

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).

2012 IL App (3d) 120559-U

Order filed November 20, 2012

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> N.R.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor,)	Peoria County, Illinois
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-12-0559
)	Circuit No. 10-JA-231
v.)	
)	
C.R.,)	
)	Honorable Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's determination of the respondent's unfitness pursuant to 750 ILCS 50/1(D)(i) was not contrary to the manifest weight of the evidence, and the evidence presented supported the trial court's finding that termination of the respondent's parental rights was in the child's best interest.

¶ 2 Following a trial in the circuit court of Peoria County on the State's petition to terminate parental rights on April 11, 2012, the trial court found that the State had proved by clear and convincing evidence that respondent, C.R., was a depraved person pursuant to section 1(D)(i) of the Adoption Act (the Act) (750 ILCS 50/1(D)(i) (West 2011)).

¶ 3 The matter was then set for a best interest hearing on June 13, 2012, where upon reviewing the best interest report and hearing the testimony of respondent, the trial court found the State had proved by a preponderance of the evidence that it was in N.R.'s best interest to terminate respondent's parental rights.

¶ 4 The respondent appeals, claiming, *inter alia*, that the trial court's finding he was depraved, and thus unfit, was against the manifest weight of the evidence, and the decision it was in the minor's best interest for respondent's parental rights to be terminated was also against the manifest weight of the evidence. We affirm.

¶ 5 BACKGROUND

¶ 6 This case was initiated on August 19, 2010, when the State filed a juvenile petition alleging that the minor, N.R., was neglected in that his environment was injurious to his welfare. N.R. was born on December 2, 2007, and was two years old at the time the neglect petition was filed. The petition alleged that respondent had an extensive criminal history, including 14 felony and misdemeanor convictions and his whereabouts were unknown. The petition further alleged that respondent had entrusted the minor to an unsuitable babysitter, one who had multiple criminal convictions and was arrested while the minor was in his care, leaving the minor without

a caretaker. At the time of the babysitter's arrest, the police found the minor sleeping within a few feet of drug paraphernalia that contained burnt cannabis residue. The petition requested that the Department of Children and Family Services (DCFS) be made a guardian of N.R. and that he be made a ward of the court.

¶ 7 On February 28, 2010, the trial court issued a dispositional order finding the mother and respondent unfit based on the allegations of the petition and making N.R. a ward of the court with DCFS acting as guardian.

¶ 8 On October 28, 2011, the State filed a three-count petition for termination of parental rights. Count I was against the minor's mother, T.O., alleging that she was unfit in that she failed to make reasonable progress toward the return of the minor to the parent within nine months of adjudication. Count II alleged that respondent was unfit person as defined by section 1(D)(m)(ii) of the Act (750 ILCS 50/1(D)(m)(ii) (West 2011)), in that respondent failed to make reasonable progress toward the return of the minor during the nine-month period following the adjudication of neglect. Count III of the petition alleged that respondent was a depraved person pursuant to section 1(D)(i) of the Act (750 ILCS 50/1(D)(i) (West 2011)) due to his extensive criminal convictions.

¶ 9 The trial on the petition to terminate commenced on April 11, 2012, where the State introduced certified orders of conviction on the following: State's exhibit No. 1, McLean County, Mob Action and Reckless Conduct; State's exhibit No. 3, Tazewell County, Deceptive Practice; State's exhibit No. 4, McLean County, Deceptive Practices; State's exhibit No. 5, Tazewell

County, Deceptive Practice; State's exhibit No. 6, Tazewell County, Domestic Battery; State's exhibit No. 7, McLean County, Resisting a Peace Officer; State's exhibit No. 8, McLean County, Forgery (two counts); State's exhibit No. 9, McLean County, Aggravated DUI; State's exhibit No. 10, McLean County, Domestic Battery; State's exhibit No. 11, McLean County, Escape; State's exhibit No. 12, McLean County, Escape; State's exhibit No. 13, Tazewell County, Cannabis Possession; State's exhibit No. 14, Peoria County, Theft. All of the exhibits were admitted into evidence, and the trial was continued to May 16, 2012.

¶ 10 At the continuation of the trial on May 16, the respondent testified on his own behalf, stating that he had been incarcerated for the life of the case, or approximately 19 to 21 months in the Pinckneyville, Logan, and Illinois River correctional centers. He testified that he had only been subject to disciplinary action once during his incarceration. He further testified that he had begun counseling, but had not engaged in anger management classes or any other services due to his movement between correctional facilities. Prior to his incarceration, the respondent had lived with his younger brother and N.R., and he stated that his life revolved around N.R. The respondent stated that his expected release date was either April or May of 2013, and that he intended to return to work with the family business when he was released. Following this testimony and argument, the trial court found that the State had proven count III by clear and convincing evidence and set the case for a best interest hearing.

