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2014 IL App (3d) 140376-U

Order filed October 1, 2014

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re B.P., a Minor)	Appeal from the Circuit Court
(THE PEOPLE OF THE STATE)	of the 9th Judicial Circuit,
OF ILLINOIS,)	Fulton County, Illinois,
)	
Petitioner-Appellee,)	
)	
v.)	Appeal No. 3-14-0376
)	Circuit No. 12-JA-3
)	
BRANDON P.,)	Honorable
)	William E. Poncin,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that the respondent was an unfit parent due to depravity and that it was in the minor child's best interest that the respondent's parental rights be terminated were not against the manifest weight of the evidence.

¶ 2 The respondent, Brandon P., appeals from judgments of the circuit court of Fulton County finding him to be an unfit parent of his minor child, B.P., and terminating his parental rights as to B.P. On appeal, the respondent maintains that the trial court's findings regarding his

¶ 7 Five days later, the trial court entered an Order granting temporary custody of B.P. to DCFS. In issuing this Order, the trial court found that there was probable cause for the juvenile petition and that there was an immediate and urgent necessity to remove B.P. from the home. The Order authorized DCFS to place B.P. with foster parents and to consent to medical care on B.P.'s behalf. Parental visitation was to be at the discretion of DCFS. The trial court again ordered the respondent to cooperate with DCFS, comply with the terms of the service plan, and correct the conditions that required B.P. to be in care or risk the termination of his parental rights. The court later found that the defendant's admission to the allegations contained in Count III of the juvenile petition had been "knowingly, voluntarily, and understandingly made" and that there was a factual basis for the respondent's admissions.

¶ 8 On April 10, 2012, the respondent began serving another prison sentence. Later that month, the trial court entered a Dispositional Order requiring the respondent to undergo certain services and setting the matter for a permanency review hearing on October 11, 2012.

¶ 9 On May 24, 2013, the State filed a petition seeking the termination of the respondent's parental rights.¹ The petition alleged that the respondent was an unfit parent under section 1(D) of the Adoption Act (Adoption Act) (750 ILCS 50/1(D) (West 2012)) on two grounds. First, the petition alleged that the respondent was unfit on the basis of depravity under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)) because he had been convicted of at least three felonies, at least one which took place within five years of the filing of the petition seeking termination of his parental rights. Second, the petition alleged that the respondent was unfit under section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2012)) because he had failed to make reasonable progress toward the return of the child within nine months of

¹ By this time, B.P.'s mother had surrendered her parental rights.

the adjudication of neglect. The petition asked the trial court to terminate the respondent's parental rights and to appoint a guardian with the power to consent to adoption. Although the respondent admitted some of the allegations of the petition, he denied that he was unfit or that his parental rights should be terminated.

¶ 10 The fitness hearing took place on October 17, 2013, and November 14, 2013. During the hearing, the State tendered certified copies of eight of the respondent's felony convictions, including convictions for robbery, enhanced theft, obstruction of justice, forgery, enhanced domestic battery, unlawful distribution of a look-alike substance, enhanced retail theft, and escape. Six of these convictions occurred within five years of the filing of the State's petition to terminate the respondent's parental rights. After the State rested, the respondent moved for a directed verdict. The trial court denied the respondent's motion and found that the State had established a *prima facie* case as to both grounds alleged in the petition.

¶ 11 The respondent presented evidence showing that, while he was incarcerated, he had completed substance abuse services, mental health services, anger management serves, and parenting classes. These services were completely voluntarily and were not required as part of the respondent's incarceration. The respondent's integrated assessment had required him to undergo substance abuse and mental health assessments and to complete any services recommended following those assessments. The integrated assessment also required the respondent to complete parenting and domestic abuse classes and to undergo random drug drops. A caseworker testified that she had no concerns that the respondent was using illegal drugs or substances at the time of the hearing.

¶ 12 The respondent also presented evidence regarding his efforts to obtain stable housing and gainful employment upon his release from prison in April 2014 (as required by his integrated assessment). The respondent's evidence showed that: (1) the respondent's brother had offered the

respondent a job transporting wind turbine parts and a vehicle would be made available to the respondent for this purpose; (2) the respondent's paramour, Danielle Cooper,² had a vehicle available for the defendant to use to get to work; (3) Cooper rented a four-bedroom house in Canton, Illinois, where the respondent and B.P. could reside; and (4) B.P. would have her own room in the house.

