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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> PATRICIA A., a minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 05—JA—178
)	
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Patrick A. a/k/a)	Patrick L. Heaslip,
Kathman A., Respondent-Appellant).)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Bowman and Zenoff concurred in the judgment.

ORDER

Held: The trial court's finding that clear and convincing evidence established respondent's unfitness on the ground of depravity was not against the manifest weight of the evidence. Because parental rights may be terminated upon proof, by clear and convincing evidence, of a single ground for unfitness (*In re D.L.*, 191 Ill. 2d 1, 8 (2000)), we need not consider here whether respondent also was unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility. The trial court's finding that the State proved by a preponderance of the evidence that termination of parental rights was in the minor's best interest is not against the manifest weight of the evidence; affirmed.

Respondent, Patrick A., the natural father of the minor, Patricia A., appeals from the order of the circuit court of Winnebago County terminating his parental rights to the minor, after finding respondent was unfit on the grounds of depravity and failure to maintain a reasonable degree of

interest, concern, or responsibility, and from the order finding that it was in the minor's best interest to terminate his parental rights. We affirm.

BACKGROUND

Patricia was born on May 27, 2001. On September 21, 2005, the State filed an amended neglect petition listing Shaymon T. as Patricia's natural mother and respondent as Patricia's father. At the time, his whereabouts were unknown. Shaymon told the court that she believed respondent was in federal prison on terrorism charges in Florida, but did not have his address. After Patricia was adjudicated neglected and placed with DCFS, the court ordered DCFS to do a diligent search for respondent.

Despite diligent searches, the State still could not locate respondent. At a permanency review hearing held on April 2, 2007, the court heard testimony that respondent was incarcerated somewhere in Florida. The court entered an order finding respondent had failed to make reasonable efforts, noting that no one knew the location of respondent but that he had not tried to contact anybody to inquire about Patricia's welfare. The court instructed the assigned caseworker to continue to search for respondent.

The State filed its first petition to terminate parental rights on November 20, 2007. Thereafter, on May 29, 2008, the court noted a letter had been sent to the court by an attorney representing respondent on a criminal matter pending in Florida, indicating that respondent would like to be heard regarding the termination of his parental rights. The court appointed counsel for respondent.

At the September 25, 2008, hearing on the petition to terminate parental rights, respondent participated by telephone due to his incarceration in Florida. Amy Pinkston, a caseworker from

Lutheran Social Services of Illinois (LSSI), testified that, between late December 2006 and October 2007, she received two or three letters from respondent inquiring about Patricia. Respondent testified that he had not seen Patricia since June 2004, when Shaymon moved with Patricia from Miami to Chicago. Respondent was first incarcerated on May 9, 2006. At the time of the hearing, respondent had not been convicted of the charges for which he was being held. The trial court dismissed the petition to terminate parental rights and the permanency goal was changed to return home within 12 months.

Following several more permanency reviews, the State filed a petition to terminate the parental rights of Shaymon and respondent on December 4, 2009. The four counts against respondent alleged he was unfit in that he (1) failed to maintain a reasonable degree of interest, care, or concern for Patricia; (2) deserted the child; (3) is depraved; and (4) failed to make reasonable progress toward the return of the child to him during any nine-month period after the initial period following the adjudication of neglect.

Patricia was nine years' old at the termination hearing on September 22, 2010. Stephanie Delhotal, another caseworker from LSSI, testified that, due to his incarceration, respondent's service plan required him to maintain contact with LSSI, and once released, he was to contact LSSI to discuss the possibility of visits and services. From October 2008 to March 2010, respondent maintained contact with Ms. Delhotal through letters, cards, and pictures he had colored for Patricia. After March 2010, respondent had no contact with Ms. Delhotal. In March 2010, respondent was transferred to the federal correctional center in Louisiana and Ms. Delhotal had not heard from him since the transfer.

The State tendered several documents from the United States District Court, Southern District of Florida, including a certified copy of three felony convictions, for which respondent was sentenced to 112 ½ months imprisonment on November 24, 2009, of the following offenses: (count I) conspiracy to provide material support to a foreign terrorist organization under 18 U.S.C. §2339B; (count II) conspiracy to provide material support to a foreign terrorist under 18 U.S.C. §2339A; and (count III) conspiracy to destroy buildings under 18 U.S.C. §844(n). Respondent did not object to its admission. Respondent stated that the three felony convictions were currently being appealed. The State maintained that the pendency of respondent's appeal did not stay the finality of his convictions, and that the three felony convictions established respondent's depravity, pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2008)), as alleged in count III of the petition to terminate. The State further argued that respondent failed to maintain a reasonable degree of interest, care, and concern for Patricia, pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2008)), as alleged in count I, due to respondent's failure to have any contact with Ms. Delhotal since March 2010. The trial court found that the State had met its burden on both counts by clear and convincing evidence, and it dismissed the remaining counts on the State's motion.

