

NOTICE  
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2011 IL App (4th) 110290-U

Filed 8/8/11

NO. 4-11-0290

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 08JA68
CHRISTOPHER WALKER,	)	
Respondent-Appellant.	)	Honorable
	)	Esteban F. Sanchez,
	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Pope and Cook concurred in the judgment.

**ORDER**

- ¶ 1     *Held:* The trial court did not err by terminating respondent's parental rights to his child where neither the court's determination that respondent was unfit nor its best-interest finding were against the manifest weight of the evidence.
- ¶ 2             Respondent, Christopher Walker, appeals the trial court's termination of his parental rights to his child, C.W. (born October 13, 2002). On appeal, he argues the court erred by finding he was unfit and that termination was in C.W.'s best interests. We affirm.
- ¶ 3             Respondent and Candy Borrowman are the parents of C.W. (Both are also the parents of other children involved in the underlying proceedings, but C.W. is the only child that is the subject of this appeal.) On May 14, 2008, a petition for adjudication of wardship was filed, alleging C.W. was a neglected minor, in that her environment was injurious to her welfare due to her mother's drug use. The following day, the trial court entered an order as to shelter care,

placing C.W. and her siblings in the temporary custody and guardianship of the Illinois Department of Children and Family Services (DCFS).

¶ 4 On August 14, 2008, Borrowman stipulated that one of C.W.'s siblings was born cocaine exposed and C.W.'s environment was injurious to her welfare due to Borrowman's drug use. The same date, the trial court entered its adjudicatory order, finding C.W. neglected as alleged in the petition. On September 11, 2008, the court's dispositional order was filed. It adjudicated C.W. a ward of the court and placed her in DCFS's custody and guardianship.

¶ 5 On July 30, 2009, the State filed a motion to terminate respondent and Borrowman's parental rights to C.W. Relevant to this appeal, it alleged respondent was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to C.W.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for C.W.'s removal; and (3) to make reasonable progress toward C.W.'s return within nine months after the neglect adjudication, specifically from August 14, 2008, to May 14, 2009. The State further alleged it was in C.W.'s best interests to terminate Borrowman's and respondent's parental rights.

¶ 6 On May 20, 2010, the State filed a supplemental motion to terminate parental rights. Relevant to this appeal, it alleged respondent was unfit because he (1) failed to make reasonable progress toward C.W.'s return to him during any nine month period after the initial nine months following the neglect adjudication, specifically May 14, 2009, to February 14, 2010, or August 14, 2009, to May 14, 2010 and (2) is depraved in that he was criminally convicted of at least three felonies and at least one of those convictions took place within five years of the filing of the motion to terminate his parental rights. Again, the State asserted termination of respon-

dent's parental rights was in C.W.'s best interests.

¶ 7 On January 24, 2011, the trial court conducted a hearing on the fitness portion of termination proceedings. At the State's request and without objection, the court took judicial notice of its adjudicatory and dispositional orders, as well as certified copies of respondent's five felony convictions in the following cases: (1) 99CF682, for possession of a controlled substance; (2) 01CF958, for the manufacture and delivery of a controlled substance; (3) 01CF1065, for the manufacture and delivery of a controlled substance; (4) 06CF417, for the manufacture and delivery of a controlled substance; and (5) 06CF786, for the manufacture and delivery of a controlled substance within a thousand feet of a church.

¶ 8 Laura Bell testified she was the director of the foster care program at Family Service Center. She was assigned as the caseworker for C.W. and her siblings from July to October 2008. Bell stated C.W. and her siblings were removed from respondent and Borrowman after one of the children was born prematurely and found to be cocaine exposed. A service plan was developed for respondent who, at the time, was serving a prison sentence for drug-related charges. Respondent was required to (1) attend a substance-abuse treatment program, (2) attend an education program to obtain his GED, (3) send correspondence to his children, and (4) maintain contact with his caseworker.

¶ 9 In November 2008, respondent was evaluated with respect to his participation in services. Bell testified services were available to respondent in prison. In October 2008, he began attending a GED program but Bell was not aware of respondent completing his GED program while she was the children's caseworker. Respondent did not enroll in a substance-abuse program and failed to maintain consistent contact with either Bell or his children. Bell

stated respondent did not maintain good contact with her and she never received correspondence from him even though he had the option of sending letters to her or her agency. He also did not send any cards, gifts, or letters to his children. Bell testified there was never a time when she was close to returning C.W. to respondent, noting he did not make progress on his service plan.

