

2014 IL App (2d) 14-0061-U  
No. 2-14-0061  
Order filed May 16, 2014

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

*In re* JORDAN L., a Minor ) Appeal from the Circuit Court  
 ) of Winnebago County.  
 )  
 ) No. 09-JA-311  
 )  
(The People of the State of Illinois, Petitioner- ) Honorable  
Appellee, v. Dustin L., Respondent- ) Mary Linn Green,  
Appellant, Amanda H.-P., Respondent.) ) Judge, Presiding.

---

*In re* HAILEY L., a Minor ) Appeal from the Circuit Court  
 ) of Winnebago County.  
 )  
 ) No. 09-JA-312  
 )  
(The People of the State of Illinois, Petitioner- ) Honorable  
Appellee, v. Dustin L., Respondent- ) Mary Linn Green,  
Appellant, Amanda H.-P., Respondent.) ) Judge, Presiding.

---

*In re* HEAVEN L., a Minor ) Appeal from the Circuit Court  
 ) of Winnebago County.  
 )  
 ) No. 09-JA-313  
 )  
(The People of the State of Illinois, Petitioner- ) Honorable  
Appellee, v. Dustin L., Respondent- ) Mary Linn Green,  
Appellant, Amanda H.-P., Respondent.) ) Judge, Presiding.

---

JUSTICE ZENOFF delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

### ORDER

¶ 1 *Held:* Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), was granted, and the trial court's judgment terminating respondent's parental rights was affirmed, where a full examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Dustin L., to be an unfit parent and ruled that it was in the best interest of his minor children, Jordan L., Hailey L., and Heaven L., to terminate his parental rights. Dustin timely appealed, and the trial court appointed counsel. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel moves to withdraw. In his motion, counsel states that he read the record, found no issue of arguable merit, and advised respondent of his opinion. Counsel has supplied a memorandum of law in support of his motion. We advised respondent that he had 30 days to respond to the motion, and he has not responded. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 Dustin is the biological father of Jordan, born August 7, 2009; Hailey, born June 28, 2007; and Heaven, born October 9, 2003. On August 20, 2009, the State filed neglect petitions with respect to all three children. At the shelter care hearing, the parties agreed that there was no immediate and urgent necessity to place the children in shelter care, and the children remained in their parents' custody. At the adjudicatory hearing, the children's mother, Amanda H.-P., stipulated to count I of the neglect petitions, which alleged that all three children were born with cocaine in their urine, blood, or meconium, which was not the result of medical treatment administered to the mother or the minor. The court adjudicated the minors neglected. Following the dispositional hearing, the court adjudicated the children wards of the court. The court

permitted the parents to maintain custody of the children on the condition that they remain drug and alcohol free and comply with the Department of Children and Family Services (DCFS) service plan.

¶ 5 At the first permanency review hearing on May 11, 2010, DCFS caseworker Victoria Moore testified that Amanda had been arrested for violating probation based on a positive drug test. The trial court placed custody of the children with Dustin.

¶ 6 The second permanency review hearing was held on August 30, 2010. Caseworker Moore testified that the children were living with their paternal great-grandmother pursuant to a safety plan. DCFS implemented the safety plan after Dustin failed to complete drug drops for two months. The State moved for a shelter care hearing, which the court conducted *instanter*. Moore testified that Dustin had not completed drug drops from May 11 to July 28, 2010. Moore further testified that DCFS had granted Dustin the discretion to allow supervised visitation between Amanda and the children. During an unannounced visit at Dustin's home, however, Moore discovered the children unsupervised with Amanda. According to Moore, Dustin returned within 5 to 10 minutes of her arrival. Moore testified that Amanda had been arrested again for another probation violation. Moore also testified that Dustin completed drug drops on August 6, 11, 19, and 23, all of which were negative. At the conclusion of the hearing, the court granted temporary custody and guardianship of the minors to DCFS with discretion to place the children with a responsible relative or in foster care. According to the record, DCFS placed the children with their maternal grandparents.

¶ 7 The State filed a motion to modify guardianship and custody. However, on January 19, 2011, the State withdrew the motion because, except for his period of noncompliance during the

summer of 2010, Dustin had remained in compliance with the service plan. According to the record, the children were returned to Dustin's custody in January 2011.