Following the best interest hearing, the trial court found that the State had proved, by a preponderance of the evidence, that it was in the best interest of the minor to terminate respondent's parental rights. The court found that the permanent, stable, and caring home life offered by the foster parents was in Patricia's best interest. The court based its decision, in part, on respondent's failure to contact Patricia from the time she was two years of age, respondent's felony convictions for

which he was serving time for 112 ½ months, and the likelihood that respondent would be deported from the country once he had served his present sentence. Respondent timely appeals.¹

ANALYSIS

1. Unfitness

Respondent contends that the trial court's finding of unfitness on the ground of depravity and his failure to maintain a reasonable degree of interest, care, and concern is against the manifest weight of the evidence. We first address respondent's depravity argument.

The Juvenile Court Act of 1987 provides a two-stage process for terminating parental rights involuntarily. 705 ILCS 405/2—29(2) (West 2008). The State must first prove parental unfitness by clear and convincing evidence and then show that the minor's best interest is served by severing parental rights. *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)) lists various grounds under which a parent may be found unfit, any of which standing alone may support such a finding, including depravity (750 ILCS 50/1(D)(i) (West 2008)). See *In re D.F.*, 332 Ill. App. 3d 112, 117 (2002).

A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re A.B.*, 308 Ill. App. 3d 227, 240 (1999). We defer to the trial court's factual findings and will not reverse the court's decision unless the findings are against the manifest weight of the evidence. See *In re D.D.*, 196 Ill. 2d 405, 417 (2001); *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004); *A.B.*, 308 Ill. App. 3d at 240. A factual finding is

¹ Shaymon appeals separately from the judgment of the trial court finding her unfit and terminating her parental rights. See *In re Patricia A.*, No. 2—10—1210 (2011) (unpublished order under Supreme Court Rule 23).

against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the determination is unreasonable, arbitrary, and not based on the evidence. *A.B.*, 308 Ill. App. 3d at 240. Because parents have superior rights against all others to raise their children, the State must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *A.B.*, 308 Ill. App. 3d at 240.

Depravity has been defined as an inherent deficiency of moral sense and rectitude. *In re Abdullah*, 85 Ill. 2d 300, 305 (1981). Depravity may be established by a course of conduct of sufficient duration and repetition to indicate a deficiency in moral sense and showing either an inability or an unwillingness to conform to accepted morality. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). A rebuttable presumption exists that a parent is depraved if he or she has been convicted of any three felonies if one of the convictions took place within five years of filing of the termination petition. 750 ILCS 50/1(D)(i) (West 2008).

The State introduced a certified copy of respondent's three felony convictions, which occurred within five years of the filing of the termination petition. Once evidence opposing the presumption is introduced, the issue is determined on the basis of the evidence adduced at trial as if no presumption had existed. The burden remains on the party who initially had the benefit of the presumption. The only effect of the presumption is to create the necessity of evidence to meet the *prima facie* case created thereby, and which, if no proof to the contrary is offered, will prevail. *In re J.A.*, 316 Ill. App. 3d 553, 563 (2000). Respondent's convictions established a rebuttable presumption that respondent is depraved.

Respondent does not contest that the three offenses of which he was convicted were felonies or that he was convicted and sentenced for all three offenses. Rather, respondent contends on appeal that “it is unclear on the face of the State’s evidence whether Respondent Father’s federal convictions would count as three felony convictions under Illinois law.” Respondent maintains that, under the one-act, one-crime rule in Illinois, two of the counts, count I for conspiracy to provide material support to a foreign terrorist organization and count II for conspiracy to provide material support to a foreign terrorist, probably would be counted as one because they were based upon the same single physical act. See, e.g., *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004) (under the one-act, one-crime rule, the less serious offense must be vacated). We reject respondent’s argument.

First, respondent did not specifically identify the elements of each offense or how one offense would be included in another for purposes of the one-act, one-crime rule. Respondent merely contends that the convictions *may* fall under the one-act, one-crime principle. Such speculation does not amount to any evidence that would rebut the presumption of depravity.

Regardless, we need not address whether either count I or count II would be counted as one act, one crime under Illinois law because section 1(D)(i) of the Adoption Act is not limited specifically to crimes of felonies or convictions under Illinois law. Section 1(D)(i) 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, or under *federal* law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights.” (Emphasis added.) 750 ILCS 50/1(D)(i) (West 2008).

Thus, three criminal convictions of felonies under the *federal* law is sufficient to create a rebuttable presumption of depravity. Respondent does not argue that the one-act, one-crime rule applies to federal law.

