

¶ 3

I. BACKGROUND

¶ 4 On January 29, 2008, the State filed a petition alleging X.J.'s environment was injurious to his welfare because Neal violated a previously issued safety plan. The safety plan resulted from Jackson and Neal's prior arrests for domestic violence on November 21, 2007, and December 10, 2007. According to the petition, X.J. was a neglected minor pursuant to section 2-3(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1) (West 2006)) in that his environment was injurious to his welfare because of (1) domestic violence between Neal and Jackson and (2) Neal's drug use. That same day, the trial court entered an order placing X.J. in shelter care. In March 2008, a visitation plan was filed with the court granting each parent a one-hour visit per week.

¶ 5 On April 3, 2008, the trial court adjudicated X.J. neglected based on Jackson and Neal's history of domestic violence. The other allegations in the State's petition were dismissed by stipulation. On May 1, 2008, the court entered a dispositional order adjudging X.J. to be a ward of the court and placed his custody and guardianship with the Department of Children and Family Services (DCFS). The court admonished Neal and Jackson to cooperate with DCFS, comply with the terms of the service plan, and correct the conditions that required X.J. to be taken into care or risk termination of their parental rights.

¶ 6 Throughout this case, the tasks assigned to Neal and Jackson basically remained consistent. Jackson was assigned the following tasks: (1) address issues related to domestic violence; (2) demonstrate appropriate parenting skills when visiting X.J.; (3) cooperate and participate with Lutheran Children and Family Services (LCFS) and recommended services; (4) refrain from engaging in criminal and illegal activities; (5) maintain sobriety; and (6) address any

aggravated battery (No. 04-CF-2). Erin Zimmer, a foster care supervisor at LCFS who was the assigned supervisor for X.J.'s caseworker, testified she supervised Casey MaCombs, the assigned caseworker from February to June 2008.

¶ 12 Zimmer testified, as of July 2008, Jackson was cooperating with the assigned tasks but Neal was not. She testified Jackson was incarcerated between February and May 2008 and did not have visitation with X.J. during this period. After his release, he began having supervised visits with X.J. on a consistent basis for one hour each week at the LCFS office.

¶ 13 According to Zimmer's testimony, Jackson completed a "preventing abusive relationships" course after she stopped supervising the case. In addition, Jackson completed a parenting class in June 2008. Zimmer testified Jackson had a substance-abuse evaluation scheduled for July 2008. The substance-abuse evaluation indicated Jackson did not need services or treatment. According to Zimmer, Jackson was employed between June 2008 and July 2009 and lived with a relative during this period.

¶ 14 Zimmer also testified Jackson began attending counseling after he received his substance-abuse assessment. Jackson attended his scheduled visits with X.J. on a regular basis. Although Jackson had received a referral for a psychological evaluation, an appointment was never made because DCFS psychologists would not grant approval for the appointment.

¶ 15 Neal also was allowed one hour of visitation with X.J. per week. In March 2008, Neal came to a scheduled visit intoxicated. After that incident, Neal was required to submit to a Breathalyzer test and a drug drop before each visit with X.J. From then until June 2008, Neal did not consistently attend visits with X.J.

¶ 16 According to Zimmer's testimony, Neal began domestic-violence classes in

February 2008, parenting classes in April 2008, and had an initial drug and alcohol assessment in March 2008. Neal was not referred for a psychological evaluation. Zimmer believed Neal did not complete domestic-violence classes and did not recall if Neal completed parenting classes. Neal did complete an alcohol evaluation in June 2008. According to Zimmer, intensive outpatient treatment was recommended. Zimmer believed Jackson only attended two counseling sessions prior to June 2008.

¶ 17 At the continued unfitness hearing in March 2011, Lori Rakers Lynch testified she was X.J.'s assigned caseworker from June 2008 to December 2009. Lynch stated a client service plan was in place when she was assigned to the case. This first plan ended in June 2008. Jackson was rated as satisfactory, and Neal was rated as unsatisfactory for that period. Lynch established a new service plan on July 2, 2008, covering the period from July 2008 to January 2009.

