

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

<u>In re</u> T.E.C. and A.L.C., Minors.	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	Nos. 07—JA—53
	)	07—JA—54
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Shawn C.,	)	Patrick L. Heaslip,
Respondent-Appellant.)	)	Judge, Presiding.

---

JUSTICE BIRKETT delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

**ORDER**

*Held:* In abuse and neglect proceeding, there was no potentially meritorious issue for appeal. Therefore, appellate counsel's motion to withdraw was allowed.

In October 2010, the trial court entered an order terminating the parental rights of respondent, Shawn C., in his biological children, T.E.C. and A.L.C. (The court also terminated the parental rights of L.C., the children's natural mother, but she is not a party to this appeal.) The trial court appointed appellate counsel, who filed this timely appeal. Pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967), and *In re Alexa J.*, 345 Ill. App. 3d 985 (2003), counsel now moves to withdraw as counsel on appeal. In his motion, counsel states that he has read the

record and found no issue of arguable merit. Counsel supports his motion with a memorandum of law providing a statement of facts, identification of several potential issues on appeal, and an argument why each issue lacks arguable merit. See *Anders*, 386 U.S. at 744 (appellate counsel must accompany his request to withdraw with a brief "referring to anything in the record that might arguably support the appeal"). We granted respondent 30 days to respond to the motion to withdraw. Within that time, respondent filed a "Motion for Appointment of Counsel," in which he asserts that leaving him to proceed without counsel would be a violation of his constitutional rights since he lacks legal knowledge and resources. Regardless, however, of his client's capability to proceed *pro se*, if there are no colorable grounds for an appeal, appointed counsel may, and indeed should, move to withdraw. Because we agree with counsel that there are no potentially meritorious issues for appeal, we grant counsel's motion and deny respondent's motion for appointment of counsel.

The background of this case is, briefly, as follows. T.E.C., a male born January 8, 2004, and A.L.C., a female born March 31, 2006, were taken into protective custody in March 2007 following a report to the Department of Children and Family Services (DCFS) that the children were neglected and in danger of sexual abuse by respondent, who was registered as a sex offender in Nebraska since his two convictions in August 1999 for felony sexual assault of a victim less than 14 years old. (Respondent was also convicted in 1994 of attempted kidnaping of a 14-year-old girl.) DCFS found the children to have severe developmental problems from undernourishment and neglect. Respondent and L.C. had fled Nebraska for Illinois after neglect proceedings were initiated in Nebraska. Also pending in Nebraska at that time were criminal charges that respondent sexually assaulted J.C., L.C.'s natural daughter and respondent's stepdaughter, who was living with them at the time. In late 2007, while the current neglect proceedings were pending, respondent and L.C.

returned to Nebraska. Sometime in 2008, respondent was incarcerated in Nebraska on the pending sexual assault charges. In November 2008, respondent was convicted in Nebraska of felony sexual assault of J.C.<sup>1</sup> He was released in September 2010 but, as a condition of his parole, was housed in a sex offender treatment center in Nebraska, where he was still confined when the trial court terminated his parental rights.

On September 20, 2010, an evidentiary hearing was held on respondent's and L.C.'s fitness. On October 14, 2010, the trial court determined that respondent and L.C. were unfit. On October 28, 2010, the trial court held a best-interests hearing, and the next day the court determined that it was in the children's best interests that respondent's and L.C.'s parental rights in them be terminated.

Section 2—29 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2—29 (West 2008)) provides a bifurcated procedure for termination of parental rights. To terminate a party's parental rights, the trial court must (1) find by clear and convincing that the party is unfit; and (2) find by a preponderance of the evidence that termination of the party's parental rights is in the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). Neither an unfitness finding nor a best-interests finding will be disturbed on review unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613, 617 (2009). A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary or not based on the evidence presented. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006).

---

<sup>1</sup> The State introduced certified copies of respondent's two 1999 sexual assault convictions. The certifications show the convictions as felony convictions. The State did not introduce a certified copy of respondent's 2008 conviction for the sexual assault of J.C., but the record elsewhere indicates that the conviction was a felony conviction.

We agree with counsel that there is no colorable argument that respondent is not unfit. The trial court found respondent unfit because, *inter alia*, he met the statutory criteria for depravity. Section (D)(1)(I) of the Act (750 ILCS 50/1(D)(I) (West 2008)) provides:

"There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state \*\*\*; and at least one of these convictions took place within five years of the filing of the petition or motion seeking termination of parental rights."

Respondent was convicted of three felonies in Nebraska, the most recent of which occurred in November 2008, within five years of the filing of the termination petition in this case. There arose, hence, a presumption of depravity, and it was incumbent upon respondent to "present evidence that, despite his [felony] convictions, he is not depraved." *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). Depravity is an "inherent deficiency of moral sense and rectitude." *J.A.*, 316 Ill. App. 3d at 561 (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)).

Respondent did not rebut the presumption. The three felony convictions (and, we might add, the 1994 attempted kidnaping conviction) show a disturbing pattern of assaults on young girls, one of them a family member. DCFS rightly was concerned that respondent's female child, A.L.C., was at risk. Pursuant to the initial service plan in this case issued in May 2007, respondent underwent a sex offender assessment in August 2007, which found him to be at a moderate to high risk for recidivism. Respondent's next service plan, issued in September 2007, required him to complete sex offender group treatment. There is no indication that respondent began the treatment before moving to Nebraska. Respondent, then incarcerated, did testify at the November 23, 2009, permanency review hearing that he was enrolled in sex offender group therapy through the prison

facility. Respondent, however, gave no subsequent indication that he completed the therapy, and there is no other evidence in the record that he did. At the time of the evidentiary hearings on fitness and best-interests, respondent was still housed in a sex offender treatment center as a condition of his parole. Thus, not only did respondent fail to initiate sex offender group therapy before his incarceration, he apparently failed to complete such therapy while in prison despite the opportunity. Moreover, his current course of treatment is incomplete as he remains detained in the treatment facility. Consequently, there is no basis on which to argue that respondent is not depraved despite his past criminal conduct, which due to its nature represents a serious risk of harm to A.L.C. and which remains not fully addressed by treatment.

