

NOTICE
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2012 IL App (4th) 110856-U

Filed 2/23/12

NO. 4-11-0856

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.M., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v.)	No. 08JA185
WILLIAM RICHTER,)	
Respondent-Appellant.)	Honorable
)	Thomas E. Little,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding respondent father was an unfit parent due to depravity was not against the manifest weight of the evidence. Termination of father's parental rights was also not against the manifest weight of the evidence.

¶ 2 Respondent father was convicted of the murder of the minor's mother, and the State filed a petition to terminate his parental rights to C.M. The trial court found respondent was an unfit parent on the grounds of depravity and termination of respondent's parental rights was in C.M.'s best interest. Respondent appeals both findings and we affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2008, Dawn Marquis, mother of C.M. (born December 17, 1994), was murdered. Respondent, William Richter, Marquis's husband and father of C.M., was

charged with her murder.

¶ 5 In October 2008, the State filed a juvenile petition pertaining to C.M. and her brother, Dalton Marquis, who was then a minor. The petition alleged the minors were dependent under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-4(1) (West 2008)) as they were without a parent or guardian because their mother was deceased and their father was currently in jail charged with their mother's murder. On February 25, 2009, C.M. was found to be dependent and made a ward of the court with the Illinois Department of Children and Family Services (DCFS) given guardianship.

¶ 6 In April 2010, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit due to (1) depravity under section 1(D)(i) of the Adoption Act (Act) (750 ILCS 50/1(D)(i) (West 2010)) because respondent had been convicted of murdering C.M.'s mother and sentenced to 75 years in the Illinois Department of Corrections and (2) (a) C.M. was in the temporary custody of DCFS, (b) respondent was incarcerated as a result of criminal conviction at the time the motion for termination of parental rights was filed, (c) prior to incarceration respondent had little or no contact with the minor, and (d) respondent's incarceration will prevent him from discharging his parental responsibilities for the minor for a period in excess of two years after filing of the motion for termination of parental rights.

¶ 7 In August 2011, the trial court conducted a hearing on the State's motion to terminate parental rights. A certified copy of respondent's murder conviction was admitted into evidence by the State. The State then called respondent as an adverse witness. He testified he was one of two people convicted of first degree murder of Dawn

Marquis, mother of C.M. The State then rested.

¶ 8 Respondent made a motion for a directed judgment. The State conceded the evidence did not establish the ground for unfitness based on (1) respondent's lack of contact with the minor or (2) his incarceration preventing him from discharging his parental obligations in excess of two years. The rest of the motion, directed toward the allegation of depravity, was denied.

¶ 9 Dalton Marquis, C.M.'s brother, was called as a witness by respondent. He was then 18 years old and respondent was his father. On August 24, 2008, the date his mother was killed, he was at home sleeping. Respondent woke him and told him something happened to his mother. He went outside but was unable to see any wounds from which she was suffering. Following his mother's death, Dalton was placed in DCFS custody and then released. He was again placed in DCFS custody following respondent's arrest for his mother's murder.

¶ 10 Dalton testified he lived with his mother and father his entire life. They had a home with three bedrooms. Respondent took Dalton and C.M. to and from school, to sports in which they participated, and made sure he and C.M. had food and clothes. Respondent never physically disciplined either C.M. or Dalton. Dalton also testified his mother participated in providing for the children. The family took vacations together. Respondent worked at Archer Daniels Midland until he was placed on disability. The family lived together until two weeks prior to his mother's murder, when she moved out of the family home. Dalton and C.M. remained in the home with respondent.

¶ 11 Dalton stated he had strong feelings for his father and wants him to be released

from prison. He does not believe respondent is guilty of murder. If he were given the opportunity, Dalton would live with respondent again. Dalton visits respondent in jail every one to two weeks and talks to him on the telephone every other day. Respondent rested.

¶ 12 The trial court found the State had made a *prima facie* case for depravity on the part of respondent. A presumption was created respondent was depraved and respondent's evidence failed to overcome that presumption by clear and convincing evidence. Respondent was found to be unfit due to depravity.

¶ 13 In September 2011, a best-interest hearing was held to determine if respondent's parental rights to C.M. should be terminated. The State presented evidence through Kim Taylor, the DCFS caseworker who worked with C.M. throughout her placement with DCFS. C.M. has had no contact with respondent in over two years due to C.M.'s own preference. C.M. has repeatedly stated she does not want to have any contact with respondent and does not want him to have access to her personal information such as school records and medical records. C.M. expressed she wants to sever ties to respondent because he murdered her mother and, therefore, she wants nothing to do with him and wants some sort of closure so she can move on with her life without him in it. Taylor opined C.M. was mature enough to make this decision and C.M. was sincere in her preference for termination of respondent's parental rights. Taylor also noted, if respondent's parental rights were not terminated, he could have access to court reports concerning C.M., her service plans, and additional information included in the court reports.