¶ 18 Lynch testified Neal was in substance-abuse treatment at the Triangle Center in June 2008. However, Neal refused to attend recommended inpatient treatment. Instead, she received outpatient treatment through Gateway from July 2008 to January 2009. During that time, she had six positive drug drops and two positive Breathalyzer exams.

¶ 19 According to Lynch, Neal completed parenting classes. However, Neal's parenting was still rated unsatisfactory because she missed visits and spent more time talking with the visitation supervisor rather than with X.J.

¶ 20 Lynch testified Jackson cooperated with his tasks during this period.

¶ 21 Lynch testified Jackson and Neal were not allowed contact because of their history of domestic violence. However, in August 2008, both Jackson and Neal were arrested

after they were involved in a domestic incident. In addition, Neal admitted contacting Jackson on Father's Day. Neal also reported Jackson left a derogatory phone message for her during this time period.

¶ 22 A new service plan was created for the period January 2009 to July 2009. The tasks remained the same on this new service plan. However, Jackson was asked to submit to a psychological evaluation.

¶ 23 In July 2009, Neal was found not to have cooperated with the assigned tasks. She had been unsuccessfully discharged from Gateway in January 2009. She then went to the Wells Center for inpatient treatment and was successfully discharged but did not attend the recommended outpatient treatment at the Wells Center. In April 2009, she went back to Gateway but was unsuccessfully discharged in June 2009. During this same time period, she had 1 negative drug drop, 12 positive drug drops, and on 12 occasions she did not appear for drops. Neal tested positive for alcohol on a number of occasions. She also tested positive for opiates, benzodiazepines, cocaine, and marijuana.

¶ 24 Neal received an unsatisfactory rating on the assigned domestic-violence task because she was still having contact with Jackson. She was also rated as unsatisfactory on her probation task and her task of cooperating with DCFS and LCFS because of her housing and employment situation. Her mental health was also rated as unsatisfactory. DCFS was unable to refer her for a psychological evaluation because of her substance abuse. Her parenting was also rated as unsatisfactory because she missed 12 of 24 scheduled visits.

¶ 25 As for Jackson, Lynch testified he did not cooperate with the service plan for this period and was also rated as unsatisfactory. Lynch testified Jackson did not attend counseling

services from April until August 2009. He also missed five out of eight scheduled visits with X.J. between June and July.

¶ 26 Lynch testified Jackson and Neal were involved in two domestic-violence incidents during that period.

¶ 27 A new service plan was implemented in July 2009 for the period from July 2009 to January 2010. Lynch testified no new tasks were added to this service plan. Lynch's involvement as the assigned caseworker ended in December 2009. Lynch testified neither Neal nor Jackson cooperated during this period. Neal did go for a substance-abuse assessment at the Triangle Center in November 2009. The Triangle Center recommended she attend outpatient treatment.

¶ 28 Lynch testified Jackson began cooperating with counseling in August 2009. He went for a substance-abuse assessment in October at the Haymarket Center in Chicago. Lynch testified Jackson recently had begun treatment in Chicago when her assignment ended. Lynch stated Jackson had also been cooperating with child visits at that time. However, his visits had been reduced in July 2009 from twice a week for two hours to once a week because of prior missed visits. Jackson missed 12 of 81 scheduled visits with X.J. while Lynch was the assigned caseworker. In November 2009, his visits were reduced again to one visit per month. Jackson's visits with X.J. were always supervised. Lynch testified the visits she supervised went well.

¶ 29 According to Lynch's testimony, on two occasions, while she was the assigned caseworker, she considered increasing Jackson's visits with X.J. and beginning the process of returning X.J. to his care. One of these occasions was in October or November 2008. However, at that time, Neal allowed Lynch to listen to a derogatory message Jackson had left on her phone.

The second occasion was around February 2009. She decided not to increase Jackson's visits at that time after a reported incident of domestic violence in March 2009.

