL three times. She was advised that Tyler was the one that needed to call. Darla told the GAL that she did not know where he was and did not have a good phone number for him. She was emotional and worried about not being able to be in Donald’s life. She acknowledged that Tyler had struggled.

¶ 39 The GAL’s report also noted that Tyler contacted the GAL on July 1, 2022. At that time, he left a phone number with the GAL’s assistant. The GAL attempted to call Tyler on July 5, 2022, after he had called again. As of July 6, 2022, the date of the report, the GAL had not had a conversation with him other than after court on April 25, 2022. The GAL’s report noted that “[p]er the message left with my staff, he does not have a current address and was going to try to use his mom’s phone to call. He indicated to my staff that the reason he had not called me was due to his phone being stolen.”

¶ 40 The GAL found it “troublesome” that there was no contact between Tyler and her office from April 25, 2022, to July 1, 2022. The report noted that Tyler’s mother contacted the GAL’s office more than Tyler did. The report further noted that Tyler never provided the GAL with any documentation regarding his parenting time or attempts to communicate with Donald. After reviewing everything provided, speaking with Meliah, Zachary, and Donald, as well as the limited contact with Tyler, the GAL opined that it was in Donald’s best interest to finalize the adoption and terminate Tyler’s parental rights due to the “complete lack of interest, care, or concern” shown by Tyler from February 2019 to the present. This included any attempt to have a relationship with Donald or file anything with the court effectuating effort to establish and maintain a relationship with Donald.

¶ 41 The best interest hearing was held on July 28, 2022. Mary Remole, a 16-year school bus driver for Potomac Grade School, testified that she knew Donald from him riding her bus and his attendance at her church. She stated that from 2015 to 2019, Donald had anger issues towards other students on the bus and would have to sit behind her on the bus. She spoke with petitioners about the behavioral issues. After speaking with them, Ms. Remole came to realize that Donald’s behaviors correlated with the time when he would visit with Tyler. She remembered Donald’s behavior clearly because there was an issue in September 2017 when he was uncontrollable, and she had to get the principal on the bus. At that time, Donald was kicking and hitting his seat uncontrollably. She stopped the bus and tried to settle him down, but it did not work. Ms. Remole noticed changes in Donald in 2019, stating he was more relaxed and less stressful. He was happy. He looked relieved, like a burden off his shoulders. He would joke with her and talk with the kids more and, at that point, they were able to move Donald to a different seat. As to church visits, Ms. Remole noted that when the family was altogether, Zachary would sit with his arm around Donald

during the service. She stated that Donald called Zachary “dad.” Ms. Remole stated that she also saw the family at gatherings after church and when they volunteered at Hooves of Hope. She stated that when the September 2017 bus incident occurred, she called Zachary. He came to the school, talked to Donald, and tried to settle him down. She stated that she had never met Tyler and that Donald had a core group of friends that he talked, and hung out, with on the bus.

¶ 42 Randall Holden, a pastor at petitioners’ church, testified that petitioners and their children attended his church beginning in the fall of 2017 and were pretty regular attendees. Mr. Holden stated his son and Donald were in the same grade so he would see Donald at school and athletic events. They were in baseball and track together. Mr. Holden stated he attended at least 10 track events in 2022. He saw petitioners, as well as Meliah’s mom, at most of those events. He also recalled a Father’s Day event in 2022, which Zachary was unable to attend. He remembered Donald asking him if he could take a piece of pie home for his dad. When the family was in church, Zachary had his arm around Donald. He never saw anyone else proclaiming to be Donald’s father at any of the sporting events. He did not recall ever seeing Tyler at any of the events.

¶ 43 Meliah testified that Donald was five months old when she and Tyler separated, and that Tyler had sporadic contact with Donald after the separation. When the family case concluded, Tyler’s scheduled parenting time was every other weekend and every Wednesday. Tyler regularly exercised his weekend visitation but not the Wednesday parenting time. She stated his visitation was regular until 2015. He did not call or show up for four to five months. At some point toward the end of 2015, he reengaged in parenting time until February 2019.

¶ 44 She stated that she met Zachary in January 2012. They began living together in May 2012 and were married in October 2016. She stated that at first, Donald was very distant towards Zachary but started getting to know him. There were no separations or breakups between her and

Zachary. Zachary had been in Donald's life since he was 1½ years old. The longest she and Zachary had ever been away from Donald was one week for a vacation.