¶ 10 Bell testified she developed a second service plan in the case, covering November 2008, to May 2009, in which respondent had the same services. In February 2009, Brianna Bailey-Hill became the caseworker for C.W. and her siblings. In May 2009, Bailey-Hill reviewed respondent's progress on the second service plan. Bailey-Hill testified respondent was involved in a prison GED program. He did not correspond with the children and was not enrolled in a substance-abuse program. Bailey-Hill testified she was able to maintain contact with respondent's correctional counselor. Although Bailey-Hill was the children's caseworker throughout the remainder of the case, she was not aware of respondent ever completing his GED program.

¶ 11 Following the review of the second service plan, a new plan was created, covering May through November 2009. In September 2009, respondent was released from prison. Upon his release, his services changed. Bailey-Hill testified respondent was asked to obtain employment and appropriate housing, complete a substance-abuse program, and complete parenting classes. She referred him to the Parent Place and the Triangle Center after his release so that he could engage in those services.

¶ 12 Bailey-Hill reviewed respondent's participation in services. She noted respondent had not participated in a substance-abuse program or completed parenting classes. Bailey-Hill testified she referred respondent for parenting classes upon his release and, in October 2009, he

began attending those classes. She recalled respondent began attending but was soon kicked out of the program for missing too many classes. Also, he was unemployed and his housing was inappropriate. Bailey-Hill stated respondent was living with Borrowman's grandmother who had an indicated report with DCFS. Additionally, she was aware of only one occasion that respondent sent a letter to his children while he was in prison.

¶ 13 Bailey-Hill testified a new service plan was created that covered November 2009, through May 2010. Respondent's services remained the same. In May 2010, the plan was reviewed. Bailey-Hill stated respondent had completed parenting classes after his second referral. However, he failed to engage in a substance-abuse program, was unemployed, and his housing was inappropriate because he continued to live with Borrowman's grandmother. When respondent was first released from prison, he kept in contact with Bailey-Hill. She heard from him at least once a month but stated she generally had to track him down. More recently, Bailey-Hill had not heard from respondent.

¶ 14 Upon his release from prison, respondent had weekly, one-hour visitations with his children. In early 2010, he was restricted to monthly, one-hour visits because he failed to make enough progress on his service plan. Visitations were supervised and Bailey-Hill observed respondent "did a pretty good job one-on-one with [his two] kids" but had more difficulty dividing his attention among both of them. Respondent attended 28 out of 33 available visits, bringing food and, occasionally, gifts to the children. Bailey-Hill testified there was no time while she was the children's caseworker that she was close to returning the children to respondent's care. She noted respondent's lack of progress on his service plan.

¶ 15 On cross-examination, Bailey-Hill testified that, when respondent was in prison,

she called his correctional facility to investigate what programs were available to him. She learned that the facility had a GED program, which respondent was enrolled in, and a substance-abuse program. She was not aware that inmates could not be enrolled in both programs at the same time. Bailey-Hill recalled a counselor telling her there was a waiting list for the facility's programs but she did not remember it being lengthy. She further testified she was not aware that respondent had negative drops for controlled substances while on parole or that he had gone to Gateway. Bailey-Hill was not aware and could not recall that respondent ever completed a drug and alcohol treatment program.

¶ 16 Respondent testified on his own behalf, stating he was 31 years old and the father of two children, C.W. and Ca.B. In June 2008, he went to prison. Around that time, his children were in the custody of his mother. In approximately November 2008, respondent's mother passed away and he learned that his children had been taken into care by DCFS and placed with their maternal great grandmother, Joy Hillman. He estimated that he received his first service plan at the beginning of 2009.

¶ 17 Respondent asserted that, while in prison, he communicated with his children by phone almost every weekend. He also sent letters to Hillman's residence and Hillman brought the children to visit him in prison approximately twice a month. Respondent stated the children knew him as their father. At the beginning of 2009, the children were removed from Hillman's care and no longer taken to see respondent.

¶ 18 Respondent stated his caseworker only communicated with him through mail, sending him service plans. He did not write any letters to his caseworkers although he was permitted to do so.

¶ 19 Respondent testified he fully participated in GED classes but did not obtain his GED because of his release from prison. He asserted he also participated in substance-abuse programs while in prison, stating he was in the Gateway prison housing unit for three or four months. However, prison officials informed him that a mistake had been made and he could only be enrolled in one of the two programs at a time. Respondent was forced to choose between the GED and Gateway programs. He chose the GED program because he felt it would be more beneficial.

¶ 20 Respondent described his efforts to find job training or employment after his prison release. He stated he filled out thousands of job applications but had not been called back. Respondent believed his felony convictions were holding him back.