¶ 30 On cross-examination, Lynch testified Jackson's biggest problem was staying away from Neal. Part of Jackson's case service plan was to stay away from Neal because Jackson and Neal would fight, which Lynch testified endangered X.J.

¶ 31 Lynch testified during the time she was assigned to this case, Neal was asked to submit to 50 drug drops. Neal tested negative 6 times, positive 30 times, and missed 14 drops. Lynch testified Neal would sometimes be visibly bruised. While Lynch was assigned the case, Neal was allowed visitation once per week. However, in November 2009, visitation was decreased to once a month. Lynch testified Neal missed 28 of 73 scheduled visits with X.J. while Lynch was assigned to the case. Lynch testified the interaction between Neal and X.J. during the visits she supervised was not bad. However, she testified Neal would try to talk to Lynch instead of X.J. Lynch testified she was never close to recommending X.J. be returned to Neal's care.

¶ 32 In January 2010, both Jackson and Neal were rated unsatisfactory for all services.

¶ 33 Natalie Cronister testified she was the assigned caseworker beginning in either December 2009 or January 2010. She testified a new service plan was established in January 2010 for the period January 2010 to July 2010. The assigned tasks were the same as on previous plans. Cronister testified Neal did not cooperate with the assigned tasks during this period. Neal had a job at Taco Gringo but was arrested and lost that job. She also did not maintain stable housing. In January, she attended outpatient treatment at Triangle Center but was under the influence of alcohol during two scheduled appointments and refused inpatient treatment. Neal

claimed she had a bed reserved at the Wells Center, but the State said they would not accept her. Neal had not reengaged in treatment since that time.

¶ 34 Cronister testified Neal initiated participation at domestic-violence classes in January but stopped attending that same month. She also did not attend her visits regularly. She started counseling in January through the Mental Health Center but stopped that same month. She also continued to have contact with Jackson even though she had an order of protection against him.

¶ 35 As for Jackson, Cronister testified he moved back to Springfield from Chicago in February or March and found a job. However, he lost that job in April after he was involved in a car accident. From the record, it appears that incident occurred after Jackson went to Neal's home in violation of an order of protection. He was arrested and charged with several traffic violations. He tested positive for controlled substances.

¶ 36 Jackson had pending domestic-violence charges from a 2009 incident. He was told he needed to attend domestic-violence classes again.

¶ 37 Cronister testified Jackson attended counseling sessions on a semi-consistent basis but was not making progress. The main topic of discussion at his counseling sessions was the need to avoid involvement with Neal. However, Jackson and Neal continued to have contact.

¶ 38 Cronister stated both Jackson and Neal received one visit per month with X.J. during this period. Neal missed her monthly visit in May because she had been badly beaten, and she missed her appointment in July because she had been arrested for violating her probation. Jackson attended all of his scheduled visits during this period.

¶ 39 Cronister testified she was never close to recommending X.J. be returned to Neal or Jackson.

¶ 40 On April 25, 2011, the third day of the unfitness hearing, Neal testified X.J. was taken from her custody because of safety plan violations. She testified X.J. was supposed to live with Neal's grandmother and uncle instead of with her at her own apartment. She claimed she was not aware of this condition of the safety plan.

¶ 41 According to Neal, she completed parenting classes in 2008 but could not complete services at Fishes & Loaves because of budget cuts in that program. She later attended three domestic-violence counseling sessions at the Sojourn House in September 2009. She stated she did not attend more because of transportation issues. She testified she participated in outpatient drug and alcohol treatment at Gateway for four months from March 2008 to August 2008. According to her testimony, she later relapsed on alcohol and turned herself into the Wells Center (Wells) in February 2009. She testified she completed treatment at Wells but was not able to do the follow-up outpatient treatment at Wells because of transportation problems getting to Jacksonville. According to her testimony, she made arrangements to engage in outpatient treatment from April 2009 until November 2009 at the Triangle Center.