¶ 45 Meliah testified that from 2015 to 2019, Donald began developing behavioral issues. He was in kindergarten that year. He would have outbursts and hit and kick whatever was around him. This behavior continued through 2019. She stated that Donald received counseling from November 2018 to 2020. Meliah testified that the behavior would happen every other week, on the weekends that Donald went to Tyler's house. It would start on the Thursday before the weekend. He would be aggressive with everyone in the family. The behaviors started to decline in February and March 2019, the same time Tyler stopped having visitation.

¶ 46 Meliah testified that at no time between 2015 and 2019 did Tyler reach out to ask to be involved in Donald's school or therapy. Donald had no contact with Tyler after February 2019. She stated that Donald did not ask about Tyler. Meliah testified that Donald and Zachary's relationship was very loving. They would go on day dates together, work on cars, and get their hands dirty doing boy stuff. Zachary was present for all of Donald's milestones including walking, talking, potty-training, reading, and writing.

¶ 47 Meliah admitted that she did not contact Tyler to discuss any of Donald's behavior issues. Nor did she invite Tyler to participate in counseling with Donald. Meliah stated that she provided Tyler's information to the school but admitted the information did not include Tyler's telephone number or address. She also agreed that she did not provide Tyler with any information about their church or who the pastor was. She stated that when she and Zachary decided to seek counseling for Donald, Tyler was not invited to be part of that process. With regard to Tyler's previous employment and parenting time, Meliah stated that Tyler made a choice to work two hours away at the prison so if that affected his ability to have parenting time, that was his choice. With regard

to the lack of visitation in 2015, she disagreed that the period was nine months long and could not recall if there was a petition for rule to show cause filed or if the court ordered her to resume visitation. She stated that she did not make any effort to tell Tyler when there were parent teacher conferences. The only school program she advised Tyler of was a 2012 Christmas program. She did not provide Tyler the names of Donald's teachers or share anything about his grades. Meliah further testified that Tyler never asked her about any of the events, grades, or activities.

¶ 48 Tyler was called as an adverse witness. He stated that he lived with his mother. He explained that when Darla advised the GAL that she did not know where he was, it was due to his mother moving in with his brother and Tyler trying to find a place for himself at that time. He eventually followed his mother and moved in with his brother. He stated he did not have a phone in June. He was not employed because he had been laid off at the end of March from Simonton Windows where he worked for two months. Currently, Tyler did not have a permanent residence and was staying in an RV parked in Marshall, Illinois, on private property. He had a valid Indiana driver's license. His Illinois license remained suspended. He stated he had not tried to contact Donald during the adoption proceedings because it was his understanding that he was not supposed to have contact.

¶ 49 Zachary testified that he and Meliah purchased their house after their daughter was born. He worked two jobs and his EMT job provided benefits for him and the family. He worked the EMT job for six years. He stated that when he was off work, Donald went with him to the fire station so he could ride in the fire truck. Zachary taught Donald how to play basketball, baseball, and football and said Donald was most interested in basketball. They worked on cars and took rides together. Zachary also worked as a DJ and would take Donald with him. Donald would get paid when he DJ'd and had saved up enough money to buy his own lawn mower so he could help

Zachary with the yard. He stated that Donald called him Dad and always wanted to do what he was doing. When Donald acted up at school, Zachary would go. It happened between 5 and 20 times each year until the outbursts lessened in 2019. Zachary attended the parent teacher conferences, sporting events, and church with Donald. Zachary testified about the DCFS investigation and stated there was a claim that Meliah and he were beating the children. The outcome of the investigation revealed the claim was unfounded. He was asked if there was a period of time that he was not allowed to be at his home and said “No.” Thereafter, petitioners rested.

¶ 50 Testimony for Tyler started with his aunt, Alicia Sergent. She stated that her dad and Darla were married. She stated that, for a while, her father was in a relationship with Meliah. During the time of that relationship, Donald enjoyed spending time with Ms. Sergent and Meliah tried not to spend time with Donald. Meliah would sit on the couch while he was playing and did not interact with him. She stated that Donald was one or two at the time. She also saw him later when she was older at Darla’s house. She would see Donald with Tyler, Tyler’s siblings, and the sibling’s children from 2016 to 2019. Donald was always happy to be around Tyler and they would play in the pool and ride bikes together.

