

the power to consent to the adoption of the children (the petitions). The mother of the children voluntarily relinquished her parental rights. The petitions alleged, *inter alia*, that the respondent was an unfit parent because he: (1) failed to make reasonable efforts to correct the conditions that were the basis of the removal of the children (750 ILCS 50/1(D)(m)(I) (West 2010)); (2) failed to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)); (3) was incarcerated at the time of the filing of the motions, he had been repeatedly incarcerated, and such had prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)); and (4) is depraved in that he has been convicted of five felonies and one of the convictions occurred within five years of the filing of the petitions (750 ILCS 50/1(D)(I) (West 2010)).

¶ 5 Evidence in the record on appeal reflects that the respondent was convicted of five felonies, the latest occurring within five years of the filing of the petitions. See 750 ILCS 50/1(D)(I) (West 2010). Specifically, the respondent's latest conviction was for burglary on July 28, 2009. A hearing on the petitions was conducted on January 31, 2011. At the conclusion of the hearing, it was determined that the appeal of the respondent's latest conviction was pending before this court. Accordingly, the trial judge in the instant case was unable to review the transcript from the jury trial in the respondent's criminal case. Nevertheless, the trial judge noted the expeditious nature of the instant case and decided to review everything that had been admitted at that point in time, rather than wait for the transcript to be returned after the disposition of the criminal appeal.

¶ 6 On January 31, 2011, the circuit court entered an order terminating the parental rights of the respondent. The order stated, *inter alia*, that the respondent was unfit based on depravity (750 ILCS 50/1(D)(I) (West 2010)) and that it was in the children's best interests to terminate the respondent's parental rights. The respondent filed a motion to reconsider,

which was denied by the circuit court on April 4, 2011. The respondent filed a timely notice of appeal. Subsequently, on June 3, 2011, this court entered an order in the criminal appeal, reversing the defendant's conviction and remanding for a new trial. See *People v. Mosley*, No. 5-09-0452 (2011) (unpublished order under Supreme Court Rule 23 (eff. Jan. 1, 2011)). Additional facts will be provided in the remainder of this order.

¶ 7

ANALYSIS

¶ 8 On appeal, the respondent raises the issue of whether the circuit court erred in determining him unfit as a parent. " 'Because the trial court's opportunity to view and evaluate the parties and their testimony is superior to that of the reviewing court, a trial court's finding as to fitness is afforded great deference and will only be reversed on review where it is against the manifest weight of the evidence.' " *In re Shanna W.*, 343 Ill. App. 3d 1155, 1165 (2003) (quoting *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000)). " 'A decision regarding parental fitness is against the manifest weight of the evidence where the opposite result is clearly the proper result.' " *Id.* (quoting *In re Latifah P.*, 315 Ill. App. 3d at 1128).

¶ 9 Section 1(D) of the Adoption Act (Act) lists several grounds for parental unfitness, any one of which merits that finding. 750 ILCS 50/1(D) (West 2010). "It is necessary that the State prove by clear and convincing evidence one statutory factor of unfitness for the termination of parental rights to ensue." *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). "Therefore, this court need not consider other findings of unfitness where sufficient evidence exists to satisfy any one statutory ground." *Id.* Section 1(D)(I) of the Act contains the following ground for unfitness:

"There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State *** 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).

¶ 10 As mentioned above, the respondent's only conviction within five years of the filing of the petitions was the July 28, 2009, conviction that was reversed by this court. The reversal of that conviction obviated the basis of depravity upon which the circuit court found the respondent unfit. As the State aptly notes, this court may affirm the circuit court's decision on any basis found in the record. See *People v. Johnson*, 208 Ill. 2d 118, 129 (2003). To that regard, the State turns our attention to the other grounds of unfitness alleged in the petitions.

¶ 11 Just as our reversal of the respondent's July 28, 2009, conviction eliminated the basis of depravity upon which to find the respondent unfit, the same is true of the incarceration that prevented the respondent from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2010)). The State could not have alleged the respondent unfit on this ground but for the conviction that was reversed. Accordingly, the respondent may not now be found unfit on this ground.

¶ 12 The two remaining grounds of unfitness alleged in the petitions are the failure to make reasonable efforts to correct the conditions that were the basis of the removal of the children (750 ILCS 50/1(D)(m)(I) (West 2010)) and the failure to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)). We find no evidence in the record to support either of the two.

¶ 13 The testimony of Maura Luedders revealed that a service plan was established for the respondent in March 2008, pursuant to which he was required to obtain suitable housing and complete anger management or domestic violence treatment, parenting classes, a substance abuse assessment and treatment, individual counseling, and a psychological evaluation. Luedders testified that the respondent had been rated unsatisfactory on all service plans

subsequent to September 30, 2008, because he was incarcerated for the offense which led to the conviction which was later reversed. Luedders testified that prior to that date, the family was living in a one-bedroom apartment which was leased by a friend of the respondent. Luedders described the apartment as adequate, but cramped. Luedders testified that a psychological evaluation could not be completed until CSS received a release from a substance abuse program. However, she conceded on cross-examination that the respondent successfully completed a drug and alcohol treatment program prior to his incarceration, and she acknowledged a report dated June 30, 2008, confirming the same.

¶ 14 Luedders testified that the respondent participated in a domestic violence assessment and was found to be too violent for the treatment modality of that particular facility. Luedders explained that she was awaiting a formal written report from the facility. Luedders testified that because of the delay in receiving the report, referrals could not be made for the respondent to obtain individual counseling or anger management counseling. Luedders testified that the prison where the respondent was incarcerated offered courses in anger management and parenting, and as of May 2010, the respondent had received certificates of completion for both courses. Luedders qualified, however, that because she could not confirm the course content, she was unable to determine whether the courses were in compliance with the requirements of the service plan. Accordingly, the respondent was rated unsatisfactory on completing the tasks of the service plan for the relevant time periods.

¶ 15 Luedders' testimony shows that any lack of completion of the requirements of the service plan was due to paperwork delays of various facilities rather than any lack of cooperation on the part of the respondent. The evidence shows that the respondent was compliant with the service plan to the greatest extent possible under the circumstance of his incarceration. There is no evidence to support a finding of unfitness based on any of the alternate grounds proposed in the petitions.

¶ 16 It was against the manifest weight of the evidence to find the respondent an unfit parent and to terminate his parental rights. The respondent should be afforded the opportunity to continue fulfilling the requirements of the service plan, in an effort to be reunited with his children.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, the orders of the circuit court finding the respondent an unfit parent and terminating his parental rights are reversed.

¶ 19 Reversed.

¶ 20 JUSTICE DONOVAN, specially concurring:

¶ 21 I concur in the result. I do not believe we should address the State's contention that there is a sufficient record to support terminating respondent's parental rights on one or more of the other three allegations of unfitness pled by the State. The trial court only made a finding of unfitness based on its finding of depravity in connection with section 1(D)(I) (750 ILCS 50/1(D)(I) (West 2010)). The trial court's finding was based in part on respondent's July 28, 2009, conviction, which has now been reversed. The trial court did not make any findings pertaining to the other three allegations of unfitness. We should not review or defer to findings of fact that were never made. *In re G.W.*, 357 Ill. App. 3d 1058, 1060, 830 N.E.2d 850, 853 (2005).