¶ 42 Neal stated she was unemployed from July 2008 to January 2009. However, she later testified she worked at Starship Billiards during this time. She also testified she worked at McDonald's from September until November 2009.

¶ 43 According to Neal's testimony, she had a relapse with alcohol sometime after November 2009. She received outpatient treatment at the Triangle Center from January 2010 until March 2010. The Triangle Center recommended she attend an out-of-state facility for

battered women for eight months because of her history of domestic violence with Jackson and domestic-violence incidents involving another man. Neal stated she did not go because she was working at Taco Gringo, where she worked from January 31, 2010, until July 3, 2010. She claimed the Triangle Center would no longer allow her to attend outpatient treatment after she declined the out-of-state services. She did not try to reengage in any outpatient services until December 2010 when she tried to go to the Wells Center but was denied. She blamed budget cuts and a lack of insurance.

¶ 44 Neal testified she was incarcerated for 67 days in 2010, which caused her to miss visits with X.J. and lose her job at Taco Gringo. She complained the service plans were unfair, except for those prepared by Natalie Cronister. She thought Cronister had been fair and given her credit for things she did. However, she still did not complete any tasks when Cronister was her caseworker.

¶ 45 Neal testified she wanted to remain X.J.'s mother, had a good relationship with him, and looked forward to her visits with him. She testified she brought him lunch and would talk to him about how his month had been at the visits. She testified X.J. called her either "mommy" or "visit mommy."

¶ 46 Neal claimed she was on the waiting list at the Triangle Center for services. She also testified she started working at Homestyle Café in February 2011. She admitted being involved in a domestic incident with a man named Michael Bann a week earlier but had not pressed charges against him at that time.

¶ 47 Jackson testified at the fitness hearing that he was currently in inpatient treatment at the Gateway Foundation in Chicago. He said he was last employed in April 2010, prior to his

car accident. Before his car accident, he had been at Neal's house. In the accident, he broke his femur, six vertebrae, and suffered a severe head injury. He had a metal rod implanted in his thigh and had undergone a spinal fusion. He testified he was temporarily disabled. Jackson tested positive for alcohol and drugs after the accident.

¶ 48 Jackson underwent a drug and alcohol assessment at Gateway in August 2010. He testified Gateway did not get back to him for two to three months. Gateway then asked him to come in for another assessment, which showed he needed alcohol or drug treatment.

¶ 49 Jackson testified he entered treatment in March 2011. He stated he had been in inpatient residential treatment for the last 63 days. He testified he had been learning coping skills and a lot about himself and the roots of his problems. He was scheduled to be released in two weeks. He claimed he was going to live with his father in Springfield when he was released.

¶ 50 When asked why he could not stay away from Neal, Jackson said he loved her, and she was the mother of his son. He testified they had been together since they were kids. He said he wanted to be a good influence on her and wanted to help her. He testified he and Neal were trying to help each other. According to his testimony, he last visited with X.J. in February 2011.

¶ 51 Jackson testified he lived with X.J. for 2 1/2 years. He was last arrested in March 2009 for domestic violence against Neal. He testified he was arrested in 2008 for criminal damage to Neal's property.

¶ 52 In April 2011, the trial court found Neal unfit because she failed to make reasonable progress toward the minor's return during the nine-month period following the neglect adjudication (April 3, 2008, to January 13, 2009) and the nine-month period from

January 13, 2009, to October 3, 2009, and the nine-month period from October 3, 2009, to July 3, 2010.

¶ 53 As for Jackson, the trial court found his situation was a closer call. The court stated Jackson "clearly has made progress and efforts, however, those have not been completed." The court found Jackson had shown a reasonable degree of interest and concern. According to the court, the State failed to establish Jackson failed to make reasonable efforts to correct the conditions, which were the basis for the removal of the minor. The court also found the State failed to prove Jackson failed to make reasonable progress within nine months after the neglect adjudication (April 3, 2008, to January 13, 2009) and during another nine-month period after the neglect adjudication (January 13, 2009, to October 3, 2009). According to the court, whether Jackson violated the terms of his service plan with regard to drugs and alcohol and staying away from Neal was in question. However, the court said there had only been one or two instances of that. The court found it was not convinced Jackson failed to make reasonable progress. However, the court found Jackson unfit based on his depravity.

