

NOTICE
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2011 IL App (4th) 110558-U

Filed 11/21/11

NO. 4-11-0558

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

In re: A.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v.)	No. 10JA94
ANTHONY CABRERA,)	
Respondent-Appellant.)	Honorable
)	Craig H. DeArmond,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in finding respondent father unfit. Only one ground for finding unfitness is needed, and the court was correct in finding the father was unfit because his repeated incarcerations prevented him from discharging his parental responsibilities to the minor. The trial court was also correct in finding the father depraved. Further, the court was correct in finding the father's parental rights should be terminated.
- ¶ 2 In June 2010, the State filed a petition for adjudication of wardship of A.W. (born May 19, 2010), the minor child of respondent, Anthony Cabrera. The allegations of neglect were made against the mother of A.W. who exercised sole custody of the child up until that point. Respondent was given temporary custody of A.W. In August 2010, a second temporary custody order was entered placing custody in the Illinois Department of Children and Family Services (DCFS) due to respondent's incarceration.
- ¶ 3 In March 2011, the State filed a petition to terminate respondent's parental rights.

The trial court found respondent to be unfit on several grounds and later terminated his parental rights in July 2011. Respondent appeals one finding of unfitness and the termination of his parental rights. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The record contains references to A.W. as J.W. also. His parents were not together at the time of his birth, and one parent named him one name and the other parent a different name. The original petition for adjudication of wardship refers to the minor as A.W., and we will use that throughout this order.

¶ 6 On June 24, 2010, the State filed a petition for adjudication of wardship alleging A.W.'s environment was injurious to his welfare due to his mother's history of substance abuse and failure to complete recommended treatment as well as untreated mental-health issues. On June 29, 2010, a temporary custody order was entered granting temporary custody of the minor to respondent father.

¶ 7 On August 14, 2010, respondent was arrested for domestic battery of his pregnant girlfriend and resisting arrest. The incident occurred in front of the minor. On August 19, 2010, a second temporary custody order was entered placing temporary custody with DCFS due to respondent's incarceration. DCFS placed A.W. in foster care.

¶ 8 On August 27, 2010, an adjudicatory order was entered finding neglect on the part of A.W.'s mother. On October 6, 2010, a dispositional hearing was held. Evidence at that hearing indicated respondent was still incarcerated. He had been employed and acknowledged the need for anger-management counseling and parenting and domestic-violence classes.

Respondent's client service plan required him to obtain a number of evaluations and participate

in a number of classes. He was allowed visits while incarcerated but none occurred. Respondent was not able to participate in any services. None were available in the county jail where he was incarcerated.

¶ 9 Respondent was released from custody in late December 2010 for medical reasons and began having visits with A.W. In a December 23, 2010, client service plan evaluation, respondent was rated as having made unsatisfactory progress toward reunification with the minor due to his incarceration and the facility not having access to any services for him. On February 10, 2011, respondent was sentenced to four years in the Illinois Department of Corrections (DOC) for resisting arrest.

¶ 10 On March 18, 2011, the State filed a petition to terminate respondent's parental rights, alleging respondent was an unfit parent under various provisions of the Adoption Act (750 ILCS 50/1(D) (West 2010)), in that he (1) had not maintained a reasonable degree of interest, concern, or responsibility as to A.W.'s welfare pursuant to (750 ILCS 50/1(D)(b) (West 2010)); (2) was deprived due to having three felony convictions (750 ILCS 50/1(D)(i) (West 2010)); and (3) was incarcerated at the time the petition for termination of parental rights was filed and had been repeatedly incarcerated as a result of criminal convictions, preventing him from discharging his parental responsibility for A.W. (750 ILCS 50/1(D)(s) (West 2010)).

¶ 11 On May 18, 2011, a hearing was held on the petition to terminate parental rights. Evidence indicated A.W. resided with respondent from May 2010 until his arrest in August 2010. Respondent had been incarcerated from August 2010 to December 2010 and, upon his release, engaged solely in visitation with A.W. He did not sign the releases to be referred for services until February 2011, only days before he was sentenced to DOC for four years.

Respondent's earliest possible release date from DOC is in February 2012. This was his fourth felony conviction. His previous convictions included 2004 convictions for possession of stolen firearms and burglary; a 2006 conviction for attempted home invasion; and a 2009 conviction of driving under the influence of alcohol. Respondent testified he was engaged in services, such as parenting classes, anger-management classes, and substance-abuse treatment while incarcerated.

¶ 12 The trial court found respondent was unfit because he was a career criminal due to three serious felony conviction in seven years, a short period of time. The court further found him unfit because respondent had been incarcerated during most of the time this case was pending, which prevented him from discharging his parental responsibilities, and he would continue to be incarcerated in the immediate future.