¶ 51 Ms. Sergent stated that Darla was one of Donald’s favorite people. They would get ice cream, play in the pool, and cook dinner together. She stated the familial relationships continued through 2019. Donald was happy to be there and never wanted to leave. Ms. Sergent confirmed that she had not seen Donald since 2019.

¶ 52 Tyler’s brother, Travis Burmood, testified that Donald would usually spend his weekends with Tyler at Darla’s house where he would spend time with his extended family. Donald loved being with Darla and she loved being with him. Travis stated that his two older children loved

playing with Donald and Donald loved playing with them because he was the only boy. He last saw Donald about three years earlier.

¶ 53 Travis stated that he had not seen Tyler in a year due to family issues. He disagreed with the life choices Tyler made and, for that reason, did not wish to be around him. When asked if Tyler was capable of providing for Donald, Travis stated, “In his current state, no.” Travis further stated that, at this time, he would not allow his children to be alone or unsupervised with Tyler.

¶ 54 Donald’s great-aunt, Debbie Martin, testified that she usually saw Donald at Edith’s house. Edith was Donald’s great-grandmother. The last time Debbie saw Donald was in 2018. Donald would always run over to Darla, grab her around the neck, and give her a big kiss. He would have a big smile on his face and was always happy to see his grandma and great-grandma. Donald was always happy to be around Tyler and always had a smile on his face. She could not remember when she last communicated with Tyler. When asked if it was her understanding that Tyler was not doing well in his life, Debbie stated, “Tyler has some issues maybe that he needs to work on, but Tyler loves his child.” She could not state what his issues were.

¶ 55 Darla testified that she was always in Donald’s life and was there when he was born. She stated that Tyler and Donald had a good relationship; they would play, go to the park, or watch cartoons together. Donald was her first grandchild. All of her grandchildren played together. When she would take Donald back to Meliah following Tyler’s visitation, Donald would not always want to go home. The majority of the time, he would not want to leave and would ask to stay longer. She stated that Donald would not take his toys, or anything else like Chapstick or a rock, home because petitioners would throw them away. After Donald told her that, she stopped sending anything home with Donald. When she saw Donald in 2018, he asked for mechanical pencils and

erasers for school. After she bought them, she asked Donald how he would get them home and then watched him place the objects in the liner of his coat so he could sneak them to school.

¶ 56 Meliah was called as an adverse witness and was asked about the 2012 DCFS case. She stated that when the case was opened, Zachary was not allowed to be unsupervised around the children and had to leave the residence for a couple of months. During that time, Zachary had daily supervised visitation with the children at his aunt's house. They also took parenting classes. The DCFS allegation was abuse due to bruises. Meliah stated the report was initiated by Tyler who called DCFS almost immediately after Tyler began having court-ordered visitation. The allegation was eventually classified as unsubstantiated and unfounded.

¶ 57 Zachary was called and was questioned about his previous testimony in which he stated that he did not leave the home during the DCFS investigation. Zachary stated that he believed the question asked was whether he was allowed to be in the home and he answered no.

¶ 58 Tyler also testified. He stated that he did not see Donald from January 2015 to September 2015 because petitioners moved and would not answer his calls. He stated that he filed paperwork with the court due to the denied visitation. Tyler stated he also got his first DUI in 2015. Tyler testified that he and Meliah lived with Darla and her husband Adam after Donald was born. About five months later, Meliah left him and ran off with Darla's husband. He stated that communication was always difficult with Meliah. He was at the hospital when Donald had tubes put in his ears. Donald became upset, and Meliah could not calm him down. Tyler held him and calmed him down. He tried to give Donald back to Meliah three or four times, but every time he did not want to go to her. He would just start screaming and wanted to come back to Tyler. He stated that, except for three months in 2013 when petitioners tried to get an OP for Tyler pinching Donald's ear, until

January 2015, he regularly exercised his visitation. Once the court restarted his visitation following the rule to show cause petition, he exercised his visitation until February 2019.