¶ 54 The trial court held a best-interest hearing on May 31, 2011. Neal failed to appear at the hearing. Natalie Cronister testified she was still the caseworker for X.J. She testified Neal had not made any progress toward having X.J. returned to her since she was found unfit. She stopped attending domestic-violence classes and was not engaged in substance-abuse treatment or mental-health services. Cronister did testify Neal had been to both scheduled visits with X.J.

¶ 55 Cronister also testified Jackson had not made any progress toward X.J.'s return. According to Cronister, he stopped attending domestic-violence classes in November and had

not reengaged. She thought Jackson had been stepped down to an intensive outpatient substance-abuse program.

¶ 56 Cronister described X.J.'s behavior with both Neal and Jackson as appropriate. She testified X.J. would get excited about visits, but Cronister said she sometimes thought X.J. was more excited about seeing the case aide rather than Neal or Jackson. She testified X.J. referred to Neal and Jackson to her as his "visit mommy and daddy."

¶ 57 X.J. was in a traditional foster home, which was an adoptive placement. He had been with this foster family for three years. Four other children also lived in the home. X.J.'s foster parents had recently adopted one of the foster children. The other three children were between the ages of two and nine. The foster parents planned on adopting all the children, including X.J. Cronister testified X.J. called the other children brothers and sisters, and they behaved like typical siblings.

¶ 58 X.J. referred to his foster parents as mom and dad. Cronister said X.J. and the foster parents were bonded. Cronister testified X.J. started to display some aggressive behavior in June 2010 but he had been receiving counseling sessions with his foster parents and his behavior had improved. Cronister testified she believed it was in X.J.'s best interest to terminate Neal and Jackson's parental rights.

¶ 59 Cronister testified Jackson and Neal could not provide for X.J. She stated X.J. was currently in a home where he was loved and where he had a chance for permanency and stability. She testified X.J. had been in foster care for over three years and deserved somewhat of a normal life with the absence of caseworkers and everything else that foster care includes.

¶ 60 Jackson testified he recently had been in drug rehabilitation for about 75 days in

Chicago. It was inpatient rehabilitation. He testified he was not allowed visits during his rehabilitation. Jackson testified he was currently in intensive outpatient treatment three days a week, two hours per session. According to Jackson, he had learned coping skills to deal with certain anxieties that caused him to drink or use drugs. He testified he believed he would no longer abuse alcohol or use illegal substances. He testified if his parental rights were not terminated he was going to move back to Springfield, live with his father, and try to get a job at Nudo Products, where he worked before his accident. According to Jackson, he believed he and X.J. still had a good relationship, and X.J. was still affectionate toward him. Jackson testified he would do whatever DCFS asked of him to be reunited with his son.

¶ 61 On cross-examination, Jackson testified he was last employed in April 2010. He also testified he had relapsed on a prior occasion after successfully completing outpatient drug and alcohol treatment. In addition, Jackson admitted he had done drugs within the past six months.

¶ 62 Carolyn Jackson, Jackson's mother, testified Jackson now was less aggressive or intimidating. She said she thought her son had changed. She testified X.J. was affectionate with Jackson at their visits when she was there. According to her testimony, she believed Jackson could take care of X.J. physically, mentally, and emotionally with help.

¶ 63 Michel'le Jackson testified Jackson was her brother. She testified she would see Jackson and X.J. about once a week before the State removed X.J. She stated X.J. was really happy. She said she never saw any signs of neglect. According to her testimony, she attended two visits between Jackson and X.J. at Lutheran Family Services. She testified both Jackson and X.J. were happy to see each other at those visits and were affectionate.

¶ 64 The trial court found it was in X.J.'s best interests to terminate Neal and Jackson's parental rights.

¶ 65 These appeals followed.