¶ 13 The respondent also presented evidence of his visitation with B.P. during his incarceration. Ashley Test, an LSSI caseworker, had arranged visits between the respondent and B.P. beginning during the week of B.P.'s birth. The respondent had approximately 12 one-hour visits with B.P. before he was incarcerated in the Fulton County jail on April 10, 2012.

¶ 14 Following the presentation of the parties' evidence and arguments, the trial court found that the State had proven by clear and convincing evidence that the respondent was unfit based upon depravity. Citing the respondent's "extensive criminal history," the court found that the respondent "me[t] the statutory definition of depravity" under the Adoption Act. The court further noted that, based upon the evidence presented, it could not find that the respondent had been rehabilitated. However, the court found that the State had failed to prove that the respondent had not made reasonable progress toward B.P.'s return. Accordingly, the court found the respondent unfit solely on the basis of depravity.

¶ 15 The trial court subsequently conducted a hearing to determine whether it was in B.P.'s best interest that the respondent's parental rights be terminated. The State called Ashlee Test, the LSSI caseworker who had been assigned to B.P.'s case from its inception. Test testified that B.P.

² Cooper was a certified nurse's assistant employed by Lutheran Social Services of Illinois (LSSI), the organization that provided foster care and visitation services to B.P. and the respondent in this case.

entered into the care of DCFS when she was two days old and she has resided with the same Foster parents (the Smiths) for her entire life. Test stated that the respondent had been incarcerated for all but the first two months of B.P.'s life (*i.e.*, since April 2012). She noted that the respondent participated in visits with B.P. prior to his incarceration. These visits occurred approximately twice per week, and each visit lasted one hour. According to Test, these visits "were always good"; B.P. was not scared of her father and was comfortable during these visits. Visits were not allowed during the time that the respondent was incarcerated at the Fulton County jail (from April 17, 2012 through sometime in September 2012). However, visits resumed when the respondent was processed by the Illinois Department of Corrections and moved to the Hill Correctional Center in Galesburg, Illinois. There were two visits per month from September 2012 until May 2013. Thereafter, Test reduced the number of visits to one per month. During these visits, B.P. never had an adverse reaction to her father, she was not scared or anxious around him, and she showed him affection. As she grew older, she seemed to be familiar with her father and appeared to be happy during the visits.

¶ 16 However, Test stated that there was no indication that B.P. understood or recognized the respondent to be her father and that she never heard B.P. refer to the respondent as her father. Moreover, Test stated that it was difficult to transport B.P. to the prison for visits because B.P. seemed uneasy and cried for her foster parents. On one occasion, she cried until she became ill. After returning home from these prison visits, B.P. seemed happy to be home and appeared to be "clingy" for a few days afterward. For these reasons, Test limited B.P.'s visits to the respondent in prison to once per month. Moreover, Test testified that the respondent had missed 4 or 5 of the 16 visits that had been scheduled while he was free. Test stated that the respondent missed those visits because he had been running and hiding to avoid arrest.

¶ 17 Test testified that B.P. had a strong relationship with respondent's son D.P. (B.P.'s half-brother). D.P. accompanied B.P. during some visits with the respondent and he interacted with B.P. at her foster parents' home approximately once per month. D.P. would comfort B.P. and calm her down when she would cry on the way to visit her father in prison. B.P. also had contact with her paternal grandmother and her maternal aunt.

¶ 18 Test stated that B.P. was living with the Smiths and their three adoptive children, all of whom were older than B.P. Test had observed B.P. with the Smiths, and she indicated that B.P. was extremely bonded to them, was affectionate toward them, and called them "Mom" and "Dad." According to Test, B.P. had also bonded with the Smiths' adoptive children and was especially attached to the older girl. Test stated that B.P. was happy and comfortable in her foster home and seemed less comfortable when she was taken out of the home.