¶ 59 Tyler stated that his ex-girlfriend drove him to the February 22, 2019, parenting time exchange location. He stated that Zachary showed up 15-20 minutes late, told him he was not getting Donald, and they were taking him back to court. He stated that Zachary also told him that he set Tyler up to get pulled over for driving on a suspended license. Tyler testified to numerous verbal and physical altercations with Zachary as the aggressor, as well as a chase going 90 miles per hour through the country. Tyler took Donald to the children's museums in Bloomington, Illinois, and Terre Haute, Indiana, as well as the zoo. Donald had numerous family members who wanted to spend time with him as well. Meliah would never allow Donald to take things home starting in 2013 when she ripped a pair of shoes off Donald's feet and threw them in the yard after Tyler bought him a new pair to replace Donald's shoes that were too small. Tyler stated that in 2016 or 2017, Donald stated that he was not allowed to mention Tyler's name in petitioners' house, or he would get in trouble and get disciplined.

¶ 60 Tyler stated that he reached out to Meliah about schooling and stuff and thought Meliah said Donald was going to school in Potomac "possibly maybe," but he did not know and stated, "It's foggy." He stated that Meliah never shared anything with him about schooling.

¶ 61 The court then interjected, asking Tyler if he was under the influence of anything, and he responded saying, "No, I'm not under anything." The court then asked, "If I have you drug tested right now, would you be positive for anything?" Tyler responded, "Probably be positive for THC; but I'm not under the influence of anything right now, no." The court asked if there was anything else, and he said, "Not that I know, no, sir. I hadn't..." The court interrupted saying, "You're acting like you can barely function." Tyler responded, "I'm just very depressed. Crying—from

crying, it's very stressful on me." The court stated it was stressful on everyone and told counsel to ask his next question.

¶ 62 Tyler testified that if given the opportunity, he would reunite with his son and exercise his parenting time. He would also participate in decisions for his son. He did not think it was in Donald's best interest to be adopted. The complications from his leg injury occurred in March 2019, and it took two years to get through that. He stated that the last present he gave his son was for his birthday in 2018. He had presents for Donald but was waiting to give them in person because he knew petitioners would throw them away. He did not know why his brother said he would not trust him with his children or what issues, beyond regular brother issues, Travis had with him. Tyler stated that he had not seen his daughter in nine months because that mother was no longer responding to him. He stated that he tried numerous times to communicate with Meliah, but he no longer had those messages.

¶ 63 Meliah was brought back to testify in rebuttal. She stated there were no confrontations between Zachary and Tyler and said they were false accusations. Following arguments by counsel and the GAL, the circuit court took the matter under advisement and stated it would issue its decision on August 8, 2022.

¶ 64 A docket entry dated August 8, 2022, stated the case was called and all parties appeared. The entry stated, "Fathers rights are terminated. *** Order to enter." No transcript from this hearing is contained in the record on appeal.

¶ 65 On August 17, 2022, the circuit court issued a written final order for adoption. The order stated it relied on five factors: (1) the development of the child's identity, (2) the child's background and ties, (3) the child's sense of attachment, (4) the wishes of the child, and (5) the child's attachment to his community in terminating Tyler's parental rights. Tyler timely appealed.

¶ 66

II. ANALYSIS

¶ 67

Unfitness

¶ 68 The Adoption Act defines an “unfit person” as “any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption.” 750 ILCS 50/1(D) (West 2020). The statute provides specific grounds of unfitness. *Id.* The finding of unfitness must be proven by clear and convincing evidence. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 67 (2005).

¶ 69 A finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence “only where the opposite conclusion is clearly apparent.” *In re N.G.*, 2018 IL 121939, ¶ 29. This court does not reweigh the evidence or reassess the credibility of any witnesses. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). We defer to the circuit court’s finding of unfitness because it had the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 70 Here, the circuit court found Tyler unfit on the grounds that he failed to visit with the minor child for a period of 12 months pursuant to section 1(D)(n)(1) of the Adoption Act (750 ILCS 50/1(D)(n)(1) (West 2020)). On appeal, Tyler contends that he demonstrated reasonable interest, concern, and responsibility. While this was one of the grounds of unfitness alleged in the petition, the circuit court did not find he was unfit for that reason. In fact, the circuit court specifically found the petitioners failed to prove their allegations on this ground. With regard to the grounds of unfitness found by the circuit court, *i.e.*, failure to visit the minor child for over 12 months, no argument was presented by defendant.