¶ 66 II. ANALYSIS

¶ 67 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/1 through 18.06 (West 2008)) (*In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008)). A reviewing court will reverse a trial court's finding of unfitness only when it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004).

¶ 68 A individual's parental rights can be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). The manifest-weight-of-the-evidence standard of review applied to a court's fitness findings calls for deference to be given to the court's decision. A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *Cornica J.*, 351 Ill. App. 3d at 566, 814 N.E.2d at 626.

¶ 69 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762

N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "A trial court's finding termination is in the children's best interest will not be reversed unless it is contrary to the manifest weight of the evidence." *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanor. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008).

¶ 70

A. Unfitness Findings

¶ 71

1. *Michelle Neal*

¶ 72

With regard to the trial court's finding she was unfit, Neal makes the following argument:

"In order for the Court to find that the Appellant/Mother failed to make reasonable progress, it must have ignored that the Appellant/Mother had completed parenting classes. [Citation.] The Court did not assign proper consideration to the fact that the Appellant/Mother's attendance at domestic violence counseling was terminated due to budget cuts. [Citation.] The Appellant/Mother also testified that she went for a mental health evaluation and was advised that she did not need counseling from

the mental health provider. [Citation.] The Court heard testimony that at the time of the hearing, the Appellant/Mother had stable housing. [Citation.] The Court also heard testimony from the Appellant/Mother that she attended two domestic violence counseling programs, one at Fishes and Loaves and one at the Sojourn House. [Citation.] Budget cuts terminated the Fishes and Loaves program and transportation was an issue at the Sojourn Program."

¶ 73 The trial court could have considered all these factors and still found Neal unfit because Neal's recitation of the evidence before the court is incomplete. She ignores the evidence her attendance at scheduled visits with X.J. was inconsistent once she was required to submit to Breathalyzer tests and drug drops before each visit. These conditions were required after Neal arrived intoxicated for a visit with X.J. in March 2008. Further, Neal ignores the evidence she continued to test positive for drugs and alcohol. In addition, the State presented evidence she continued to have contact with Jackson in violation of family service plans and orders of protection. In fact, she was arrested in August 2008 as a result of a domestic incident with Jackson.

¶ 74 The State also presented evidence Neal refused to attend recommended inpatient drug and alcohol rehabilitation. Further, between June 2008 and December 2009, while Lynch was assigned to this case, Neal was asked to submit to 50 drug drops. Of those 50 drops, Neal tested negative only 6 times, had 30 positive results, and missed 14 drug drops.

¶ 75 Lynch also testified Neal was still being abused and at times exhibited visible

bruises. In addition, during Lynch's time working on this case, Neal missed 28 of 73 scheduled visits with X.J.

¶ 76 While Neal did attend outpatient treatment at the Triangle Center in January 2010, she was under the influence during two scheduled appointments and refused inpatient treatment. That same month, Neal started a domestic-violence class again but stopped attending before February. The same thing happened with regard to mental-health counseling.

¶ 77 Based on the evidence presented, the trial court's findings that Neal was unfit because she failed to make reasonable progress toward X.J.'s return during the nine-month periods between April 2008 and January 2009, January 2009 and October 2009, and October 2009 and July 2010 were not against the manifest weight of the evidence. Neal failed to make any real progress during any of these individual 9-month periods or the 27-month period as a whole.

¶ 78 *2. Daniel Jackson*

¶ 79 As stated previously in this disposition, the trial court found Jackson unfit based on the State's allegation Jackson was depraved. To find a parent unfit based on depravity, the State must establish the parent is depraved at the time of the petition to terminate parental rights. *In re A.M.*, 358 Ill. App. 3d 247, 253, 831 N.E.2d 648, 654 (2005). "[T]he 'acts constituting depravity *** must be of sufficient duration and of sufficient repetition to establish a 'deficiency' in moral sense and either an inability or an unwillingness to conform to accepted morality.'" *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000) (quoting *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166, 345 N.E.2d 714 (1976)). The trial court's finding was not against the manifest weight of the evidence.