¶ 21 Respondent estimated that in October 2009, shortly after his release, he underwent a substance-abuse assessment at Gateway. He stated the assessment was required as a condition of his parole and showed he needed no treatment. Respondent alleged he received a paper that he gave his parole officer. He did not provide the paper to his caseworker but did let her know about the assessment. Respondent stated his caseworker never wrote down the information he provided. He further testified he never received a parole violation for failing to attend a drug treatment program. Respondent also underwent urinalysis twice at the request of his parole officer and both tests came back negative.

¶ 22 Respondent acknowledged that upon his release from prison he began living with Hillman. He asserted he did not have anywhere else to go. Currently, respondent was about to move in to a three bedroom house with his girlfriend.

¶ 23 The trial court found the State proved respondent unfit. Its unfitness finding was

based upon the grounds that respondent (1) failed to make reasonable progress toward his children's return within the nine-month periods of August 2008, through May 2009, and May 2009, through February 2010, and (2) was depraved.

¶ 24 On February 28, 2011, a best-interest report was filed, showing C.W. had lived in a traditional foster home since January 2009. She had a strong bond with her foster mother and foster sibling. The foster mother wished to adopt C.W. and C.W. was described as "comfortable" with being adopted. The report showed respondent had not been in contact with the caseworker, Bailey-Hill, for several months; was unemployed; had never completed a substance-abuse treatment program to Bailey-Hill's knowledge; had not obtained his GED; and had missed four of the last six visits offered to him. Bailey-Hill recommended termination of respondent's parental rights.

¶ 25 On March 1 and 29, 2011, the trial court conducted best-interest hearings in the matter. Bailey-Hill testified C.W. was 10 years old. She confirmed that, since January 2009, C.W. lived in a traditional foster home that was an adoptive placement. C.W. was connected with her foster family, which included two younger foster children. Bailey-Hill testified C.W. had no special needs and her regular needs were being met in the foster home. She opined it was in C.W.'s best interests to be permanently placed in her foster home with her foster mother. Bailey-Hill testified C.W. also had monthly, four-hour visits with her siblings. Her foster parent was willing to continue visits with her siblings even upon termination of parental rights.

¶ 26 Bailey-Hill acknowledged that C.W. made a request to return to respondent. She stated respondent missed four out of his last six visits with C.W. but faithfully visited with her prior to that time. Bailey-Hill further testified that C.W. knew respondent as her father and

respondent and C.W. loved each other. She stated C.W. acted just as loving toward respondent as she did toward her foster mother.

¶ 27 Respondent testified he had visits with C.W. once a month. She recognized him as her father and he would bring her gifts and talk to her on the phone. Respondent stated he had a nice home and had been referred to Primed For Life, an organization which he believed would help him find a job.

¶ 28 Respondent testified he attended four out of the previous six monthly visits with C.W. He acknowledged missing a few visits prior to that time due to being sick and painting houses. Respondent also stated that the last time C.W. lived with him was prior to his imprisonment in 2006.

¶ 29 The trial court found it was in C.W.'s best interests to terminate the parental rights of both Borrowman and respondent. Neither Borrowman's nor respondent's parental rights were terminated with respect to C.W.'s older sibling, Ca.B., due to that child's age and relationship with his parents. Instead, upon the recommendation of the parties, the court set the goal for Ca.B. as guardianship. Additionally, Borrowman surrendered her parental rights to a third sibling who was not respondent's child.

¶ 30 This appeal followed.

¶ 31 The issues on appeal involve only the trial court's termination of respondent's parental rights to C.W. First, respondent argues the court's unfitness finding was against the manifest weight of the evidence. He maintains the State failed to prove his unfitness by clear and convincing evidence.

¶ 32 A trial court may involuntarily terminate parental rights where it (1) finds, by

clear and convincing evidence that a parent is unfit as defined in Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) and (2) concludes termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). "Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed "unfit," any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). On review, a court's unfitness finding will not be disturbed unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005). "A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517.

¶ 33 Here, the trial court found respondent unfit based upon the State's allegations that he (1) was depraved and (2) failed to make reasonable progress toward C.W.'s return within the nine-month periods of August 2008, through May 2009, and May 2009, through February 2010. Pursuant to the Adoption Act, a rebuttable presumption exists that a parent is depraved if he "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 or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2010). "The Illinois Supreme Court has accepted the definition of depravity 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).

¶ 34 "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 deprived." *In re A.H.*, 359 Ill. App. 3d 173, 180, 833 N.E.2d 915, 921 (2005).

"[O]nce evidence opposing the presumption comes into the case, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." *J.A.*, 316 Ill. App. 3d at 562-63, 736 N.E.2d at 686.

¶ 35 Under the Adoption Act, a parent may also be deemed unfit for failing to make reasonable progress toward the return of his child either within the initial nine-month period after the neglect adjudication or within any subsequent nine-month period. 750 ILCS 50/1(D)(m)(ii) and (m)(iii) (West 2010). "[I]n determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968. The time that a parent spends in prison does not toll the relevant nine-month period. *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968.