¶ 71 The failure to present an argument typically results in forfeiture of the issue. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). However, given the fundamental liberty interests of a parent (*Lulay v. Lulay*, 193 Ill. 2d 455, 470-71 (2000)) at stake in this matter, we will consider the issue. See *Hux v. Raben*, 38 Ill. 2d 223, 224 (1967) (the rule of forfeiture is a limitation on the parties, not the court).

¶ 72 Here, the record is replete with evidence, including from Tyler, revealing that Tyler's last visit with Donald occurred on February 5, 2019. Thereafter, on February 22, 2019, Zachary allegedly told Tyler he would not allow Tyler to have his court-ordered parenting time due to Tyler's lack of a driver's license and driving while his license was suspended with Donald in the vehicle. While conflicting testimony was presented as to who did or did not show up for the parenting time exchanges in March 2019, we do not find the conflict dispositive. Instead, we find dispositive the fact that, despite petitioners refusing to allow Tyler his court-ordered parenting time during March 2019, or for over a year thereafter, Tyler took no legal action to assert his parenting time rights.

¶ 73 The record reveals that Tyler was familiar with the process of filing a rule to show cause in the family law case, as he successfully utilized the method in 2015 to reinstate his parenting time rights. While Tyler's leg injury, and subsequent complications related thereto, may have precluded immediate court action in March of 2019, at no time did Tyler proceed with any legal action for the period from February 2019—when he was originally denied parenting time—to the filing of the adoption petition on April 7, 2020. Nor did Tyler ever return to the designated parenting time exchange location after March 2019.

¶ 74 The record confirms that Tyler had not visited Donald for nearly three years by the time the fitness hearing in the instant matter was held on January 13, 2022.¹ As such, we cannot find that the circuit court’s finding of unfitness based on a failure to visit the minor child for a period of 12 months was against the manifest weight of the evidence.

¶ 75 Best Interests

¶ 76 After a parent is found, by clear and convincing evidence, to be unfit, the circuit court proceeds to the determination of whether the child’s best interests would be served by the child’s adoption by the petitioners and termination of the natural parent’s parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). In making a best-interest decision, the circuit court considers several statutory factors in the context of the child’s age and specific needs. 705 ILCS 405/1-3(4.05) (West 2020). These include: (a) the child’s physical safety and welfare; (b) 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 love, security, familiarity, and continuity of relationships with parental figures; (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.* On review, we will not overturn the circuit court’s finding unless it is against the manifest weight of the evidence. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261-62 (2004).

¹While Tyler’s lack of effort in asserting his parental rights is determinative of this issue, our decision in no way condones the unilateral actions taken by petitioners in refusing to allow Tyler his court-ordered parenting time in February and March of 2019 or their failure to present to the court-ordered bi-weekly exchange location for over a year thereafter.

¶ 77 On appeal, Tyler argues that he was denied visits with his child. He states that he had a normal father-son relationship with his child, and the two loved each other. He further argues that the child had extended family who also had a good relationship with him. He contends there was no reason why Donald could not have Zachary as a stepfather and maintain a relationship with Tyler.

¶ 78 While emotional, such argument is not the standard by which these cases are reviewed. Tyler’s brief fails to address the factors considered by the circuit court and points to no error in the circuit court’s findings with regard to the factors pronounced in the August 17, 2022, order. Further, the record fails to contain the transcript from the August 8, 2022, hearing at which time the circuit court issued its ruling on the best interest issue. “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392.

¶ 79 There is no dispute that “[p]arental rights and responsibilities are of deep human importance and will not be lightly terminated.” *In re Paul*, 101 Ill. 2d 345, 351-52 (1984). However, here, with no transcript from the August 8, 2022, hearing, and no argument presented claiming error with the circuit court’s findings upon consideration of the statutory factors articulated in the August 17, 2022, order, there is no basis to vacate the decision. As such, we find the circuit court’s best interest order was not against the manifest weight of the evidence.

¶ 80

III. CONCLUSION

¶ 81 For the reasons stated herein, we affirm the circuit court's findings of unfitness and that it was in the best interest of Donald to terminate Tyler's parental rights.

¶ 82 Affirmed.