



¶ 4

## I. BACKGROUND

¶ 5 On March 22, 2010, the State filed a juvenile petition, alleging that A.P. was neglected. Specifically, the State alleged that A.P. was neglected in that she was born with codeine in her system (705 ILCS 405/2-3(1)(c) (West 2010)). On March 25, 2010, the trial court entered an order as to shelter care, (1) appointing the Department of Children and Family Services (DCFS) as A.P.'s temporary custodian, (2) finding A.P. neglected pursuant to her mother's stipulation, and (3) ordering A.P.'s mother to cooperate with DCFS in completing her client-service plan. That same day, the court entered an order for paternity testing as to Calvin Williams and respondent. (Neither A.P.'s mother nor Williams are parties to this appeal.)

¶ 6 In June 2010, the State filed a "Petition for Adjudication of Neglect and Termination of Parental Rights" as to A.P., alleging that respondent, who was incarcerated in the Illinois Department of Corrections (DOC), (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.P. (750 ILCS 50/1(D)(b) (West 2010)), and (2) was depraved because (a) he had at least 3 felony convictions and (b) one of his convictions occurred within 5 years of the filing of the State's petition seeking termination of his parental rights (750 ILCS 50/1(D)(i) (West 2010)).

¶ 7 Following a February 2011 hearing, the trial court adjudicated A.P. neglected. At that same hearing, the court found respondent unfit based on depravity, having been presented with (1) certified copies of respondent's felony convictions for obstructing justice (Sangamon County case Nos. 07-CF-429 and 08-CF-939) and retail theft (Sangamon County case Nos. 08-CF-940, 08-CF-941, 09-CF-256, and 09-CF-483); (2) testimony from the State's witnesses that A.P. was born with codeine in her system and that respondent did not have any contact with A.P.

within 30 days after her birth, as he was in DOC; and (3) exhibits certifying that respondent had completed courses in (a) adult basic education and (b) anger management.

¶ 8 Following a May 2011 hearing, at which respondent failed to appear, the trial court terminated respondent's parental rights after receiving arguments from counsel and testimony from Brooke Budny, A.P.'s caseworker, that (1) A.P. had bonded with her foster family; (2) A.P.'s foster parents were meeting A.P.'s "special needs" and were prepared to adopt A.P.; and (3) respondent was "a little uneasy" because A.G. cried during most of his visits. The court also considered the State's April 2011 "Dispositional Hearing Court Report," which included the following summary of respondent's criminal history:

"[Respondent] reported he has been convicted for at least 3 felonies. He stated that his first charge of a felony came when he was 24 years old, for obstructing justice. He reported that his recent incarceration was his second incarceration, with the first one being when he was 24 for obstructing justice. [Respondent] reported that at the time of his arrest, he knew he had a warrant out for a misdemeanor charge and he gave the police officer a fake name. He reported he was then convicted of a felony obstructing justice and he spent 61 days in jail. [Respondent] stated his next felony charge came a year later, where he was convicted of theft. He stated he was placed on probation for that charge. He reported that while he was on probation for theft, he received another felony charge for theft that resulted in a 15[-]month prison sentence.

[Respondent] was released on November 1, 2010[,] from that incarceration and he is currently on parole. On December 9[, 2010, respondent] was again arrested for another felony theft charge. He is currently out on bail and awaiting a trial which is scheduled for May 9, 2011."

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Respondent argues that the trial court erred by (1) finding him unfit and (2) terminating his parental rights. We address respondent's contentions in turn.

¶ 12 A. Respondent's Claim That the Trial Court Erred by Finding Him Unfit

¶ 13 Respondent first contends that the trial court erred by finding him unfit.

Specifically, respondent asserts that the court erred because although the certified copies of his criminal convictions created a *prima facie* showing of depravity, he rebutted that presumption by presenting evidence that he had completed an adult education course and an anger-management program. We disagree.

¶ 14 The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility. *In re D.F.*, 201 Ill. 2d 476, 498-99, 777 N.E.2d 930, 943 (2002). We will not reverse a trial court's finding of parental unfitness unless it was contrary to the manifest weight of the evidence, meaning that the correctness of the opposite conclusion is clearly evident from a review of the record. *In re D.F.*, 201 Ill. 2d at 498, 777 N.E.2d at 942.

¶ 15 One of the grounds for unfitness is depravity. 750 ILCS 50/1(D)(i) (West 2010).

The statute outlining depravity as an unfitness ground states that "[t]here is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies \*\*\* and at least one of these convictions took place within 5 years of the filing of the petition \*\*\* seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2010).

¶ 16 As previously stated, respondent does not claim that the State failed to show that he had been convicted of at least 3 felonies, at least one of which took place within 5 years from the filing of the termination petition. Instead, respondent posits that he overcame the presumption of unfitness that flowed from the State's evidence when he presented evidence that he had completed an anger-management program (March 2010) and an adult education course (August 2010). While commendable, we do not view respondent's completion of an anger-management program and an education course sufficient to overcome his depravity, particularly in light of the fact that respondent was arrested on a December 2010 felony theft charge after completing those programs. See *In re A.M.*, 358 Ill. App. 3d 247, 254, 831 N.E.2d 648, 654-55 (2005) (rejecting the respondent's claim that he rebutted the presumption of depravity because he had completed education courses and was enrolled in others, in part, because he later committed other crimes).

¶ 17 Accordingly, we conclude that it was not against the manifest weight of the evidence for the trial court to find that respondent was unfit due to his depravity.

¶ 18 **B. Respondent's Claim That the Trial Court Erred  
by Terminating His Parental Rights**

¶ 19 Respondent next contends that the trial court erred by terminating his parental rights. Respondent asserts that the court erred because it based its termination determination on the fact that respondent was incarcerated. We disagree.

¶ 20 At the best-interest stage of parental termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 21 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 22 In this case, the record shows that the trial court considered the statutory factors in determining the best interest of A.P. The evidence presented at the best-interest hearing revealed that respondent had been incarcerated for a significant portion of A.P.'s life, and would likely not provide an adequate home and environment, given the likelihood that respondent would be repeatedly incarcerated. The evidence further showed that (1) A.P. had bonded with her foster family and (2) A.P.'s foster parents were (a) meeting A.P.'s "special needs" and (b) prepared to adopt A.P.

¶ 23 Given our standard of review, we conclude that the court's finding that it was in A.P.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 24 In closing, we note that respondent posits that he is entitled to a new hearing

because the trial court orally found him unfit based upon depravity at the February 2011 fitness hearing, but later, in its June 2011 order terminating parental rights, the court indicated that respondent was unfit because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of A.P. In other words, we should reverse the court's judgment because the court's fitness findings were inconsistent. Our review of the record, however, reveals that the basis for unfitness outlined in the court's June 2011 order was merely a clerical error. In any event, the court's oral pronouncement of its finding from the February 2011 hearing is controlling. See *People v. Roberson*, 401 Ill. App. 3d 758, 774, 927 N.E.2d 1277, 1291 (2010) ("When the oral pronouncement of the court and the written order conflict, the oral pronouncement of the court controls"). Thus, we reject any notion that respondent is entitled to a new hearing because the court's unfitness finding was based on anything other than respondent's depravity.

¶ 25

### III. CONCLUSION

¶ 26

For the reasons stated, we affirm the trial court's judgment.

¶ 27

Affirmed.