¶ 36 Evidence at the unfitness hearing showed respondent had five felony convictions from 1999 to 2006 that were all related to the possession, manufacture, or delivery of a controlled substance. His 2006 convictions occurred within the requisite five years of the State's motion to terminate his parental rights. Respondent was in prison at the time C.W. was adjudicated neglected and placed in DCFS's custody and guardianship. He was not released until September 2009.

¶ 37 Evidence further showed respondent failed to fully engage in the services that were required of him. Respondent enrolled in GED classes while in prison but, ultimately, failed to obtain his GED. While in prison, he did not maintain consistent contact with his caseworker or his children. Respondent wrote no letters to his caseworker although he had the ability to do

so. His caseworker was aware of only one letter respondent wrote to his children while imprisoned. Upon his release from prison, respondent completed required parenting classes but failed to maintain suitable housing or employment. Both testifying caseworkers asserted there was never a time they were close to returning C.W. to respondent's care.

¶ 38 Respondent's level of participation in substance-abuse services was a disputed issue at the unfitness hearing. His caseworker was unaware that respondent had ever engaged in such required services and there is no evidence that he participated in substance-abuse services at the Triangle Center where was referred by his caseworker. Instead, respondent asserted he was involved in a Gateway program in prison for three to four months until he was informed that he could not be enrolled in the program while also taking GED classes. He further testified that, upon his release from prison, he went to Gateway for a substance-abuse assessment as a condition of his parole. Respondent alleged the recommendation from the assessment was that he needed no services. He also alleged two urinalysis tests, undergone as a condition of his parole, were both negative.

¶ 39 Respondent acknowledged that he never provided his caseworker with documentation of a Gateway assessment or urine tests. Regarding this issue, the trial court aptly stated as follows:

"This is exactly the type of situation -- where the saying the ball is in your court applies. It isn't [DCFS's] job or the caseworker's job to take you by the hand or take somebody, a father or a mother, by the hand to make sure that they do the services. It's up to the parents because it is in the parent's court to make sure that they

show and demonstrate that they care and that they do everything that they're told to get the job done.

It is not impressive to hear, well, I didn't do it because I wasn't told. Or I didn't do it because I wasn't provided transportation. Or I didn't do it because I wasn't clear on the instructions that I needed to do -- of what it is that I needed to do. The ball is in the parent's court once the case gets to this stage to do everything they can to make sure that they are doing what they're told to do, in terms of completing the service plan."

¶ 40 We agree with the trial court's assessment. Particularly in this case, where substance-abuse issues were at the heart of why C.W. was removed from her parents' custody. C.W.'s sibling was born drug exposed and respondent was in prison on drug-related charges. As stated, his criminal record shows five felony convictions for drug-related offenses. It was imperative that respondent engage in services to address substance-abuse issues and provide proof of his participation to his caseworker.

¶ 41 Although the evidence showed some level of participation by respondent in services, it also showed many ways in which he failed to take necessary actions to have C.W. returned to his care. The record contained sufficient evidence to support the trial court's finding that respondent was unfit both for failing to make progress toward C.W.'s return during the nine-month periods identified by the State and because he was depraved. Given the totality of the evidence presented, respondent failed to rebut the presumption of depravity by clear and convincing evidence. The court's decision was not against the manifest weight of the evidence.

¶ 42 On appeal, respondent further challenges the trial court's best interest determination. He argues the court's finding that termination of his parental rights was in C.W.'s best interests was against the manifest weight of the evidence. "After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009).

"When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291, citing 705 ILCS 405/1-3(4.05) (West 2008).

As with the court's unfitness finding, the court's best-interest determination will not be reversed unless it was against the manifest weight of the evidence. *Jay H.*, 395 Ill. App. 3d at 1071, 918

N.E.2d at 291.

¶ 43           The record shows C.W. was 10 years old. She had not lived with respondent since before he went to prison in 2006. Since January 2009, she resided in a traditional foster home that was an adoptive placement. All of C.W.'s needs were being met in the foster home and she was described as connected with her foster family. While C.W. undoubtedly loved respondent and made a request to return to him, she was just as loving with her foster mother. Additionally, respondent had a long history of instability, including multiple drug-related felony convictions, imprisonment, and a failure to meet the requirements of his service plans. At the time of the best-interest hearing respondent remained unemployed. There was no indication from the record that he would be able to parent C.W. at any point in the near future.

¶ 44           The record contains sufficient support for the trial court's best-interest determination. Its decision was not against the manifest weight of the evidence.

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

¶ 46           Affirmed.