¶ 19 Test also described how the Smiths had provided for B.P.'s physical and medical needs. She testified that there was room in the Smiths' home for B.P. and that B.P. was adequately fed and clothed. Moreover, she testified that, when B.P. continued to suffer withdrawal symptoms after her release from the hospital 10 days after her birth, the Smiths took her to the doctor regularly and made sure all her medical needs were met. According to Test, B.P. did not have any ongoing physical or mental health concerns, she was current on her shots and examinations, and the Smiths had taken her to all required medical appointments. Test stated that B.P.'s doctor had informed Test that B.P. was on target developmentally.

¶ 20 Test testified that Ms. Smith had regular contact with the respondent's mother (B.P.'s grandmother), allowed her to visit B.P., and sent her pictures of B.P. Ms. Smith communicated with B.P.'s mother until it became "overwhelming" due to her asking a lot of questions about court and things that Ms. Smith did not feel comfortable about. However, Test affirmed that the Smiths remained willing to arrange contact between B.P. and her grandmother.

¶ 21 Regarding B.P.'s ties to the community, Test testified that "she's involved *** with the school, I mean her older siblings had talked about her and sports and things like that. So she goes to games a lot. And *** they have a lot of friends and are involved in the school district." On cross-examination, Test stated that a child of B.P.'s age (*i.e.*, approximately 22-24 months old) would typically be in the home the majority of the time and it was uncommon for such a child to be in day care or school. She testified that B.P. is comfortable in the home and experiences separation anxiety when out of the home.

¶ 22 Test stated that she believed that B.P. was well integrated into the Smith home. She testified that the Smiths had expressed an interest in adopting B.P., and she noted that she did not foresee moving B.P. to another foster home if she became available for adoption. After reviewing the statutory factors for determining the best interest of a child under the Juvenile Court Act, Test prepared a "Best Interest Report" in which she opined that it was in B.P.'s interest that the respondent's parental rights be terminated and that B.P. remain in the foster home where she has lived and been cared for all of her life.

¶ 23 Ms. Smith testified that B.P. refers to Ms. Smith and her husband as "Mommy" and "Daddy." She stated that B.P. calls the Smiths' other children by their names and "knows they are brothers and sisters." The other children in the household treat B.P. as if she were their sibling. Moreover, B.P. has contact with members of Ms. Smith's and her husband's extended families, who treat B.P. as if she were a biological member of the family. For example, Ms. Smith's sister has six children in the same school district who regularly visit the Smith home, and B.P. has a relationship with those children. Moreover, Ms. Smith testified that B.P. had many visits with her half-brother, D.P., at the Smith home, that she had an attachment to D.P., and that she showed him affection. Ms. Smith stated that B.P. shows affection to all the members of the

household by giving them hugs and kisses all the time. In addition, Ms. Smith stated that the family regularly brings B.P. to their daughter's basketball games.

¶ 24 Ms. Smith affirmed that she and her husband were committed to adopting B.P.

According to Ms. Smith, B.P. appears well established in the household routines and, judging by her affection and interactions, B.P. seems comfortable and secure in the Smith home and with the Smith family. B.P. turns to Ms. Smith for comfort, or to Ms. Smith's daughter if Ms. Smith is not available. Ms. Smith testified that, although her husband worked outside the home, she has not worked outside the home for the past 13 years and she intended to remain a "stay-at-home mom." The Smiths had no plans to move to a different location.

¶ 25 On cross-examination, Ms. Smith described how she cared for B.P. while B.P. was getting over her withdrawal symptoms during her first weeks at the Smith home. During that time, Ms. Smith was primarily responsible for taking B.P. to her doctor's appointments and for making sure that the doctor's orders were carried out.

¶ 26 After the State rested its case-in-chief, the respondent moved for a directed verdict. The trial court denied the respondent's motion.

¶ 27 During the respondent's case-in-chief, two LSSI case aids who had supervised some of the visits between the respondent and B.P. testified. Case aid Apryl Ratliff testified that B.P. was not afraid of her father during the visits, and that she played and interacted with him and smiled at him "once in a while." However, Ratliff stated that, while she was transporting B.P. to one of the visits, she had to turn back because B.P. would not stop crying and "made herself sick." Ratliff also noted that, although B.P. appeared to recognize the respondent, Ratliff never heard B.P. call him "Daddy." Similarly, case aid Emily Lynch testified that B.P. appeared to recognize the defendant, was not anxious or nervous during visits, and hugged the respondent when the visit was over, but she never called the respondent "Dad."