¶ 11 The best interest hearing took place on June 13, 2012, at which time respondent, again, testified that he had been incarcerated throughout the life of the case, and that despite multiple

requests, he had not been granted a visit with N.R. Other evidence presented at trial included the best interest hearing report and testimony of the caseworker, Ms. Hoerr. Hoerr stated that respondent had no visits with N.R. since the time of his incarceration because the agency had deemed visits with respondent in prison not to be in the best interest of the minor. The best interest report indicated that after becoming a ward of the State on August 18, 2010, N.R. had been placed with foster parents, Mike and Carol Brooks. The Brooks expressed a desire to adopt N.R. and were willing and able to do so. The report further indicated that N.R.'s needs were being met with the Brooks, and that N.R. had formed strong relationships with both Mr. and Mrs. Brooks as well as their four biological children.

¶ 12 At the close of argument, the trial court found that the State had proven by a preponderance of the evidence that it was in N.R.'s best interest that respondent's parental rights be terminated.

¶ 13 This timely appeal followed.

¶ 14 ANALYSIS

¶ 15 The respondent first contends that the trial court committed reversible error by finding him unfit. Specifically, while respondent concedes that the State produced sufficient evidence at trial to invoke the presumption of his depravity, he argues that the evidence presented overcame that presumption.

¶ 16 "A parent's rights may be terminated only upon proof, by clear and convincing evidence, that the parent is unfit. [Citation.] This determination must be made prior to a consideration of

the child's best interest. [Citation.] The State must establish the existence of at least one statutory ground of unfitness, as defined in section 1(D) of the Adoption Act (750 ILCS 50/1 (West 1998)). [Citation.] A court's determination of parental unfitness will not be disturbed on review unless it is against the manifest weight of the evidence. [Citation.] A decision is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. [Citation.]" *In re E.C.*, 337 Ill. App. 3d 391, 398 (2003).

¶ 17 Again, a "finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act." *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203-04 (2008). Section 1(D) of the Act (750 ILCS 50/1(D) (West 2011) provides that an "unfit person" means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. Section (D)(i) provides that "[t]here 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 or any other state, or under federal law, *** 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 2011).

¶ 18 Our supreme court has defined "depravity" as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *Stalder v. Stone*, 412 Ill. 488, 498 (1952).

Within the context of a petition to terminate parental rights, depravity must be shown to exist at the time of the petition, 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.' " *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000).

¶ 19 In this case, the State clearly demonstrated that respondent had six felony convictions and seven misdemeanor convictions. The most recent felony conviction, theft over \$500, occurred in 2010, well within the five-year period mandated by statute. The respondent's actions also display sufficient repetition, demonstrating either his inability or unwillingness to conform to accepted morality. The State, therefore, met its burden and proved by clear and convincing evidence the rebuttable statutory presumption that respondent is depraved under section 50/1(D)(i). We agree with respondent that a rebuttable presumption is one that he can overcome. Indeed, it has been held that "[w]here the presumption of depravity is rebuttable, the parent is still able to present evidence showing that, despite his convictions, he is not depraved." (Internal quotation marks omitted.) *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005) (quoting *J.A.*, 316 Ill. App. 3d 553, 562 (2000)). However, the evidence presented by respondent fails to rebut the presumption established by his multiple felony convictions. The respondent submits his very limited disciplinary record since being incarcerated as evidence of his moral rectitude. The respondent also asserts that in the adjudicatory hearing, he acknowledged and understood the wrongfulness of his past depraved acts and regretted his performance of those acts. As further evidence to rebut the presumption of depravity, respondent testified that while he was unable to seek anger management classes and/or substance abuse treatment, he did engage in counseling services while incarcerated.

¶ 20 We agree with the State and similarly find *In re A.M.*, 358 Ill. App. 3d 247 (2005),

instructive. In that case, the respondent-father offered far more evidence that would tend to rebut the presumption of depravity that the State had established. This court stated:

"As evidence that the respondent was not depraved, he offered the completion of his GED in 1995. However, he committed two misdemeanors and two felonies after obtaining his GED. While commendable, the completion of the respondent's GED did not show that he was no longer depraved.

After the respondent's last felony conviction in 2003, he obtained certificates for (1) the 'Education to Careers Seminar,' (2) perfect attendance in the seminar, and (3) 'Commercial Custodial Services.' However, completion of classes in prison, while also commendable, does not show rehabilitation. [Citation.]

The respondent had enrolled in parenting and drug abuse classes. He also had been approved for work release. Again, these efforts are commendable. However, because the respondent had not yet begun any of these programs, these facts could not be considered as proof that he was no longer depraved." *Id.* at 254.