¶ 8 On April 7, 2011, the court conducted an emergency hearing after receiving a "concern report" from DCFS. The State indicated that Dustin had dropped off the children at their maternal grandparents' home, that DCFS had been unable to get in touch with him, and that Dustin had begun missing drug drops. The court ordered that the children would remain with their maternal grandparents and scheduled a shelter care hearing.

¶ 9 On April 11, 2011, Dustin waived his right to a shelter care hearing. The court placed temporary guardianship and custody of the children with DCFS. The State subsequently filed a motion to modify guardianship and custody, to which Dustin stipulated. On May 18, 2011, the court placed guardianship and custody of the children with DCFS with discretion to place with a responsible relative or in foster care. According to the record, the children remained with their maternal grandparents.

¶ 10 The next permanency review hearing was held on November 15, 2011. Children's Home and Aid caseworker Michelle Garnhart, who had been assigned the case, testified that on June 15, 2011, Dustin was charged with burglary and "knowing damage to property" stemming from an incident on April 4, 2011. She further testified that he had not completed any drug drops for six months. The court found that Dustin had not made reasonable efforts or progress but maintained the permanency goal at return home within 12 months.

¶ 11 At the May 15, 2012, permanency review hearing, Garnhart testified that the children remained with their maternal grandparents. She testified that Dustin had been incarcerated in the Winnebago County jail since November 25, 2011. According to Garnhart, Dustin participated in one parenting class in jail and was on a waiting list for an "AA" class. Dustin had weekly half-

hour visits with the children at the jail. The court made no findings as to Dustin's efforts due to lack of information on the services available to him, but found that he had not made reasonable progress. The court maintained the permanency goal at return home within 12 months.

¶ 12 The next permanency review hearing was scheduled for November 13, 2012, but was continued due to Dustin's absence. Dustin's attorney indicated that Dustin had pleaded guilty to attempted burglary and was sentenced to five years' imprisonment.

¶ 13 At the rescheduled permanency review hearing on December 7, 2012, Garnhart testified that the children remained in their maternal grandparents' care and were doing well. She testified that Dustin had been incarcerated at Sheridan Correctional Center for approximately one month and had not yet engaged in services because he needed to "sign a release." Regarding Dustin's participation in services while in the Winnebago County jail, Garnhart testified that he "may have attended some AA/NA meeting." She further testified that Dustin told her he participated in a "male/dad program," but when she spoke to a woman at the jail, the woman indicated that he had not. Garnhart testified that visitation between Dustin and the children had not taken place since June because Dustin had acted inappropriately during visitations, including giving the children a telephone number for his girlfriend. The trial court found that Dustin had not made reasonable efforts or progress and found that it was in the minors' best interest to change the permanency goal to substitute care pending termination of parental rights.

¶ 14 On March 8, 2013, the State filed petitions to terminate Dustin's parental rights to all three children.<sup>1</sup> The petition alleged that he was an unfit parent in that he failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (count I)

---

<sup>1</sup> The petitions also named Amanda, who subsequently consented to the termination of her parental rights and to the children's adoption.

(750 ILCS 50/1(D)(b) (West 2012)); he failed to make reasonable progress toward the return of the children to him within any nine-month period after the end of the initial nine-month period following an adjudication of neglect (count II) (750 ILCS 50/1(D)(m)(iii) (West 2012)); and he was deprived (count III) (750 ILCS 50/1(D)(i) (West 2012)).

¶ 15 At the unfitness hearing on August 7, 2013, Garnhart testified that the children most recently had been removed from Dustin’s care on April 11, 2011. At that time, Dustin was not participating in services, was not meeting with the caseworker, and was not regularly sending the children to school. Between April and November 2011—the time of his incarceration—Dustin had been asked to complete a substance abuse assessment, a mental health assessment, and drug screens; to participate in individual domestic violence counseling, parenting classes, and visitation; and to maintain housing and a steady income. According to Garnhart, Dustin completed one substance abuse assessment and a second assessment was recommended, which he did not complete. Dustin completed no drug screens after the children were removed from his care. He also never finished the mental health assessment. Nor did he participate in individual domestic violence counseling. He was unable to participate in parenting classes due to his failure to complete drug screens. Although he maintained housing until he was incarcerated, he did not have a steady income. His participation in visitation was inconsistent.

¶ 16 On cross-examination, Garnhart testified that, while incarcerated, Dustin participated in the substance abuse treatment program required of all offenders at Sheridan. He also completed an anger management class and a “24/7 dads” class. He had supervised visits with the children every three months. According to Garnhart, the visits between Dustin and the children at the prison were “better than they ha[d] [been] in the past” and were appropriate.

