NOTICE
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2011 IL App (4th) 110747-U Filed 12/30/11

NO. 4-11-0747

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 10JA55
MALCOLM MATTHEWS,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Respondent forfeited any argument challenging the trial court's unfitness or best-interest findings.

¶ 2 (2) Forfeiture aside, the trial court's unfitness and best-interest determinations were not against the manifest weight of the evidence.

¶ 3 Respondent father, Malcolm Matthews, was found to be unfit and his parental rights to his son, M.M. (born March 14, 2011), were terminated. Respondent appeals, arguing the trial court's termination of his parental rights was an abuse of discretion. We affirm.

¶ 4 I. BACKGROUND

¶ 5 According to an August 2010, shelter-care report, M.M.'s sibling, Ma. M., was hospitalized nine times between May 2009 and July 2010 because their mother, Maria Hilson, reported Ma. M. (born April 15, 2009) had suffered seizures. Hilson indicated Ma. M.'s seizures

were increasing in frequency and included an instance where Ma. M. ceased breathing and vomited blood onto his pillow. While Ma. M.'s physician prescribed anticonvulsant medication, Hilson's reports of Ma. M.'s seizures continued. Ma. M.'s physician suspected Hilson of Münchausen Syndrome by proxy. Hilson denied any history of mental illness despite a prior psychiatric hospitalization following a suicide attempt three years earlier. Medical personnel contacted the Department of Children and Family Services (DCFS) on July 30, 2010, regarding their concerns Hilson was causing a substantial risk of physical injury to Ma. M. At the time, respondent was not a reasonable placement alternative for Ma. M. due to his incarceration in the Illinois Department of Corrections (DOC) following a physical altercation involving Hilson.

¶ 6 On March 14, 2011, Hilson gave birth to M.M., the minor at issue in this appeal.

¶ 7 On April 29, 2011, the trial court terminated respondent's parental rights with regard to respondent's other son, Ma. M. On September 26, 2011, this court affirmed. See *In re M.M.*, No. 4-11-0382 (Sept. 26, 2011) (unpublished order under Supreme Court Rule 23).

¶ 8 On May 12, 2011, the State filed a two-count petition for adjudication of neglect and an expedited motion to terminate respondent's parental rights to M.M. Hilson was also named in the petition but is not a party to this appeal.

¶ 9 Count I of the State's petition alleged the minor, M.M., was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2008)) because respondent had failed to correct the conditions that resulted in the prior adjudication of unfitness with regards to Ma. M. Count II alleged M.M. resided in an environment injurious to his welfare in that he was exposed to the risk of physical harm.

¶ 10 The termination portion of the State's petition alleged respondent was unfit

pursuant to section 1(D)(i) (750 ILCS 50/1(D)(i) (West 2008)) of the Juvenile Court Act because he was depraved in that "he has been criminally convicted of at least three felonies under the laws of this state and at least one of the convictions took place within five years of the filing of this motion to terminate." The petition also alleged respondent was unfit because he was depraved in that "he has engaged in a pattern of conduct which demonstrates an inherent deficiency of moral sense and rectitude."

¶ 11 During the July 6, 2011, adjudicatory hearing on the State's petition for adjudication of neglect, the trial court took judicial notice of all prior orders as well respondent's prior convictions. The State argued respondent had been in DOC since March 2011 for domestic battery in Champaign County case No. 10-CF-2032 and clearly had "not corrected the conditions which were the basis for the removal of custody of [Ma. M.]" The State argued, if anything, "the conditions have worsened since that time." Respondent's attorney did not present any evidence. In its written order, the court noted respondent had been incarcerated in DOC "since before [M.M.] was born." The court found the State had proven "both by a preponderance of the evidence" and "clear and convincing evidence, neglect under both count one and count two."

¶ 12 The trial court then took up the State's expedited petition to terminate and heard arguments on the State's request for a finding of unfitness. The court took judicial notice of respondent's prior convictions in Champaign County case Nos. 10-CF-2032 (domestic battery of Hilson with a prior domestic-battery conviction), 10-CF-1697 (domestic battery of Hilson with a prior domestic-battery conviction), 10-CF-741 (domestic battery of Hilson), and 08-CF-1406 (resisting a peace officer). The court also took notice of case No. 10-OP-528 (order of protection for Hilson) as well as respondent's conviction in Macon County case No. 06-CF-1041 ((attempt)

residential burglary). Respondent's attorney did not present any evidence. The State argued respondent was "clearly depraved as alleged [in its petition] in that he has been convicted of four felonies, all within the last five years." The State also pointed out respondent "has offered no evidence to attempt to rebut the presumption of depravity." At the conclusion of the hearing, the trial court found respondent to be an unfit parent on both counts alleged in the State's petition.

¶ 13 The August 4, 2011, combined disposition/best-interest report, filed by Lutheran Social Services, indicated respondent was currently incarcerated in DOC and has had no involvement or visitation with M.M. The report also indicated respondent, prior to his incarceration, had been unable to secure employment and his mother was supporting him financially. The report indicated M.M. was living with Hilson, with whom he had a strong attachment. According to the report, M.M. was "developmentally on target" and did "not have any serious health concerns at this time." However, while Hilson was cooperating with her service providers, the report indicated she was "only making some progress in addressing the issues that placed [Ma. M.] in foster care." The report recommended the trial court remove custody and guardianship from both parents. The report also recommended the court terminate respondent's parental rights.