¶ 21 After this analysis, the court in *A.M.* held that the State's evidence was clear and convincing, the father had failed to prove that he was no longer depraved and affirmed the trial court's finding that the father was unfit based upon grounds of depravity. *Id.*

¶ 22 We believe it is readily apparent that if the actions of the father in *A.M.* were not enough to rebut the presumption that he was deprived, the respondent's actions in this case similarly fall short of rebutting the presumption. While the respondent-father in *A.M.* had convictions for two misdemeanors and three felonies, the respondent here has a significantly more extensive criminal history, with a total of 13 convictions (note that while the initial petition alleged 14 convictions, it was later clarified that one of the respondent's charges was dismissed and he was convicted on a lesser charge). Moreover, the respondent-father in *A.M.* actively pursued counseling and classes while incarcerated, earning his GED and awards for participation. While we understand that respondent was transferred numerous times between detention facilities, we find his record for seeking counseling and other services offered through the Illinois Department of Corrections to be lackluster. Thus, we find that the evidence offered by respondent failed to prove that he was no longer deprived, and the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 23 The respondent also contends that the trial court's finding that it was in the best interest of the minor to terminate respondent's parental rights was against the manifest weight of the evidence.

¶ 24 The best interest determination is made after the parent is found to be unfit. The Juvenile Court Act of 1987 provides a bifurcated system in which parental rights can be terminated. *In re Konstantinos H.*, 387 Ill. App. 3d at 203 (citing 705 ILCS 405/2-29(2) (West 2004)). First, there must be a showing of parental unfitness based upon clear and convincing evidence. *Id.* Based

upon our analysis above, the State has met its burden and proved that respondent was depraved and, thus, unfit. The State's job, however, does not end at the unfitness determination. The State must then make a subsequent showing that the best interest of the child are served by severing parental rights. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). The State has the burden of proving by a preponderance of the evidence that the termination is in the best interest of the child. *In re D.T.*, 338 Ill. App. 3d 133, 154 (2003).

¶ 25 Although parental rights and responsibilities are of deep human importance and will not be lightly terminated, the deference accorded to parental rights does not negate a court's responsibility to protect minors from neglect and abuse. *In re E.M.*, 295 Ill. App. 3d 220, 227 (1998). Therefore, once parental unfitness has been found, all of the parent's rights must yield to the best interests of the child. *In re T.G.*, 147 Ill. App. 3d 484, 488 (1986). A trial court's determination that it is in a child's best interest to terminate the rights of his or her parent is given great deference and will not be reversed on appeal unless it is contrary to the manifest weight of the evidence. *In Interest of D.M.*, 298 Ill. App. 3d 574, 582 (1998); *In re V.O.*, 284 Ill. App. 3d 686, 690 (1996).

¶ 26 In the instant case, respondent has failed to point to any evidence that would justify a reversal of the trial court's decision. The respondent suggests that the fact that he will be released from prison next year and plans to go back to work for the family business in order to support N.R. warrants a finding by this court that the State's evidence regarding N.R.'s best interest was insufficient. The respondent also points to the fact that he and N.R. had a strong bond, and that

N.R. was also developing strong relationships with his extended paternal family. However, these facts are overshadowed by other evidence presented in this case, particularly his multiple misdemeanor and felony convictions dating back to 1993, with the most recent coming in 2010, three years after N.R.'s birth in December of 2007.

¶ 27 The caseworker, Ms. Hoerr, again, testified at the best interest hearing that respondent had not had any contact with N.R. during his incarceration. The record indicates that respondent had been incarcerated in the Peoria County jail on his most recent charge since October 26, 2010. At the time, N.R. was only two years old. Following his conviction for theft as a Class 3 felony, respondent was sentenced to five years in the Illinois Department of Corrections on May 19, 2011. With a release date of April or May 2013, respondent will have been incarcerated from the time N.R. was 34 months old until he is almost 5½.

¶ 28 While respondent is incarcerated, N.R. is thriving in his foster home placement with Mike and Carol Brooks. He has formed strong relationships with the Brooks and their four biological children. The foster parents provide N.R. with a warm, loving, stable home life; they are willing and able to adopt him. At a best interest hearing, the parents' interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347 (2004); see also *In re J.L.*, 236 Ill. 2d 329 (2010).

¶ 29 Aside from listing the statutory factors to be considered when a child's best interest is being determined pursuant to section 1-3(4.05) (705 ILCS 405/1-3(4.05) (West 2011)), the respondent fails to point out what, if anything, the trial court failed to consider that would

necessitate a reversal of the termination of parental rights. The respondent only reiterates those facts that he argued overcame the presumption of depravity. A review of the record and transcript from the best interest hearing indicates that the trial court considered all of the relevant statutory factors, as well as the best interest report and testimony and made a thoughtful and weighted decision regarding N.R.'s best interest. See *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006) (holding that in rendering its decision, the trial court is not required to explicitly mention, word-for-word, the factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987). Accordingly, we find that the trial court's decision to terminate respondent's parental rights as to N.R. was not contrary to the manifest weight of the evidence.

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 32 Affirmed.