¶ 13 On June 22, 2011, a best interests hearing was held to determine whether respondent's parental rights should be terminated. Evidence indicated A.W. was bonded with his foster parents who were committed to adopting him once he was available. Respondent testified he had started some services while in prison but had to discontinue them during his transfer back to Danville for the unfitness and best interests proceedings. Respondent testified he would be released in February 2012 and wanted to parent A.W. upon his release. The trial court found it was in A.W.'s best interests to terminate respondent's parental rights. On July 20, 2011, the unfitness and termination orders were entered. This appeal followed.

¶ 14

II. ANALYSIS

¶ 15 A trial court's finding of unfitness in a termination of parental rights case will not be reversed unless it is against the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1114, 762 N.E.2d 701, 705 (2002). Once a court has found a parent to be unfit, whether

that parent's rights should be terminated is determined by the best interests of the child, and that decision also will not be reversed unless it is against the manifest weight of the evidence. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261-62, 810 N.E.2d 108, 126-27 (2004).

¶ 16 A. Unfitness

¶ 17 The trial court found respondent to be unfit for two reasons: (1) he was deprived due to having three felony convictions; and (2) he was incarcerated at the time the petition was filed, had been repeatedly incarcerated as a result of criminal convictions, and his repeated incarceration prevented him from discharging his parental responsibilities to the minor who was in the temporary custody of DCFS. On appeal, respondent challenges only the court's finding he was deprived.

¶ 18 Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005); *In re M.R.*, 393 Ill. App. 3d 609, 613, 912 N.E.2d 337, 342 (2009). By challenging only one of the two grounds on which the court found him unfit, respondent has conceded his unfitness on the unchallenged ground of unfitness (*In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001)), and he has forfeited any argument he may have had on the unchallenged ground by failing to raise it in his brief (see Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006); *In re K.J.*, 381 Ill. App. 3d 349, 353, 885 N.E.2d 1116, 1120 (2008)). While forfeited, the argument has no merit. His repeated incarceration prevented him from acting as a responsible parent.

¶ 19 The trial court's finding respondent was deprived is supported by clear and convincing evidence. Section 1(D)(i) of the Adoption Act providing a parent may be found unfit based on depravity states:

"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 2010).

¶ 20 Evidence admitted at the unfitness hearing included certified copies of respondent's convictions for (1) possession of stolen firearms and for burglary in 2004; (2) attempted home invasion in 2006; and (3) resisting or obstructing a peace officer in 2010. The State clearly established depravity based on three felony convictions. The trial court noted the 2004 case began with a residential burglary charge and respondent was allowed to plead guilty to the possession of stolen firearms and burglary. While on probation from those convictions, in 2006 respondent was charged with a home invasion causing injury and he was allowed to plead to attempt (home invasion). In 2010, while on mandatory supervised release, respondent was charged with an aggravated battery against a police officer and domestic battery and pleaded guilty to resisting arrest for a four-year sentence. He accumulated these convictions for serious felonies in only 7 years, between the ages of 17 and 24. Respondent was proved unfit due to depravity by clear and convincing evidence. No evidence in the record suggests otherwise.

¶ 21 **B. Best Interests**

¶ 22 Respondent also appeals the trial court's finding it was in the best interests of A.W. to terminate respondent's parental rights, claiming it is against the manifest weight of the

evidence. A decision is against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite result. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 912 N.E.2d 284, 291 (2009). The State must prove by a preponderance of the evidence termination of parental rights is in the best interests of the minor. *In re Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 290-91.

¶ 23 Here, the evidence indicated A.W., then 13 months old, had been with his foster family since he was 3 months old. He was bonded to them and doing well. Respondent had not been a parent to A.W. in 10 months. His earliest release date is in February 2012. By then another eight months would have passed in A.W.'s young life. Respondent was attending some services available to him in DOC, but it was not clear those services were what he needed to complete the services required of him under the DCFS service plans. Respondent had only parented A.W. briefly, and his incarceration prevented visitation.

¶ 24 Even if respondent could somehow complete all services required of him by the time he was released from DOC, it was not in A.W.'s best interests to keep him in foster care for an indefinite period and then plan to take him from the only parents he had ever known, who wanted to adopt him, and place him with a parent he did not know if respondent ever demonstrated an ability to stay out of jail and prison and parent a child. The facts do not demonstrate an opposite result should have been reached. It was in the best interests of A.W. to terminate respondent's parental rights.

¶ 25 III. CONCLUSION

¶ 26 The trial court's findings as to both unfitness and best interests are not against the manifest weight of the evidence. We affirm.

¶ 27 Affirmed.