¶ 28 The respondent also testified. He expressed his love for B.P. and his desire that she live with him. During cross-examination, the respondent stated that, prior to B.P.'s birth, he had been sentenced to serve 120 days at the Fulton County jail but chose not appear. As a result, while this case was pending, he was charged with escape and sent to the Illinois Department of Corrections, where he remained at the time of the hearing. On cross-examination by B.P.'s guardian *ad litem*, the respondent admitted that he did not report to the Fulton County jail because he was scared to confront his drug problem and go through withdrawal symptoms.

¶ 29 The respondent's mother and Danielle Cooper, the respondent's paramour, also testified in support of the respondent's position. Cooper testified that she witnessed one of the visits B.P. had with her paternal grandmother. Cooper stated that, during that visit, B.P. recognized her grandmother, hugged and kissed her, and appeared to be happy and smiling.

¶ 30 After considering all of the witness testimony, the documentary evidence (including Test's "Best Interest Report"), and the "best interest" factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2012)), the trial court found that the best interests of B.P. required that the respondent's parental rights be terminated and that a guardian be appointed with the power to consent to adoption. The court indicated that one way to address the best interest issue is to ask what would be in the child's *worst* interest, which, in the court's view, "would be to create a situation in the child's life where there's no permanence, no stability, and no continuity." The court noted that B.P. had spent almost all of her life with the same foster family and that many of the statutory factors had been met and provided by the foster family. The court acknowledged that the respondent had a family member who was willing to provide employment after his release from prison and that the respondent's mother had a legitimate interest in her granddaughter. However, the court expressed concerns that the respondent was planning to

reside with a woman he had met after his incarceration, noting that "[t]hat is certainly, perhaps, wishful thinking that that type of an environment and that type of a relationship will work out."

¶ 31 Moreover, although the trial court acknowledged that the respondent had sought drug treatment while incarcerated, he observed that the respondent's sobriety had been achieved in a highly structured environment and noted that only time would tell whether the respondent "can lead a life of abstinence." The court stated that "when we look at permanence, stability, and continuity, time is the child's enemy."

¶ 32 For these reasons, the trial court found that the State had proven by a preponderance of the evidence that it was in the best interests of B.P. that the respondent's parental rights be terminated. This appeal followed.

¶ 33 ANALYSIS

¶ 34 1. The Trial Court's Finding that the Respondent Is Unfit

¶ 35 On appeal, the respondent argues that the trial court's finding that he was unfit is contrary to the manifest weight of the evidence. We disagree.

¶ 36 The Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006); *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Donald A.G.*, 221 Ill. 2d at 244; *Tiffany M.*, 353 Ill. App. 3d at 889.

¶ 37 In this case, the circuit court found the respondent to be unfit based on depravity. "Depravity," for purposes of determining whether a parent is unfit, is "an inherent deficiency of moral sense and rectitude." *Donald A.G.*, 221 Ill. 2d at 244; *In re S.W.*, 315 Ill. App. 3d 1153,

1158 (2000). Depravity is demonstrated by a series of acts or a course of conduct that indicates a moral deficiency and an inability or unwillingness to conform with accepted morality. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003).

¶ 38 Section 1(D)(i) of the Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2012). Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not depraved. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24. If the parent presents evidence rebutting the presumption, "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." *Id.* (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." *Id.*

¶ 39 We will reverse the trial court's finding of unfitness only if it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); *In re J'America B.*, 346 Ill. App.3d 1034, 1045 (2004). A determination of unfitness is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002); *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 40 During the fitness hearing in this case, the State entered into evidence certified copies of eight of the respondent's felony convictions. Six of these convictions occurred within five years of the filing of the petition seeking termination of the respondent's parental rights. This evidence

clearly sufficed to raise a rebuttable presumption of depravity under section 1(D)(i) of the Act (750 ILCS 50/1(D)(i) (West 2012)), which requires only three felony convictions with one occurring within five years of the filing of the petition.