Finally, although respondent's convictions standing alone may serve as a basis for a finding of depravity, the evidence introduced sufficiently proved that respondent is depraved. The very nature of a terrorism-related offense is a crime indicative of an inherent deficiency in a moral sense. Respondent's plan to destroy the Sears Tower and five federal buildings in Florida show his moral deficiency and inability to conform to accepted moral standards. Moreover, respondent presented no evidence of rehabilitation.

Having failed to present any evidence to rebut the presumption of depravity, we cannot say that the trial court's finding of unfitness on this basis was contrary to the manifest weight of the evidence. When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider additional grounds for unfitness cited by the trial court. See *In re D.D.*, 196 Ill. 2d at 422. Therefore, this court need not consider whether respondent was unfit based upon the trial court's findings that he failed to maintain a reasonable degree of interest, concern, or responsibility toward Patricia (see 750 ILCS 50/1(D)(b) (West 2008)).

2. Termination of Parental Rights

We next address respondent's argument that the State failed to prove by a preponderance of the evidence that termination of his parental rights was in Patricia's best interest. If the trial court finds a parent unfit by clear and convincing evidence on one or more statutory grounds under the Act (750 ILCS 50/1(D) (West 2008)), the trial court then conducts a second, bifurcated proceeding that focuses on whether termination of parental rights and allowance of an adoption petition would be

in the child's best interest. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re Adoption of Syck*, 138 Ill. 2d 255, 277 (1990). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court's determination will not be reversed unless it is against the manifest weight of the evidence. *D.T.*, 212 Ill. 2d at 366. A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *In re Z.L.*, 379 Ill. App. 3d 353, 376 (2008). Cases involving an adjudication of neglect and wardship are *sui generis* and must be decided on the unique facts of the case. *Z.L.*, 379 Ill. App. 3d at 376.

When determining whether termination of parental rights is in a child's best interest, a court must consider the following factors of section 1—3 (4.05) of the Juvenile Court Act of 1987 in the context of the child's age and developmental needs: (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 attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1—3 (4.05) (West Supp. 2009).

The evidence presented at the best interest hearing was more than sufficient to support the trial court's determination that termination of respondent's parental rights was in Patricia's best interest. The evidence revealed that Patricia had bonded with her foster parents and had adjusted well in her new home. Patricia is also bonded with her foster sister, who is a few years younger than

her. The foster parents have adopted Patricia's foster sister and they wish to adopt Patricia too. Patricia wants to stay where she is and become a member of her foster family. When Patricia came to live with the foster parents two years before, she barely could read. Now, after the foster parents placed her in private school, she is reading above grade level. The foster parents help her with her homework, and they attend parent-teacher conferences and school events. The guardian *ad litem* recommended permanency, stability, and continuity in Patricia's life, and opined that the foster parents would provide Patricia with a permanent and stable home life. The caseworker also recommended that termination of parental rights was in Patricia's best interest. She also believed the foster family would provide Patricia with a stable home and future.

Respondent contends that the trial court improperly speculated that he would be deported to Haiti after his incarceration. However, respondent will face deportation upon his release from prison because he is not a United States' citizen and was convicted of terrorism. Thus, the trial court's finding of the likelihood of deportation is more probable than not. We note also that respondent told Ms. Delhotal that he probably would be deported upon his release from prison.

Respondent maintains that he was not given an adequate opportunity to bond with Patricia and that his 2014 release from prison will not threaten Patricia's stability, as her environment will remain intact until he is released. Patricia was nine years old at the time of the best interest hearing held on October 27, 2010. She had been living in the same foster home for over two years, where she is deeply bonded, secure, and thriving. Respondent has never bonded with Patricia, who does not know her father. He has not had contact with Patricia since she was two years' old, and has not offered evidence that he provided for any of her needs. Even if there existed a father-daughter bond, it does not automatically insure that a parent will be fit or that the child's best interest will be served

by that parent. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004). Respondent will not be released from the penitentiary until 2014, at which time he likely will be deported. Clearly, respondent has not adequately discharged his parental duties and would not be able to do so in the near future because of his incarceration. Further delay and lack of permanency and stability certainly would not be in Patricia's best interest. See *K.H.*, 346 Ill. App. 3d at 463 (permanency and stability is important for a child's welfare). As the trial court aptly noted, the amount of time until respondent's release from prison can be an eternity in the life of a child and it would be an abuse of the trial court's discretion not to bring an end to the uncertainty in Patricia's life. An adoptive home is available to satisfy Patricia's needs for permanency and stability. Under these circumstances, the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, the decision of the circuit court of Winnebago County is affirmed.

Affirmed.