

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).

2011 IL App (4th) 110382-U

Filed 9/26/11

NO. 4-11-0382

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.
Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in finding respondent an unfit parent where respondent conceded the State presented sufficient evidence for the statutory presumption of depravity to apply, but respondent failed to sufficiently rebut that presumption.

(2) The trial court did not err in terminating respondent's parental rights where the State sufficiently proved termination was in the minor's best interest.

¶ 2 Respondent father, Malcolm Matthews, was found to be unfit and his parental rights to his son, M.M. (born April 15, 2009), were terminated. Respondent appeals, arguing the trial court erred both in finding him unfit and in terminating his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 5, 2010, the State filed a three-count petition for adjudication of neglect, abuse, and shelter care for respondent's child, M.M. Maria Hilson, M.M.'s mother, was also

named in the petition but is not a party to this appeal.

¶ 5 The State's petition alleged the minor 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 he resided in an environment injurious to his welfare in that he was exposed to the risk of physical harm (count I) and domestic violence (count III). The petition also alleged M.M. was abused pursuant to section 2-3(1)(2)(ii) (705 ILCS 405/2-3(1)(b) (West 2008)) because Hilson created a substantial risk of physical injury to M.M. (count II).

¶ 6 The August 5, 2010, shelter-care report indicated M.M. was hospitalized nine times between May 2009 and July 2010 because Hilson reported M.M. had suffered seizures. Hilson indicated M.M.'s seizures were increasing in frequency and included an instance where M.M. ceased breathing and vomited blood onto his pillow. While M.M.'s physician prescribed anticonvulsant medication, Hilson's reports of M.M.'s seizures continued. M.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 M.M. The report indicated respondent was not a reasonable placement alternative to Hilson due to his incarceration in the Illinois Department of Corrections (DOC) following a physical altercation involving Hilson.

¶ 7 During an August 5, 2010, shelter-care hearing, the trial court found probable cause to believe M.M. was neglected as alleged and an immediate and urgent need existed for shelter care. The court placed M.M.'s temporary custody with DCFS.

¶ 8 During the September 14, 2010, adjudicatory hearing, respondent stipulated to count III of the State's petition. Hilson stipulated to counts I and III. The court accepted the stipulations and adjudicated M.M. neglected.

¶ 9 On October 29, 2010, Lutheran Social Services (LSS) filed a Home and Background report. The report indicated DCFS had recommended respondent attend domestic-violence classes, individual counseling, and undergo a substance-abuse evaluation. However, according to the report, respondent had not attended services because of an intended move from Decatur to Champaign and a desire to attend services in Champaign. The caseworker began the referral process, during which time respondent was incarcerated again because of an October 4, 2010, domestic-violence incident involving M.M.'s mother.

¶ 10 During the November 4, 2010, dispositional hearing, respondent's counsel stated respondent acknowledged the situation and knew it needed to be addressed and corrected. Counsel acknowledged respondent's participation in services was delayed by his incarceration. However, counsel argued respondent was "very good about maintaining contact" with his caseworker and attending visits prior to his incarceration. Counsel argued respondent had just been released recently and expected to see "good progress" in this case.

¶ 11 At the conclusion of the hearing, the trial court stated it considered the home and background report and the arguments and evidence presented. The court found respondent unfit, unable, and unwilling to care for, protect, train or discipline the minor and the health, safety, and best interest of the minor would be jeopardized if the minor remained in respondent's custody. In its November 5, 2010, dispositional order, the court noted respondent's guilty pleas to domestic battery of M.M.'s mother in Champaign County case Nos. 10-CF-1697 and 10-CF-741. The

court made M.M. a ward of the court and placed his custody and guardianship with DCFS.

¶ 12 The February 4, 2011, permanency report, prepared by LSS, indicated respondent had not yet received any services and remained incarcerated. Further, the report showed an order of protection issued against respondent prohibited contact between respondent and M.M.