¶ 17 The State admitted into evidence certified copies of four of Dustin's convictions: an April 6, 2006, conviction of burglary, a class 2 felony; two November 30, 2007, convictions of burglary, both class 2 felonies; and an October 17, 2012, conviction of attempt burglary, a class 3 felony.

¶ 18 Dustin testified that at Sheridan he participated in three hours of drug treatment per day and weekly mental health counseling. He also participated in "24/7 dads," anger management classes, and a GED program. Dustin completed a domestic violence assessment, but classes were not recommended for him. Dustin testified that, while the children were in his care from January to April 2011, he was not regularly sending them to school because he "really wasn't ready to have the kids returned to [his] care." He "just felt like [he] couldn't tell them no." In April 2011, "it got overwhelming," in part because Jordan had asthma and required breathing treatments, and Dustin was caring for the children alone. Dustin testified that he took the children to their grandparents' house in April 2011 because he "fell off and [he] started doing illegal activity." He knew that people were "looking for [him] because [of] what [he] did to them" and that "it just wasn't safe at the time." He decided it was best to take the children to their grandparents' home. When asked why he did not participate in services at that time, he testified that a "lot of it was selfish."

¶ 19 The court found that the State proved by clear and convincing evidence all three grounds of unfitness alleged in its petition to terminate parental rights. With respect to count I, the court found that Dustin had not exhibited a reasonable degree of interest, concern, or responsibility for the children. The court noted that, while the children were in his care, Dustin failed to send them to school regularly and committed a felony. With respect to count II, the court found that during the nine-month period from February to November 2011, Dustin committed a felony, failed to

engage in services, and failed to complete drug screens. With respect to count III, the court found that Dustin was presumed to be deprived because he had been convicted of at least three felonies, one of which was within five years of the filing of the petitions to terminate his parental rights (750 ILCS 50/1(D)(i) (West 2012)). The court found that Dustin presented insufficient evidence to rebut the presumption.

¶ 20 The best interest hearing was held on January 17, 2014. Garnhart testified that the children remained with their maternal grandparents, with whom they had resided since August 2010 except for the period from January to April 2011 when they were with their father. She testified that Jordan had asthma and that his grandparents provided him with all necessary treatments. According to Garnhart, Heaven and Hailey both told her that they wished to remain with their grandparents, and Jordan, who was very young, had not expressed any problems regarding living with his grandparents. All three children were comfortable in the home and had adapted well.

¶ 21 Garnhart testified that Dustin was released from prison in November 2013 and had a supervised visitation with the children in December. The visitation went “pretty well” and Dustin brought Christmas gifts. The children did not express a desire to return to their father’s home. Garnhart’s opinion was that adoption by the maternal grandparents was in the children’s best interest.

¶ 22 On cross-examination, Garnhart testified that the children seemed happy to see their father at the visitation in November. Garnhart knew that Dustin had been living in an apartment since his release from prison, but she did not know anything about it. According to Garnhart, Dustin completed a substance abuse assessment after his release from prison, and intensive

outpatient services were recommended. Garnhart was not sure if Dustin was participating in the recommended services, although he told her he was.

¶ 23 On redirect, Garnhart testified that, while the children were living with Dustin in 2011, he told her that he was not using drugs. However, in 2012, while he was incarcerated in the Winnebago County jail, Dustin admitted to Garnhart that he had been using drugs the entire time the children were placed with him. He told Garnhart that he had used marijuana on a daily basis.

¶ 24 Dustin testified that he had a close relationship with his children. He denied that he was doing drugs while the children were in his care. He admitted that he relapsed after he dropped the children off at their maternal grandparents' house in April 2011. He thought that would be a short-term situation, but he "got in too deep with some stuff." Dustin testified that he had seen the children once and spoken with them on the phone three or four times since he was released from prison. He believed that the children were still bonded to him and showed him affection.

¶ 25 Dustin admitted into evidence 10 pictures of his house, which showed rooms set up for each of the children. Each room had a bed and age-appropriate decorations. Dustin testified that the children had expressed a desire to come home with him.

¶ 26 Dustin testified that he had remained drug free since being released from prison. He also completed an intensive outpatient substance abuse program and weekly drug screens. He admitted into evidence reports showing that his two most recent drug screens were negative. He testified that he would begin working construction for his stepfather the following Monday.

