

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-11-0049

Order Filed 4/26/11

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

In re: N.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 08JA135
TERANCE CARTER,	)	
Respondent-Appellant.	)	Honorable
	)	Esteban F. Sanchez,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Presiding Justice Knecht and Justice McCullough  
concurred in the judgment.

**ORDER**

*Held:* Where respondent was unfit and it was in the minor's best interest that respondent's parental rights be terminated, the trial court's unfitness findings and its ultimate decision on termination were not against the manifest weight of the evidence.

In September 2008, the State filed a petition for adjudication of wardship with respect to N.C., the minor child of respondent, Terance Carter. In December 2008, the trial court adjudicated the minor a ward of the court and placed custody and guardianship with the Illinois Department of Children and Family Services (DCFS). In September 2009, the State filed a motion to terminate respondent's parental rights. In May 2010, the trial court found respondent unfit. In January 2011, the court found it in the minor's best interest that respondent's parental rights

be terminated.

On appeal, respondent argues the trial court erred in terminating his parental rights. We affirm.

#### I. BACKGROUND

In September 2008, the State filed a petition for adjudication of wardship, alleging respondent's daughter, N.C., born in September 2008, was a neglected minor pursuant to section 2-3(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1) (West 2008)). The petition alleged N.C., as a newborn infant, tested positive for cocaine. The trial court found probable cause to believe N.C. was neglected and an immediate and urgent necessity existed to place her in shelter care.

In November 2008, the trial court found the minor was neglected based on her being born exposed to cocaine. In its December 2008 dispositional order, the court found it in the minor's best interest that she be made a ward of the court and placed custody and guardianship with DCFS.

In September 2009, the State filed a motion to terminate respondent's parental rights. The motion listed respondent's address as the Graham Correctional Center. The State alleged respondent was unfit because he (1) was depraved as he had been criminally convicted of three felonies and at least one conviction had taken place within five years of the filing of the motion (750 ILCS 50/1(D) (i) (West 2008)); (2) failed to maintain

a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2008)); (3) failed to make reasonable efforts to correct the conditions which were the basis for the minor's removal from him (750 ILCS 50/1(D)(m)(i) (West 2008)); and (4) failed to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)).

In May 2010, the trial court conducted a hearing on the motion to terminate parental rights. The State introduced certified copies of respondent's convictions. In case No. 08-CF-700, respondent was convicted of manufacture and delivery of a controlled substance and unlawful use of a weapon by a felon. He received prison sentences of 17 and 14 years, respectively, on those convictions. In case No. 95-CF-33, respondent was convicted of armed robbery, aggravated criminal sexual assault, and attempt (armed robbery), and he received sentences of 2, 20, and 4 years in prison, respectively.

Claire Kelley, a foster care caseworker at Catholic Charities, testified N.C. was born exposed to cocaine. On respondent's service plan, Kelley indicated he was to complete sex-offender treatment, complete his legal stipulations, undergo therapy, complete a drug and alcohol assessment, and verify his completion of parenting classes. Kelley stated respondent has

been incarcerated since N.C.'s birth. Respondent never provided verification that he completed any of the requirements on his service plan. He never requested a visit with N.C. and never sent any cards, letters, or gifts to her via Kelley. Kelley stated respondent had not made reasonable progress on his recommended services.

The trial court found respondent unfit. The court found he was depraved, failed to make reasonable efforts to correct the conditions which were the basis for the minor's removal, and failed to make reasonable progress toward her return after the adjudication of neglect. The court, however, found respondent was not unfit for failing to maintain a reasonable degree of interest or responsibility as to N.C.'s welfare.

In January 2011, the trial court conducted the best-interest hearing. Amy English, a caseworker with Catholic Charities, testified N.C. had been living with Mark and Tressa Pierce in Taylorville since her birth. N.C.'s half-brother also lived in the household. Because she was born exposed to cocaine, N.C. has the inability to self-soothe, has a short attention span, shows aggression, and is behind on her motor and social-cognitive skills. She receives early intervention services and physical therapy. English stated the Pierces have been involved in N.C.'s therapy and make sure she receives her required medical and dental care. N.C. gets along with the other children in the

home and is "very bonded" with her half-brother. The Pierces hope to adopt N.C. English stated respondent remained incarcerated. Based on certain letters, English stated it was apparent respondent cared for his daughter.