¶ 41 The respondent argues that the defendant's criminal history, standing alone, cannot establish depravity by clear and convincing evidence. In support of this argument, the respondent cites our appellate court's decisions in *In re S.H.*, 284 Ill. App. 3d 392, 398-99 (1996) (ruling that "the commission of most felonies, even very serious ones, will not, without more, support a finding of unfitness based on depravity") and *In Interest of Sanders*, 77 Ill. App. 3d 78, 82 (1979) (ruling that "the criminal record of a person, while highly persuasive, is only one factor to be considered" and that "'the mere fact that a parent has been convicted of *** a number of felonies is not sufficient to establish depravity"). In addition, the respondent maintains that the felonies he committed cannot establish depravity because most of them were not offenses that "harmed individuals or property."

¶ 42 We disagree. Section 1(D)(i) of the Act provides that "[t]here is a rebuttable presumption that a parent is deprived *if the parent has been criminally convicted of at least 3 felonies* *** 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 2012). Unless this presumption is rebutted by contrary evidence, it will establish that the parent is unfit by reason of depravity even if the State presents no additional evidence. See, e.g., *In re Travarius O.*, 343 Ill. App. 3d 844, 853 (2003) ("Certified copies of conviction create a *prima facie* showing of depravity, which shifts the burden to the parent to show by clear and convincing evidence that he is in fact not deprived."). Moreover, the statute draws no distinction between types of felonies, and it does not make the presumption contingent upon the commission of offenses that harm individuals or property. Rather, it merely states that a rebuttable presumption of depravity arises

if the parent has been convicted of "at least 3 felonies," at least one of which took place within five years of the filing of the petition.

¶ 43 Moreover, the cases upon which the respondent relies do not support its position. As the respondent concedes in his reply brief, *Sanders* was decided before the enactment of section 1(D)(i) of the Juvenile Court Act and has been superceded by statute. *Travarius O.*, 343 Ill. App. 3d at 853. In addition, *S.H.* is inapposite because it addressed a different question than the question presented here. Specifically, *S.H.* addressed whether a parent may be found unfit by reason of depravity based *solely upon a single criminal conviction* for certain types of criminal acts he committed upon his child. *S.H.*, 284 Ill. App. 3d at 399-400. Here, by contrast, the issue is whether the respondent may be found unfit due to depravity based upon his conviction of eight felonies, six of which occurred within five years of the filing of the State's termination petition. The plain terms of section 1(D)(i) provide that he may.

¶ 44 In the alternative, the respondent argues that, even if his criminal history gave rise to a rebuttable presumption of depravity, he presented evidence sufficient to prove that he was rehabilitated and no longer depraved (thereby rebutting the presumption and precluding a finding of unfitness). While he was incarcerated, the respondent successfully completed substance abuse services, mental health services, anger management serves, and parenting classes. He also underwent drug tests, all of which yielded negative results. He was drug free since his incarceration on April 12, 2012. Moreover, the respondent had employment and housing set up upon his release, and he engaged in appropriate visitation with B.P. and with B.P.'s half brother D.P. both before and during his incarceration.

¶ 45 Despite this evidence, we cannot conclude that the trial court's finding of unfitness due to depravity was against the manifest weight of the evidence. Although the completion of classes while in prison is commendable, it does not necessarily establish rehabilitation. See *A.M.*, 358

Ill. App. 3d at 254; *Shanna W.*, 343 Ill. App. 3d at 1167. Moreover, although the respondent has apparently been drug free since his incarceration on April 12, 2012, this sobriety has been achieved in a highly structured prison environment where drugs are unavailable. It is not clear yet whether the respondent will be able to continue abstaining from drugs upon his release, especially given his extensive prior history of substance abuse and criminality. Further, as the trial court noted, it is not clear whether the claimant's living situation with his paramour will remain stable in the long term.