¶ 13 During the February 8, 2011, permanency review hearing, the trial court noted respondent, who was not present, had not begun services and had not been cooperating with DCFS. The court found respondent failed to make reasonable or substantial progress or reasonable efforts toward returning M.M. home.

¶ 14 On February 8, 2011, the State filed a petition seeking the termination of respondent's parental rights. Count I 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 deprived in that

"he has been criminally convicted [of] at least three felonies under the laws of this State and at least one of these convictions took place within five years of this filing; and that said offenses were not isolated events but were a part of a pattern of criminal behavior resulting in numerous criminal convictions since 1989 which show [respondent's] inherent deficiency of moral sense and rectitude."

Count II alleged respondent was unfit because he was deprived in that "he has engaged in a pattern of conduct which demonstrates an inherent deficiency of moral sense and rectitude."

¶ 15 During the March 11, 2011, adjudicatory hearing on the State's petition to terminate, the trial court took judicial notice of Champaign County case Nos. 08-CF-1406 (resisting a peace officer), 10-CF-741 (domestic battery of Hilson), 10-CF-1697 (domestic

battery of Hilson with a prior domestic-battery conviction), and 10-CF-2032 (domestic battery of Hilson with a prior domestic-battery conviction). The court also took notice of respondent's conviction in Macon County case No. 06-CF-1041 ((attempt) residential burglary). Respondent did not object. Respondent conceded the convictions were sufficient for the presumption of depravity to apply. Respondent instead argued he presented sufficient evidence to rebut the presumption.

¶ 16 In support of his argument, respondent presented testimony from Jerome Matthews, respondent's father, who testified respondent was a devoted father. Matthews testified respondent and M.M. had a loving father and son relationship. In addition, Margaret Matthews, respondent's grandmother, testified respondent seemed to be a devoted father. She also testified she believed respondent would be a good father when released from prison. Respondent testified he was currently serving a sentence in DOC. According to respondent, he had not yet had the chance to sign up for any counseling programs or classes. However, respondent testified he intended to take parenting and anger-management classes and pursue his general equivalency diploma (GED) while finishing out the rest of his sentence. Respondent also testified he had not missed any visits with M.M. during the times he was not incarcerated until the order of protection issued. 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.

¶ 17 The April 19, 2011, best-interest report filed by LSS indicated respondent was incarcerated for an October 4, 2010, and a December 3, 2010, domestic-battery incident involving Hilson. According to the report, respondent's mother was supporting him financially prior to his incarceration.

¶ 18 The report indicated M.M. had been placed with his maternal aunt and was benefitting from a stable home environment. According to the report, M.M. "continues to be agreeable and happy in his foster placement." Further, M.M. "seems to be appropriately bonded to his foster family" and has not demonstrated any negative behaviors or emotions as a result of the discontinued visits with respondent. The report recommended the trial court terminate respondent's parental rights.

¶ 19 During the April 28, 2011, best-interest hearing, the State argued M.M. had no attachment to respondent and that M.M.'s physical safety and welfare would be in serious danger if he were ever in respondent's custody. The State noted respondent had been in and out of prison since 2006 and his behavior had become more violent and abusive since M.M.'s birth. The State argued respondent had been convicted of domestic violence to M.M.'s mother three times. The State also noted since respondent's 2010 release from DOC, he attended just three of seven visits with M.M., the last visit taking place September 20, 2010. No further visits took place because of the order of protection and his subsequent incarceration.

¶ 20 Respondent argued that while he did not attend all visitations, both he and M.M. enjoyed the visits respondent did attend. Respondent maintained a connection existed "in that they share the same name" and the trial court should consider "family" and "cultural continuity" in making its ruling. Respondent requested the court consider his connection with M.M. but acknowledged incarceration was a significant handicap to maintaining such a connection.