¶ 14 Respondent testified in his own behalf. He stated he did not want his parental

rights terminated. If those rights were terminated, he could not participate in programs offered by the Department of Corrections designed to reconcile and mend relationships between incarcerated parents and their children. He did not believe C.M. no longer wanted a relationship with him and noted if his rights were terminated, C.M. would be unable to change her mind and participate in the reconciliation programs with him.

¶ 15 The trial court found it was in the best interest of C.M. respondent's parental rights be terminated. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 A. Unfitness Due to Depravity

¶ 18 The State has the burden of proving a parent's unfitness by clear and convincing evidence. *In re C.N.*, 196 Ill. 2d 181, 208, 752 N.E.2d 1030, 1045 (2001). The trial court's decision on unfitness may be reversed only if the finding was against the manifest weight of the evidence. *C.N.*, 196 Ill. 2d at 208, 752 N.E.2d at 1045.

¶ 19 The State alleged respondent was deprived pursuant to section 1 (D)(i) of the Act (750 ILCS 50/1 (D)(i) (West 2010)) because he had murdered C.M.'s mother. Respondent concedes the State's evidence created a presumption of depravity. However, he contends the evidence he produced rebutted the presumption of depravity. He argues Dalton's testimony established he was a perfectly normal father to Dalton and C.M., providing them with food, clothes, shelter and extras, such as sports activities and transportation to school and sporting events. He claims this testimony of his goodness as a father prior to his murder conviction rebuts the presumption of depravity raised by that conviction. No additional evidence as to his depravity was presented by the State other

than the existence of his murder conviction. Therefore, he contends the trial court's decision was against the manifest weight of the evidence.

¶ 20 We disagree. Depravity is defined as a deficiency in moral sense and rectitude. *In re A.M.*, 358 Ill. App. 3d 247, 253, 831 N.E.2d 648, 654 (2005). To overcome a presumption of depravity, a parent must show he is no longer depraved. See *A.M.*, 358 Ill. App. 3d at 254, 831 N.E.2d at 654-55. A parent must show he is rehabilitated (see *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167-68, 799 N.E.2d 843, 852-53 (2003)) and this necessarily involves evidence of his conduct after the crime of which he was convicted to show how he was changed or restored from a murderer into an individual with "moral sense and rectitude," capable of parenting a minor. Evidence of his conduct *prior* to the murder does not show how he has been rehabilitated after his conviction. Respondent has failed to rebut the presumption of depravity and the trial court's finding of depravity was not against the manifest weight of the evidence. See *Shanna W.*, 343 Ill. App. 3d at 1168, 799 N.E.2d at 852.

¶ 21 B. Best-Interest Hearing

¶ 22 Respondent contends the trial court's best-interest determination was against the manifest weight of the evidence.

¶ 23 At the best-interest hearing, the entire focus is on the best interests of the minor and not the interests of the parent. *In re Tashika F.*, 333 Ill. App. 3d 165, 170, 775 N.E.2d 304, 307 (2002). The State must prove by a preponderance of the evidence termination is in the minor's best interests. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). A trial court's determination termination is in the minor's best

interests will not be reversed unless it is against the manifest weight of the evidence. *In re M.F.*, 326 Ill. App. 3d 1110, 1115-16, 762 N.E.2d 701, 706 (2002). Under section 1-3 (4.05) of the Juvenile Court Act (705 ILCS 405/1-3 (4.05) (West 2010)), the court must consider the following factors: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's background and ties, including familial, cultural, and religious; (4) the minor's sense of security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence, including the need for stability and continuity of relationship with parental figures and siblings; (8) the uniqueness of every family and minor; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the minor. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009).

¶ 24 The evidence shows C.M. wants the parental rights of respondent to be terminated. She wanted to prevent respondent from seeing information about her and to provide for closure. C.M. was over 16 years old at the time of the termination hearing. She had no contact with respondent for over two years and her caseworker believed she was mature enough to choose not to visit with respondent and to request his parental rights be terminated.

¶ 25 Respondent's release date from prison was scheduled to be 2086 after his 75-year sentence for murdering C.M.'s mother. He would be severely limited in doing anything for C.M. until his release from prison.

¶ 26 Respondent argues because he is incarcerated for 75 years, terminating his