The trial court found it in the minor's best interest that respondent's parental rights be terminated. This appeal followed.

## II. ANALYSIS

### A. Unfitness

Respondent argues the trial court erred in finding him unfit. We disagree.

Because termination of parental rights is a serious matter, 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 determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.'" *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007), quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139 (2007). "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).

In the case *sub judice*, the trial court found respondent unfit, *inter alia*, because he was depraved. Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2008)) provides "[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." Depravity has been defined as "an inherent deficiency of moral sense and rectitude." *In re Yasmine P.*, 328 Ill. App. 3d 1005, 1011, 767 N.E.2d 867, 871 (2002). Depravity must be shown to exist at the time of the motion for termination of parental rights, and "the '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.' [Citation.]" *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000).

Because the presumption of depravity is rebuttable, a parent is still able to present evidence to show he is not depraved despite his convictions. *In re Shanna W.*, 343 Ill. App.

3d 1155, 1166, 799 N.E.2d 843, 851 (2003). "Certified copies of the requisite convictions create a *prima facie* showing of depravity, which shifts the burden to the parent to show by clear and convincing evidence that he is, in fact, not depraved." *In re A.H.*, 359 Ill. App. 3d 173, 180, 833 N.E.2d 915, 921 (2005).

In this case, the State presented evidence of respondent's five felony convictions. In May 2009, respondent was sentenced to 17 years in prison for manufacture and delivery of a controlled substance and 14 years for unlawful use of a weapon by a felon, the offenses having been committed in July 2008. In September 1995, respondent was sentenced to 20 years in prison for armed robbery, 20 years for aggravated criminal sexual assault, and 4 years for attempt (armed robbery).

Based on these certified convictions, the State presented evidence that respondent had been convicted of at least three felonies and at least one conviction took place within five years of the 2010 motion to terminate parental rights. Therefore, under section 1(D)(i) of the Adoption Act, the State's evidence created a rebuttable presumption that respondent was depraved.

Respondent argues he rebutted the presumption of depravity. Although he did not testify or present evidence, respondent claims he rebutted the presumption because he contacted the caseworker on several occasions and requested pictures

of N.C. Unfortunately for respondent, his actions speak louder than his words. It is readily apparent respondent's prison stay following his 1995 convictions did little to lead him down the path of rehabilitation as he returned to his criminal ways in 2008. Further, his limited inability to show any rehabilitation because he is currently incarcerated is not a valid excuse. See *Shanna W.*, 343 Ill. App. 3d at 1167, 799 N.E.2d at 852 (rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely"). Respondent's claims that he contacted the caseworker and asked for a picture of N.C. failed to rebut the presumption of depravity because it did not show he had changed from his criminal ways "into an individual with 'moral sense and rectitude' capable of parenting a child." *A.H.*, 359 Ill. App. 3d at 181, 833 N.E.2d at 921-22, quoting *Shanna W.*, 343 Ill. App. 3d at 1167, 799 N.E.2d at 851.

As respondent's convictions established a pattern of criminal activity, the trial court's finding of unfitness based on depravity was not against the manifest weight of the evidence. Because we find the evidence supported this ground of unfitness, we need not analyze the remaining grounds. *A.H.*, 359 Ill. App. 3d at 181, 833 N.E.2d at 922.

#### B. Best-Interest Finding

Respondent argues the trial court erred in terminating

his parental rights. We disagree.

Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *M.H.*, 196 Ill. 2d at 362-63, 751 N.E.2d at 1140. Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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).

See also 705 ILCS 405/1-3(4.05) (a) through (4.05) (j) (West 2008).

The trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

At the best-interest hearing, English testified N.C. had been in her current placement since she was born and her foster parents have made accommodations to meet her special needs. N.C. gets along well with the other children in the home and she is "very bonded" with her half-brother. English stated N.C.'s foster parents love her very much and want to adopt her.

N.C., born exposed to cocaine, is a young child in need of developmental and physical therapy to help her live her life. N.C.'s foster parents are able and willing to provide her with

the stability and attention she needs and deserves. Although respondent cares for his daughter, his criminal history and continued residence in the Department of Corrections indicate he cannot provide the stability N.C. needs for the foreseeable future. Based on the evidence presented, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

### III. CONCLUSION

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

Affirmed.