

NOTICE  
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2013 IL App (4th) 120762-U  
NO. 4-12-0762  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
January 17, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: E.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 10JA102
HARMON LYNCH,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in terminating respondent-father Harmon Lynch's parental rights to E.H.

¶ 2 In August 2012, the trial court terminated the parental rights of respondent, Harmon Lynch, to E.H. (born June 23, 2001). E.H.'s mother's parental rights were also terminated. However, E.H.'s mother, Hannah Yearber, is not a party to this appeal. Respondent appeals, arguing the court erred in finding he was an unfit parent and terminating his parental rights to E.H. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In August 2010, the State filed a three-count petition in this matter, alleging the following: (1) E.H. was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(a) (West 2008)) because she was not receiving proper

or necessary care (count I); (2) E.H. was neglected pursuant to section 2-3(1)(b) of the Juvenile Act (705 ILCS 405/2-3(1)(b) (West 2008)) because her environment was injurious to her welfare (count II); and (3) E.H. was abused pursuant to section 2-3(2)(ii) of the Juvenile Act (705 ILCS 405/2-3(2)(ii) (West 2008)) because she was exposed to a substantial risk of physical injury other than by accidental means which would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function (count III). The allegations revolved around E.H.'s mother. The petition stated respondent was not involved with child rearing responsibilities. The State asked the trial court to adjudge E.H. a ward of the court.

¶ 5 In September 2010, the trial court issued a supervision order after respondent and the minor's mother admitted the allegations in count I of the State's petition. The court found E.H. could remain in her home and be cared for consistent with her health, safety, and best interests. The court ordered respondent and E.H.'s mother to cooperate with the Department of Children and Family Services (DCFS) and comply with the terms of any service plan created.

¶ 6 In January 2011, the State filed a petition to revoke supervision and adjudicate E.H. neglected. The petition again noted respondent had not been involved in the case. According to the petition, E.H.'s mother had been evicted from her home in December 2010, had not paid rent in six months, and had no food, diapers, or Pediasure to provide for the children's basic needs "despite having WIC [Special Supplemental Nutrition Program for Women, Infants, and Children], LINK [Illinois Link Program], and Social Security Disability benefits/entitlements."

¶ 7 That same month, respondent's appointed counsel filed a motion to vacate his appointment and withdraw as counsel for respondent. According to the motion, respondent

failed to maintain contact with counsel. In February 2011, the trial court allowed the motion to withdraw, finding respondent had not been in contact with his public defender.

¶ 8 In February 2011, the trial court entered an adjudicatory order, finding E.H. was “abused, neglected” because she “suffered from a lack of support, education, remedial care” as defined by section 2-3(1)(a) of the Juvenile Act (705 ILCS 405/2-3(1)(a) (West 2008)). The court based its order on E.H.’s mother’s substance abuse, mental health, medical neglect, and lack of cooperation with services. The court found respondent was not involved with the case, and his current whereabouts were unknown. The court stated the abuse or neglect was inflicted by the mother’s behavior and respondent’s absence. The court also entered a dispositional order, finding E.H.’s mother unfit and unable and respondent unfit, unable, and unwilling to care for, protect, train, educate, supervise or discipline E.H. The court made E.H. a ward of the court. Because respondent was “not involved” and his “whereabouts were unknown,” the court found placement of E.H. with respondent contrary to E.H.’s health, safety, and best interests.

¶ 9 On April 21, 2011, a visitation plan was established to aid in the reunification between respondent and E.H. The plan called for one-hour visits once per week.

¶ 10 In March 2012, the State filed a motion seeking a finding respondent and E.H.’s mother were unfit and termination of their parental rights was in E.H.’s best interests. The State alleged respondent was unfit for the following reasons: (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) he was depraved in that he had been convicted of at least five felonies; (3) he failed to make reasonable efforts to correct the conditions that were the basis for E.H.’s removal; and (4) he failed to make reasonable progress toward the return of the minor to the parent within nine months after the adjudication of

neglect or abuse. The State asked the trial court to find E.H.'s best interests would be served by the termination of her parents' parental rights.