¶ 21 At the conclusion of the hearing, the trial court stated it had considered the best-interest report, the evidence presented, and the arguments of counsel. The court found M.M. was not bonded to respondent and respondent's criminal behavior had limited the amount of contact

he had with M.M. The court also found M.M. was well cared for and bonded to his relative placement. The court concluded it was in the minor's best interest to terminate respondent's parental rights.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent argues the trial court erred in (1) finding him to be an unfit parent and (2) terminating his parental rights.

¶ 25 A. Finding of Unfitness

¶ 26 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).

¶ 27 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).

¶ 28 On appeal, respondent concedes the State presented sufficient evidence for the statutory presumption of depravity to apply. Respondent instead argues only that he presented sufficient facts to rebut the presumption. 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).

¶ 29 During the March 11, 2011, adjudicatory hearing, respondent's counsel argued the following:

"Your Honor, I recognize that the State has presented the requisite convictions to make the *prima facie* case of course. I would suggest however that we have presented sufficient evidence to rebut the case and show that in fact [respondent] is not depraved. He is devoted to his son and has tried to spend as much time as possible with him when he has been out of custody. He has certainly tried to cooperate with the caseworker in this case when he's been out of custody and is intending to continue to do so when he's released again and is also intending to do his best to improve himself while he is in the Department between now and November apparently.

Given all that, your Honor, I would suggest that we have

shown this is a person who has suffered setbacks in his life which are no doubt largely of his own making. Nevertheless he is not depraved. He is a person who is dedicated to his son, dedicated to improving himself so that he will be available for his son in the future and I would suggest that that simply shows he is not a person who is depraved and I would ask the Court to find the State has not met its burden."

¶ 30 In his brief on appeal, respondent argues his father and grandmother testified about the loving relationship between respondent and M.M. Respondent also references his testimony showing his intention to enroll in parenting, anger-management, and GED classes. However, respondent cites no authority showing the preceding are sufficient to rebut the presumption of depravity. See *In re A.H.*, 359 Ill. App. 3d 173, 181, 833 N.E.2d 915, 921-22 (2005) (finding the respondent's testimony he loved his child and participated in services did not rebut the presumption of depravity because the respondent did not show he had changed himself into an individual with the " 'moral sense and rectitude' capable of parenting a child").

¶ 31 Further, respondent's intention to take classes in prison does not prove rehabilitation. See *In re A.M.*, 358 Ill. App. 3d 247, 254, 831 N.E.2d 648, 655 (2005); *Shanna W.*, 343 Ill. App. 3d at 1167, 799 N.E.2d at 852. Evidence of rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely." *Shanna W.*, 343 Ill. App. 3d at 1167, 799 N.E.2d at 852. Here, respondent went to jail following the adjudication of neglect and was in custody at the time of the court's fitness determination. 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.

¶ 32

B. Best-Interest Finding

¶ 33

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.

¶ 34 In this case, the trial court found M.M. was not bonded to his father. The best-interest report indicated that while M.M. appeared to enjoy his visits with respondent, M.M. "did not show any difficulties in parting from [respondent] at the end of visits and he has not shown any behaviors that indicate that he would like to see [respondent] since [the] visits have ended." Conversely, the court found M.M. was bonded to his relative placement. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 893, 819 N.E.2d 813, 822 (2004) (in making best-interests determination, trial court can consider the nature of the child's relationship with the foster parent and the effect any change would have upon the child's well-being). The best-interest report also indicated M.M. was doing well in his foster placement. According to the report, M.M. "continue[d] to be agreeable and happy in his foster placement" and "seem[ed] to be appropriately bonded to his foster family." The report also indicated M.M. was benefitting from residing in a stable home environment. The court noted respondent's "criminal behavior ha[d] limited the amount of contact" he had with M.M. The record shows respondent had been repeatedly incarcerated since M.M.'s birth in April 2009 and remained incarcerated at the time of the best-interest hearing. Based on the evidence presented, we hold the trial court's order finding termination of respondent's parental rights was in the minors' best interest was not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

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

¶ 37 Affirmed.