¶ 14 On August 11, 2011, the trial court held both a dispositional hearing as to respondent and Hilson's custody and guardianship of M.M., and a best-interest hearing regarding respondent's parental rights.

¶ 15 During the dispositional hearing, the State argued Hilson was unfit and unable to exercise care, custody, and control of M.M. Hilson's counsel agreed with the recommendations contained in the dispositional report. Respondent's counsel also agreed with the report's

recommendations and stated the following:

> "Your Honor, obviously, for dispositional purposes, my client is not in a position to exercise custody and guardianship at this time and will not be until approximately four months from now and, obviously, that's at best. Therefore, we would accept the dispositional recommendations of the report at this time."

Thereafter, the court found Hilson "unfit and unable" to act as a custodial parent. The court also found respondent "unfit, unable[,] and unwilling" to act as a custodial parent. The court adjudicated M.M. neglected, made him a ward of the court, and placed his custody and guardianship with DCFS.

¶ 16 The trial court then took up the State's request for the termination of respondent's parental rights. At the time of the best-interest hearing, respondent remained incarcerated. The State argued that considering the trial court's prior rulings in the previous matter, it would be in M.M.'s best interest for the court to terminate respondent's parental rights. Respondent's attorney did not present any evidence. The court found M.M. was not bonded to respondent and he remained incarcerated. The court concluded it was in the minor's best interest to terminate respondent's parental rights.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. Forfeiture

¶ 20 On appeal, respondent argues the trial court erred in terminating his parental rights. We note respondent does not specifically challenge the court's unfitness or best-interest

findings. Instead, respondent only contends generally that the court's termination of his parental rights was an abuse of discretion. The State argues respondent has forfeited his argument. We agree. The entirety of respondent's argument on appeal is as follows:

> "Because of his incarceration since March, [respondent] has had no chance to form a relationship with [M.M.] However, the evidence was that [respondent] would be released as early as November, 2011. Since [M.M.'s] birth, the Department has made no effort to contact him and offer him services, but once released, [respondent] would be in a position to engage in services and undertake the establishment of a relationship with [M.M.]--all during a time before which [respondent] will have developed lasting memories."

¶ 21 In this case, respondent has failed to cite to *any* authority in support of his statements. Respondent's failure to develop a well-reasoned argument regarding whether the trial court's unfitness and best-interests findings were against the manifest weight of the evidence results in the forfeiture of those issues on appeal. See *In re H.D.*, 343 Ill. App. 3d 483, 489, 797 N.E.2d 1112, 1118 (2003) ("[t]he principles of forfeiture apply to proceedings conducted pursuant to the Juvenile Court Act"). However, because this case involves the parental rights of a minor, we will address whether the trial court's findings were against the manifest weight of the evidence. See *In re Louis S.*, 361 Ill. App. 3d 763, 768, 838 N.E.2d 218, 222 (2005) (citing *Smith v. Menold Construction, Inc.*, 348 Ill. App. 3d 1051, 1056, 811 N.E.2d 357, 362 (2005) (noting forfeiture is a limitation on the parties, and not the reviewing court)). Forfeiture aside,

the trial court did not err (1) in finding respondent to be an unfit parent and (2) in terminating his parental rights.

¶ 22 B. Finding of Unfitness

¶ 23 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " 'A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 24 In this case, the trial court found respondent unfit based on depravity (750 ILCS 50/1(D)(i) (West 2008)), which Illinois courts define as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1952)). A parent's depravity may be demonstrated by a series of acts or a course of conduct, indicating a moral deficiency and an inability to conform to accepted morality. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 850 (2003). The statute provides a rebuttable presumption of depravity exists if the parent has been convicted of at least three felonies and one of the convictions happened within five years of the petition for termination of parental rights. 750 ILCS 50/1(D)(i) (West 2008). A parent may rebut a presumption of depravity with proof of rehabilitation or with evidence the

circumstances surrounding the crimes did not result from depravity. *In re T.T.*, 322 Ill. App. 3d 462, 466, 749 N.E.2d 1043, 1046 (2001).

¶ 25 In this case, respondent meets the statutory definition for a depraved person. During the July 6, 2011, hearing, the trial court took judicial notice of respondent's prior felony convictions in Champaign County case Nos. 10-CF-2032, 10-CF-1697, 10-CF-741, and 08-CF-1406. The court also took notice of respondent's conviction in Macon County case No. 06-CF-1041. Thus, respondent had at least three prior felony convictions within five years of the filing of the State's May 12, 2011, petition to terminate his parental rights. Further, the record does not show he rebutted the presumption of depravity. In fact, respondent's counsel did not present *any* evidence during the fitness hearing to rebut the statutory presumption of depravity. Likewise, on appeal, respondent does not address the issue of his depravity. Based on the evidence in the record, we conclude the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 26 C. Best-Interest Finding

¶ 27 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2008); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best-interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 2008). These include the following:

> "(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 person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court's best-interest determination is reviewed under the manifest-weight-of-the-evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 28 In this case, the trial court found M.M. was not bonded to respondent. The record shows respondent had been incarcerated at the time of M.M.'s birth and remained incarcerated at the time of the best-interest hearing. Because of respondent's criminal behavior, respondent has had no visitation with M.M. Further, the best-interest report indicated respondent had no record of employment and that his mother had been supporting him financially prior to his arrest. Based on the evidence presented, the trial court's order finding termination of respondent's parental rights

was in the minor's best interest was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the trial court's judgment.

¶ 31 Affirmed.