¶ 11 In July 2012, the trial court held a fitness hearing, where respondent was represented by counsel. Leslie Vice, a foster care supervisor at Lutheran Child and Family Services (Lutheran) who began supervising this case on December 6, 2011, offered the following testimony. Respondent's whereabouts were unknown when E.H. was brought into care in February 2011, following the filing of the petition to revoke supervision. However, the case file stated respondent had been notified E.H. was brought into care. Respondent was admitted to incarceration in the Illinois Department of Corrections (DOC) on May 4, 2011. According to the case file, respondent was sent a letter in June 2011 asking him to contact Lutheran. To Vice's knowledge, respondent did not contact anyone at Lutheran.

¶ 12 According to Vice's testimony, in March 2012, Michelle Massey, a caseworker at Lutheran, visited respondent at the prison where he was housed and discussed the case with him. Massey provided respondent a copy of the service plan at the prison visit. Respondent told Massey he was unaware of the services he had to complete because of his incarceration. According to Vice, respondent told Massey he was going to engage in services. However, Lutheran had no verification or documentation confirming he had done so.

¶ 13 Respondent asked Massey for visitation with E.H. However, the determination whether visitation should occur was left to the discretion of the children's caseworker. Vice did not recommend visitation with respondent at the prison because respondent had no contact with E.H. since August 2010. E.H. was never taken to the prison to visit respondent.

¶ 14 Trevor Ile, a foster care supervisor at Lutheran's office in Mt. Vernon, testified he

saw E.H. once per month at her foster home. Ile's only contact with respondent was at the initial appearance on the unfitness petition in May 2012. He also had not been contacted about visitation by anyone from the prison where respondent was incarcerated. According to Ile, he was unaware respondent had asked to see E.H. On cross-examination, Ile testified neither he nor anyone from his office sent respondent a letter informing him to contact Ile. Ile stated he understood the previous caseworker sent respondent a letter in June 2011, and he saw a certified letter in the case file.

¶ 15 Star Tucker, a foster care supervisor at Lutheran, testified she supervised this case from June 2011 to December 2011. She did not have any contact with respondent. A certified letter was sent to respondent on June 6, 2011, but Lutheran never received the return receipt. Tucker testified Lutheran performed a diligent search and discovered respondent was incarcerated. She did not know if anyone tried to contact respondent other than through the diligent search. Part of the diligent search protocol is to send a letter to anyone who could potentially be respondent. However, Tucker testified she did not check the file before testifying to see if a letter was sent to respondent at the prison where he was housed.

¶ 16 During the State's case, respondent testified he had been convicted of aggravated battery with great bodily harm in 1997 in Will County (case No. 97-CF-3308), aggravated driving while under the influence and driving with a suspended or revoked license in Macon County (case No. 10-CF-1024), obstruction of justice in Effingham County (case No. 00-CF-171), possession of a firearm by a felon in Will County (case No. 96-CF-6075), and retail theft in excess of \$150 in Cook County (case No. 90-C-550633).

¶ 17 Respondent also testified on his own behalf. According to defendant, before the

agencies became involved in this case in 2009, E.H. stayed with him every weekend and stayed with her mother the rest of the time. After the agencies' involvement, E.H.'s mother told respondent she wanted to keep all her kids together at "the grandmother's" home. Respondent did not have a driver's license and was unable to go see E.H. E.H.'s mother kept him apprised of what was going on with the case.

¶ 18 According to respondent, Lutheran did not contact him when this case started in 2009 even though E.H.'s mother knew how to contact respondent. Respondent did not know anything was going on with the case until June 2011 when he received a letter from Lutheran while he was in receiving at the Graham Correctional Center. However, the record reflects respondent was served with summons on August 9, 2010, and he appeared in court and admitted count I of the petition for adjudication and signed the order of supervision. Respondent could not respond to Lutheran while at Graham so he had to wait until he was sent to the Vandalia Correctional Center 52 days later. In the move from Graham to Vandalia, his paperwork was lost. He did not have E.H.'s mother's information to get in touch with her to see what was going on with the case.