¶ 27 The maternal grandfather briefly addressed the court and expressed his belief that it was in the children's best interest that the grandparents adopt them.

¶ 28 The court found that the State proved by a preponderance of the evidence that, taking into account the statutory best interest factors, it was in the children's best interest to terminate

Dustin's parental rights. The court emphasized that Dustin had exhibited a course of criminal conduct, which continued while he had guardianship and custody of the children. The court further emphasized that the grandparents provided safety and stability for the children. The court indicated, and the maternal grandparents confirmed, that Dustin would continue to have the ability to visit the children and maintain his relationship with them. Dustin timely appealed.

¶ 29

## II. ANALYSIS

¶ 30 Termination of parental rights under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2012)) is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. The State first must establish by clear and convincing evidence one ground of parental unfitness from those listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2) (West 2012); *In re B.B.*, 386 Ill. App. 3d 686, 698 (2008). If the trial court finds a parent unfit, the court must conduct a second hearing to determine, by a preponderance of the evidence, whether it is in the best interest of the minors to terminate parental rights. *B.B.*, 386 Ill. App. 3d at 698. A reviewing court will not disturb a trial court's decision at a termination hearing unless it is against the manifest weight of the evidence. *Julian K.*, 2012 IL App (1st) 112841, ¶ 65. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, and not based on evidence. *B.B.*, 386 Ill. App. 3d at 697-98.

¶ 31 We agree with counsel that there is no issue with arguable merit to support an appeal from the trial court's finding of unfitness. The court found that the State proved by clear and convincing evidence all three grounds of unfitness alleged in its petition to terminate Dustin's parental rights. A single ground of unfitness under section 1(D) is sufficient to support a finding of unfitness. *Julian K.*, 2012 IL App (1st) 112841, ¶ 2.

¶ 32 Count III alleged that Dustin was an unfit parent in that he was depraved. Although the legislature has not defined depravity, “our supreme court has defined depravity as ‘an inherent deficiency of moral sense and rectitude.’ ” *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 23 (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)), “[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 \*\*\* 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.” If a party presents evidence to rebut the presumption of depravity, “ ‘the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed.’ ” *Addison R.*, 2013 IL App (2d) 121318, ¶ 24 (quoting *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000)). “The amount of evidence that is required from an adversary to meet the presumption is not determined by any fixed rule.” *J.A.*, 316 Ill. App. 3d at 563. “The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent and the reviewing court will give such a determination deferential treatment.” *J.A.*, 316 Ill. App. 3d at 563.

¶ 33 At the unfitness hearing, the State admitted into evidence certified copies of four of Dustin’s felony convictions: an April 6, 2006, conviction of burglary; two November 30, 2007, convictions of burglary; and an October 17, 2012, conviction of attempt burglary. The October 17, 2012, conviction was within 5 years of the filing of the State’s petitions to terminate his parental rights, which were filed on March 8, 2013. This evidence gave rise to a rebuttable presumption that Dustin was depraved.

¶ 34 To meet the presumption of depravity, Dustin testified that, while incarcerated at Sheridan, he participated in three hours of drug treatment per day and weekly mental health

counseling, participated in a “24/7 dads” class and in anger management classes, and was enrolled in a GED program. He further testified that he completed a domestic violence assessment in prison but that classes were not recommended for him.

¶ 35 In *In re T.S.*, 312 Ill. App. 3d 875 (2000), the court affirmed a finding of depravity where, although the respondent father expressed a desire to care for his son and to complete any necessary programs upon being released from prison, “the evidence showed that he continued to commit crimes when he had three other children who presumably needed him.” *T.S.*, 312 Ill. App. 3d at 878. Similarly, in *Addison R.*, the respondent mother pursued every program offered to her while incarcerated, but this court affirmed a finding of depravity based largely on the seriousness of the mother’s conduct that resulted in her criminal convictions. *Addison R.*, 2013 IL App (2d) 121318, ¶ 27. In *J.A.*, by contrast, the court affirmed a finding that the respondent father rebutted the presumption of depravity where he visited his son more than the service plan recommended, was in constant contact with his children, and provided them with continual emotional and financial support. *J.A.*, 316 Ill. App. 3d at 563.