¶ 46 In arguing that he is rehabilitated and no longer depraved, the respondent relies upon *In re Gwynne P.*, 346 Ill. App. 3d 584, 599 (2004), but that case is distinguishable. In *Gwynne P.*, our appellate court held that a mother had produced sufficient evidence to rebut the presumption of depravity where she showed that she: (1) had successfully completed a drug treatment program at Haymarket, a substance abuse treatment facility; (2) had remained drug-free for approximately three years by the time of the fitness hearing; (3) was hired as a "detox specialist" at Haymarket and was continually employed there during the seven months prior to the hearing; (4) was meeting the requirements of her parole—to remain a drug-free and law-abiding citizen; (5) had completed all the required services, including parenting skills classes; and (6) always acted appropriately during her visits with her daughter. Unlike the respondent in this case, the respondent in *Gwynne P.* had demonstrated sobriety and law-abiding behavior *for several years while she was out of prison*, and was continuously employed for seven months prior to the hearing. Here, by contrast, the respondent had remained sober for only two years prior to the hearing, and he was incarcerated during that entire period. Moreover, the respondent in this case showed only the promise of possible future employment, not several months of actual employment.

¶ 47 In sum, while the respondent's completion of services and his efforts toward self-

the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 51 In the present case, we cannot say that the circuit court's determination that termination of the respondent's parental rights was in B.P.'s best interest is contrary to the manifest weight of the evidence. B.P. had lived with her foster family for almost her entire life and had bonded with them. The Smith home was the only home she ever knew. By all accounts, the Smiths have taken good care of B.P. When B.P. was suffering withdrawal symptoms after she was released from the hospital, Ms. Smith took her to all required doctor's appointments and made sure that the doctor's orders were followed. B.P. is now in good health with no lingering health problems, and her doctor indicated that she is on target developmentally. The Smiths have also provided B.P. with adequate food and shelter, and B.P. is fully integrated into her foster family. She calls Mr. and Ms. Smith "Daddy" and "Mommy," she is attached to Mr. and Ms. Smith and to each of their adoptive children, and she has a relationship with members of the Smiths' extended family, who treat B.P. as a member of their biological family. Moreover, the Smiths have expressed a desire to adopt B.P. Thus, there is ample evidence suggesting that the Smiths have provided a loving and stable foster home where B.P. feels comfortable and secure and appears to be thriving.

¶ 52 By contrast, the respondent's contacts with B.P. have been limited and sporadic due to his lengthy incarceration. The respondent has been incarcerated for all but the first two months of B.P.'s life. Prior to his incarceration in April 2012, the respondent had approximately 12 visits with B.P. However, according to Test, the respondent missed 4 or 5 scheduled visits during that time period because he was running and hiding in an attempt to avoid arrest. Moreover, while this case was pending, the respondent was convicted of escape after he refused to appear on an earlier jail sentence because he was scared to confront his drug problem and go through withdrawal symptoms. That resulted in an additional prison sentence, which further limited his

contact with B.P. Since his incarceration in April 2012, the respondent's contact with B.P. has consisted of scheduled prison visits which have occurred once or twice per month, one hour per visit (with no visits occurring from April 17, 2012, through sometime in September 2012).

Although B.P. appears to recognize the respondent and shows him affection during visits, there is little indication that B.P. understands the respondent to be her father. Moreover, although the respondent testified that he has employment and housing lined up upon his release from prison, it is uncertain whether he will be able to remain drug free and to provide a stable home for B.P. on a long-term basis.

¶ 53 Although B.P. has good relationships with her paternal grandmother and with her half brother D.P., the evidence suggests that the Smiths will continue to allow her to visit with them and to maintain those relationships. In addition, the respondent's argument that B.P. has insubstantial community ties through her foster family lacks merit because, as Test noted, a child of B.P.'s age would typically be in the home the majority of the time and it is uncommon for such a child to be in day care or school.

¶ 54 In sum, the trial court found that terminating the respondent's parental rights and allowing B.P. to remain with her foster parents would promote "permanence, stability, and continuity" in B.P.'s life and would otherwise be in B.P.'s best interest. On this record, we cannot conclude that this finding is against the manifest weight of the evidence.

¶ 55 **CONCLUSION**

¶ 56 For the reasons sets forth above, we affirm the judgment of the circuit court of Fulton County.

¶ 57 Affirmed.