¶ 19 Respondent testified Massey came to see him at the prison in March 2012. Massey said E.H. was in a foster home and asked why he had not tried to be involved with E.H. Respondent told Massey he did not know what was going on with E.H. because of his incarceration. Respondent testified Massey told him he needed to complete a service plan and participate in "some kind of program" and engage in some kind of treatment. Respondent was unaware of the existence of any service plan prior to Massey's visit. Respondent testified he completed a parenting class in November 2011, prior to Massey's visit. Respondent said he took

this class because he wanted to be a part of his daughter's life.

¶ 20 According to respondent, he told Massey he wanted visitation rights. Massey told him she would send him something in the mail and try to arrange monthly visits. Neither Massey nor anyone else from Lutheran sent him anything about visitation. The next time respondent heard anything about the case was when he was told the State was seeking to terminate his parental rights.

¶ 21 On cross-examination, respondent testified his "out-date" from prison was November 4, 2012. When asked whether he knew Lutheran had been involved with E.H. since at least 2009, the following exchange occurred:

“[RESPONDENT:] I knew a little about it.

[THE STATE:] And did you say anything then? Did you come forward and say anything to the caseworkers then that were working the family?

[RESPONDENT:] From my understanding, she had a court date. We both had a court date. To my understanding, we went to court, they gave her a year to do whatever she needed to do as far as the service plan. At that time, I wasn't involved to my knowledge, it was just about her doing what she was supposed to do, whatever they had her do, the service plan that they gave her at that time I didn't have a service plan.

I guess, I was just—I was under the—the understanding that the reason I was at court was because I was the other parent,

you know, because she was a custodial parent, so at that time I—wasn't obligated. I didn't even know if I was supposed to do anything at that time because if I had known, I would have—

[THE STATE:] So, you didn't—you didn't really keep in touch with either her or the—the department, or Lutheran[,] any of the caseworkers[,] you didn't kind of say—

[RESPONDENT:] I didn't need none of the caseworkers. I have heard this—everything that I've heard or everything I knew about the case at that time was from the mom. And then shortly after that, the mom she moved. I didn't know where she was. The kids was at her—at her mom's house. I catch this case, so I mean everything went down hill pretty much, so I lost contact with everybody."

¶ 22 The trial court found respondent unfit. The court stated respondent failed to maintain a reasonable degree of interest and concern or responsibility for E.H. The court also found respondent failed to overcome the presumption of depravity resulting from his felony convictions. In addition, the court found the State proved respondent failed to make reasonable efforts to correct the conditions that were the basis for E.H.'s removal and failed to make reasonable progress toward E.H.'s return to him within nine months of the adjudication of neglect.

¶ 23 In August 2012, the trial court held a best interest hearing. Star Tucker, a foster care supervisor for Lutheran, testified E.H. was doing very well in her relative placement and the

foster family was willing to ensure permanency by adoption. She recommended respondent's parental rights be terminated so the children could be adopted and have permanent homes. On cross-examination, Tucker stated she had only worked on this case in a supervisory capacity and had no hands-on experience in the case. She admitted all she knew about how E.H. was doing in her foster placement was based on what Trevor Ile had reported.

¶ 24 Trevor Ile testified he had been E.H.'s caseworker since September 2011. He testified E.H. was doing very well in her foster placement, where she had been since November 2010, and was bonded to her foster parents. Ile stated E.H. was happy and comfortable in her foster placement. Ile also recommended terminating respondent's parental rights.

¶ 25 Respondent testified his projected release date was November 2, 2012. He had completed a parenting class, was on a waiting list for a substance abuse class, and was taking an anger management class. He testified he wanted to finish his anger management class and get counseling for his substance abuse issues when released from DOC. Respondent stated he was going to try to get visitation with E.H. after his release and find a job. He stated he had always tried to be involved in her life and did not think it was in her best interest to terminate his parental rights.

¶ 26 The trial court found it was in E.H.'s best interest to terminate respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent

is unfit as defined by the Adoption Act (750 ILCS 50/1 to 24 (West 2008)) (*In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008)). A reviewing court will reverse a trial court's finding of unfitness only when it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004).