¶ 80 With regard to this case, section 1(D)(1) of the Adoption Act states in pertinent part:

"There is a rebuttable presumption that a parent is deprived 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." (750 ILCS 50/1(D)(i) (West 2008).

"Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not deprived." *In re J.A.*, 316 Ill. App. 3d at 562, 736 N.E.2d at 686. If a respondent offers evidence he is not deprived, the presumption of depravity ceases to exist. Once the presumption is gone, the State bears the burden of proving depravity by clear and convincing evidence. *In re A.M.*, 358 Ill. App. 3d at 254, 831 N.E.2d at 654.

¶ 81 The State introduced evidence Jackson had three felonies convictions (case Nos. 2006-CF-1215 (retail theft), 2006-CF-0576 (forgery), and 04-CF-02 (aggravated robbery)), two of which took place within 5 years of the filing of the State's supplemental petition to terminate Jackson's parental rights (case Nos. 2006-CF-1215 and 2006-CF-0576 (July 19, 2007)) . Based on these three convictions, the State established a rebuttable presumption of depravity pursuant to the second paragraph of section 1(D)(i) (750 ILCS 50/1(D)(i) (West 2008)).

¶ 82 However, the State did not rest its case on these three convictions. It presented other evidence in addition to Jackson's three convictions to establish his continued depravity,

including his drug use and police contact during the pendency of this case. For example, the State presented evidence Jackson was charged twice with possession of a controlled substance. The State also presented evidence Jackson was involved in an automobile accident in April 2010, suffering serious injuries. Jackson tested positive for alcohol and cocaine at that time.

¶ 83 Further, the State presented evidence of instances of domestic violence and other inappropriate contact between Jackson and Neal. For example, Jackson was arrested in March 2009 for an incident involving Neal, and he was arrested in 2008 for criminal damage to Neal's property. Although he had a proclivity for becoming involved in domestic incidents, Jackson stopped attending domestic-violence classes in November 2010.

¶ 84 We conclude the State presented clear and convincing evidence to establish Jackson was depraved, and the trial court's decision was not against the manifest weight of the evidence.

¶ 85 B. X.J.'s Best Interest

¶ 86 We also find the trial court's best-interest finding was not against the manifest weight of the evidence. The court heard testimony Neal had not made any progress toward having X.J. returned since the original adjudication of neglect. The court also heard evidence Neal had stopped attending domestic-violence classes and was not engaged in substance-abuse treatment or mental health services. As for Jackson, he had taken steps to address his substance-abuse issues. However, he also had stopped taking domestic-violence classes and had not reengaged.

¶ 87 Regardless of any progress made by Jackson, Neal and Jackson's rights yielded to X.J.'s best interest once they were found unfit. The trial court heard testimony X.J. was bonded

with the foster family he had been with for three years. This foster family included four other foster children between the ages of two and nine, one of whom the foster parents had recently adopted. The court also heard evidence the children all behaved like typical siblings. Further, these foster parents wanted to adopt X.J.

¶ 88 The trial court also heard Cronister, the only caseworker Neal thought had been fair to her, testify she believed it was in X.J.'s best interest to terminate Neal and Jackson's parental rights. She testified neither Neal nor Jackson could provide for X.J. Cronister testified X.J. had been in foster care for three years and deserved permanency and stability, which neither Neal nor Jackson could provide. We note Neal even failed to attend the best-interest hearing.

¶ 89 The trial court's statements in ruling it was in X.J.'s best interest to terminate Neal and Jackson's parental rights demonstrate the court's careful consideration of the facts and evidence. Based on the evidence in this case, the court's decision was not against the manifest weight of the evidence.

¶ 90 III. CONCLUSION

¶ 91 For the reasons stated, we affirm the trial court's judgment with regard to the termination of Neal and Jackson's parental rights.

¶ 92 No. 4-11-0471, Affirmed.

¶ 93 No. 4-11-0472, Affirmed.