Though the trial court found other grounds of unfitness, “[a] parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence” (*In re D.C.*, 209 Ill. 2d 287, 296 (2004)). Because at least one ground of unfitness was not susceptible to a colorable challenge, we do not consider whether there are any arguably meritorious bases for challenging the remaining grounds of unfitness.

We move to the questions of best interests. At the fitness stage, “the parent's past conduct is under scrutiny.” *In re D.M.*, 336 Ill. App. 3d 766, 771-72 (2002). In contrast, at the best-interests stage the court “focuses upon the children's welfare and whether termination would improve the child's future financial, social and emotional atmosphere.” *Id.* at 772. “The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated. Accordingly, at 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.” (Emphasis added.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The trial court “cannot rely solely

on fitness findings to terminate parental rights." *D.M.*, 336 Ill. App. 3d at 772. The statutory factors include: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachment, including love, security, familiarity, continuity of relationships with parent figures, and considering the least disruptive placement alternative for the child; (5) the child's wishes and goals; (6) community ties; (7) the child's need for permanence; (8) the uniqueness of every family and every child; (9) the risks related to substitute care; and (10) the preferences of the person(s) available to care for the child. 705 ILCS 405/1—3(4.05) (West 2008).

The evidence shows that, for most of the children's lives, respondent and L.C. were transients. The children were underfed, attended school infrequently, and did not receive adequate medical care such as immunizations. Rather than submit to abuse and neglect proceedings in Nebraska that could have improved the children's lives, respondent and L.C. fled to Illinois. When DCFS took the children into protective care in 2007, T.E.C. had decaying teeth and a severe speech impediment, while A.L.C., who had not been to a doctor since her birth, had an untreated urinary tract infection and was developmentally behind.

The children have a strong bond with their foster family, the Burzas, with whom they have resided since March 2007. The children have friends in the neighborhood, are involved in extracurricular activities, and are integrated into the Burzas' extended family. Kristen Burza, the foster mother, testified at the October 2010 best-interests hearing that A.L.C. has never asked for a visit with respondent, and while T.E.C. has occasionally asked for a visit, he never inquires about respondent or L.C. The Burza family is willing to adopt the children.

Respondent has made little effort to foster a relationship with the children. Kristen testified that respondent has made no contact with the children for the past three years. Respondent did not dispute this, but testified that he did not phone the children because he was not given the Burza's phone number. Kristen testified that she did provide respondent her cell phone number. The phone-contact issue aside, respondent offered no excuse for failing to write the children for the past three years.

James Alfredson, respondent's caseworker from February to October 2010, testified that respondent sent him several letters. In one of the letters, respondent asked for pictures of the children, but the remaining letters were not about the children. Respondent acknowledged that, in his letters to Alfredson and Amy Pinkston (respondent's caseworker from March 2007 to February 2010), he did not inquire about the children. Respondent claimed the reason was that L.C. was keeping him current on the children's health and welfare.

Alfredson testified that, since he became respondent's caseworker in February 2010, respondent has not asked for visits with the children. To Alfredson's knowledge, respondent also did not ask for visitation earlier in his incarceration, when Pinkston was his caseworker. Alfredson acknowledged, however, that Pinkston's April 29, 2009, permanency report to the court notes that respondent "[has] inquired about visits with the children while he is incarcerated in Nebraska." Respondent, however, never testified that he asked for or had visits with the children. Alfredson noted that respondent could have, if he desired, arranged such visits while incarcerated.

Alfredson testified that, given the nature of the offense for which respondent is in treatment, it would be an "extended period of time before [Alfredson] would be able to consider visitation or placement of the children with [respondent]." Alfredson also noted that, given the lapse of time

since respondent last had contact with the children, it would be “confusing and hurtful” for him to “reenter their lives as father.” Similarly, Burza testified that respondent would not be a positive influence on the children and that it would simply confuse them for respondent to reenter their lives. Burza also believed that respondent posed a danger to the children.

Based on the evidence, the trial court determined that the children have “no bond” with respondent and that it was “likely that they don’t even know who he is.” The court also found it “unlikely [that respondent] will be able to care for them in the foreseeable future.” By contrast, the court noted, the Burzas have provided the children with a “stable, loving[,] and nurturing home” and are willing to adopt them.

It is apparent that respondent, in failing to foster a relationship with the children in recent years, manifested the same lack of regard that was behind his severe neglect of the children while they were in his care. Also, respondent’s sexual depravity, which remains not fully addressed by treatment, presents an acute risk to A.L.C. The children have little or no emotional bond with respondent. The Burzas have offered a stable, nurturing, and permanent home for the children. Given these considerations, we find no potentially meritorious basis on which to challenge the trial court’s finding that termination of respondent’s parental rights is in the best interests of the children.

After examining the record and the motion to withdraw, we agree with counsel that this appeal presents no issue of arguable merit. Therefore, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Winnebago County.

Affirmed.