¶ 30 An individual's parental rights can be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). The manifest weight of the evidence standard of review applied to a court's fitness findings calls for deference to be given to the court's decision.

¶ 31 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence." *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanor. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882

N.E.2d 999, 1005 (2008).

¶ 32 A. Finding of Unfitness

¶ 33 The trial court did not err in finding respondent unfit based on his depravity. To find a parent unfit based on depravity, the State must establish the parent is depraved at the time of the petition to terminate parental rights. *In re A.M.*, 358 Ill. App. 3d 247, 253, 831 N.E.2d 648, 654 (2005). "[T]he '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, 736 N.E.2d 678, 685 (2000) (quoting *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166, 345 N.E.2d 714, 717 (1976)). The trial court's finding in this case was not against the manifest weight of the evidence.

¶ 34 Section 1(D)(i) of the Adoption Act states in pertinent part:

"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 or any other state, or under federal law, or the criminal laws of any United States territory; 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 2008).

"Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not depraved." *J.A.*, 316 Ill. App. 3d at 562, 736 N.E.2d at 686. If a respondent offers evidence he is not depraved, the presumption of depravity ceases to exist.

Once the presumption is gone, the State bears the burden of proving depravity by clear and convincing evidence. *A.M.*, 358 Ill. App. 3d at 253-54, 831 N.E.2d at 654.

¶ 35 Respondent does not dispute the State met the presumption of depravity by producing evidence of his multiple convictions. However, respondent argues he rebutted the presumption because of his unilateral efforts to better himself in DOC by enrolling in and completing a parenting class and getting placed on the waiting list for several other courses.

According to respondent:

"It would have been very easy for [him] to do nothing while incarcerated and not try to fight for his daughter. However, he did everything to the contrary, and did everything he possibly could while incarcerated to make himself a better person. These actions on his part are enough to rebut the presumption of depravity, and, therefore, the burden of proof shifts back to the State to prove depravity, which the State failed to do."

We disagree.

¶ 36 Respondent was in DOC when he completed the parenting class and when his parental rights were terminated. While completing a parenting class is commendable, the record does not reflect he made any real proactive effort to stay in contact with E.H. while he was in prison or even before he was incarcerated and E.H. was placed with her maternal grandmother. Completing one parenting class while incarcerated is not sufficient to rebut the presumption of depravity, especially considering his lack of any effort to stay in contact with E.H. While respondent offered excuses for failing to contact his daughter, someone with sufficient moral

sense and rectitude, *i.e.*, someone not depraved, would have taken proactive measures to locate his daughter in order to maintain a relationship. From the record, respondent did not do this.

¶ 37 In addition, we also find the trial court did not err in finding respondent unfit based on his failure to maintain a reasonable degree of interest, concern, or responsibility for E.H. Respondent attempts to shift the blame for his lack of contact or role in E.H.'s life since the inception of this case on everyone but himself. While Lutheran did not provide him much assistance, he provided Lutheran with no indication he wanted any help until Massey visited him in prison. Further, even if E.H.'s mother and grandmother did not provide respondent with any contact information for E.H. while he was incarcerated, his failure to put forth any effort to locate and contact E.H. is indicative of his failure to maintain a reasonable degree of interest, concern, or responsibility for E.H. Further, his failure to maintain a reasonable degree of interest, concern, or responsibility for E.H. began even before he was incarcerated as he did not maintain contact with his daughter prior thereto.

¶ 38 Because we find the trial court did not err in finding respondent unfit based on the State's allegations of depravity and failure to maintain a reasonable degree of interest, concern or responsibility, we need not examine the court's other findings of unfitness. *In re J.P.*, 261 Ill. App. 3d 165, 174, 633 N.E.2d 27, 34 (1994) (only one ground of unfitness need be proved to find a parent unfit).

¶ 39 B. Best Interest Finding

¶ 40 Respondent next argues the trial court erred in finding it was in E.H.'s best interest to terminate his parental rights. In his brief, respondent focuses on the fact he performed services on his own while he was incarcerated and he was scheduled to be released from prison in