¶ 36 Here, even assuming that Dustin’s testimony was sufficient to rebut the presumption of depravity, the trial court’s finding that he was depraved was not against the manifest weight of the evidence, because the opposite conclusion was not clearly evident. When the children were returned to Dustin’s care for a short period from January to April 2011, not only did he attempt to commit his fourth burglary, but also he failed to send the children to school regularly and ceased complying with the DCFS service plan. Among other things, he stopped completing required drug screens and, once they were removed from his care, he visited the children inconsistently. According to his own testimony, he “really wasn’t ready to have the kids returned to [his] care,” and he “just felt like [he] couldn’t tell them no.” When “it got

overwhelming,” he “fell off and [he] started doing illegal activity.” Although he had the foresight to bring the children to their maternal grandparents’ house for their safety, Dustin himself admitted that this was necessitated by his own illegal conduct. According to Dustin, people were “looking for [him] because [of] what [he] did to them” and “it just wasn’t safe at the time.” The clear and convincing evidence established Dustin’s “ ‘inherent deficiency of moral sense and rectitude.’ ” *Addison R.*, 2013 IL App (2d) 121318, ¶ 23 (quoting *Stalder*, 412 Ill. at 498). Especially in light of the deference to which the trial court’s close scrutiny of Dustin’s character and credibility is entitled (*J.A.*, 316 Ill. App. 3d at 563), its finding that the State proved count III of the petition by clear and convincing evidence was not against the manifest weight of the evidence.

¶ 37 We also agree with counsel that there is no issue of arguable merit to support an appeal from the trial court’s determination that it was in the children’s best interest to terminate Dustin’s parental rights. Once a parent is found unfit, the focus shifts to the child, and the parent’s 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, 364 (2004). The Act sets forth the factors to be considered whenever a best interest determination is required: “(a) the physical safety and welfare of the child, including, food, shelter, health, and clothing”; “(b) the development of the child’s identity”; “(c) the child’s background and ties, including familial, cultural, and religious”; “(d) the child’s sense of attachments”; “(e) the child’s wishes and long-term goals”; “(f) the child’s community ties, including church, school, and friends”; “(g) the child’s need for permanence which includes the child’s need for stability and continuity of relationships with parent figures and with siblings and other relatives”; “(h) the uniqueness of every family and child”; “(i) the risks attendant to entering and being in substitute care”; and “(j) the preferences

of the persons available to care for the child.” 705 ILCS 405/1-3(4.05) (West 2012). Also relevant in a best interest hearing is the nature and length of the minor’s relationship with his or her present caretaker and the effect that a change in placement would have upon the minor’s emotional and psychological well-being. *In re William H.*, 407 Ill. App. 3d 858, 871 (2011).

¶ 38 The evidence at the best interest hearing was that, except for the period from January to April 2011, the children had been in their maternal grandparents’ care since August 2010. The grandparents were willing to adopt the children, met all of their medical and emotional needs, and provided them with a safe, loving, and stable environment. The evidence was that historically Dustin had been unable to provide a stable, safe environment for his children. He had been unable to meet basic parental responsibilities such as sending the children to school. He also admitted that his criminal conduct endangered his children. Although he denied using drugs while the children were in his care, he admitted that he relapsed after he dropped the children off at their maternal grandparents’ house. While Dustin initially believed the arrangement would be short-term, he acknowledged that he “got in too deep with some stuff,” which prevented the children from being returned to him. In addition, the children expressed a desire to remain living with their grandparents.

¶ 39 Dustin believed that the children were still bonded to him and showed him affection. He also testified that he had set up rooms for the children in his house after his release from prison and admitted into evidence photographs of the rooms. However, as the trial court found, the grandparents’ adoption of the children was in their best interest, in part, because it allowed them to visit and maintain their relationship with Dustin. The children would have the permanency, stability, and safety that Dustin was unable to provide, while continuing to have a relationship with Dustin.

¶ 40 Based on the evidence at the best interest hearing, the trial court's determination that it was in the children's best interest to terminate Dustin's parental rights was not against the manifest weight of the evidence. Therefore, we agree with counsel that there was no issue of arguable merit to support an appeal from the order terminating his parental rights.

¶ 41

### III. CONCLUSION

¶ 42 After examining the record, the motion to withdraw, and the memorandum of law, we hold that this appeal presents no issue of arguable merit. Thus, we grant counsel's motion to withdraw and affirm the judgment of the circuit court of Winnebago County.

¶ 43 Affirmed.