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2014 IL App (5th) 130588-U

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).

NO. 5-13-0588

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> M.H., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 12-JA-56
	)	
Melissa M.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.  
Justices Stewart and Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Termination of parental rights affirmed where evidence is sufficient to support the circuit court's finding of unfitness.

¶ 2 The respondent, Melissa M., appeals the November 12, 2013, order of the circuit court of St. Clair County that found her unfit as a parent and terminated her parental rights. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 M.H. was born to the respondent on October 31, 2011. On May 7, 2012, the State

filed a two-count petition for an adjudication of wardship of M.H. Count I alleged that M.H. was neglected, pursuant to section 2-3(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(b) (West 2012)), by being in an environment injurious to her welfare. Count II alleged that M.H. was dependent, pursuant to section 2-4(b) of the Act (705 ILCS 405/2-4(b) (West 2012)), in that she was without proper care because of the respondent's inability to care for her. The circuit court entered an order the same date, placing M.H. into protective custody.

¶ 5 An order of adjudication was entered on July 17, 2012, finding that M.H. was dependent, pursuant to section 2-4(b) of the Act (705 ILCS 405/2-4(b) (West 2012)). A dispositional order was also entered that, *inter alia*, made M.H. a ward of the court. On January 16, 2013, the State filed a motion for a termination of the respondent's parental rights and for the appointment of a guardian with the power to consent to adoption. A fitness hearing was conducted on November 12, 2013, where testimony and evidence were as follows.<sup>1</sup>

¶ 6 Lynneshea Morrow testified that she is licensed by the Department of Children and Family Services (DCFS) as a child welfare specialist, employed by Christian Social Services as a foster care caseworker, and the caseworker for M.H., who was two years old

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<sup>1</sup> Evidence was also presented regarding the respondent's oldest child, W.H., over whom the respondent voluntarily surrendered her parental rights, as well as evidence with regard to the parental rights of M.H.'s father and any and all unknown fathers. All such evidence is omitted here as it is not relevant to this appeal.

at the time of the hearing. Morrow became involved with M.H.'s case in October or November 2011, shortly after M.H.'s birth. At that time, Morrow met with the respondent and developed a service plan for her, which included requirements for substance abuse treatment, a psychological evaluation, a domestic violence assessment, individual counseling, housing, and income. Morrow averred that the respondent now has housing and that she completed substance abuse treatment, but she began abusing opiates again only two weeks after completing the treatment program. Morrow emphasized that the respondent has not even attempted to stay clean. Moreover, until the respondent becomes clean, Morrow can neither initiate individual counseling for her nor obtain a referral for a psychological evaluation. Morrow added that the respondent has not obtained stable income as required by the service plan, and although she completed some sort of domestic violence assessment while she was incarcerated, Morrow could not confirm whether that assessment met DCFS requirements. For these reasons, the respondent received an unsatisfactory rating on her service plan.

¶ 7 Morrow introduced People's exhibits 1 through 5, which are certified copies of the respondent's felony convictions, including: (1) 02-CF-1377, a felony conviction entered January 11, 2001, for burglary and theft; (2) 02-CF-1042, a felony conviction entered November 25, 2002, on two counts of forgery; (3) 04-CF-879, a felony conviction entered March 10, 2005, for burglary; (4) 04-CF-880, a felony conviction entered March 10, 2005, for burglary; and (5) 11-CF-1772, a felony conviction entered on October 29, 2012, for theft. These exhibits were all admitted into evidence, with no objection from defense

counsel.

¶ 8 The respondent testified that she is currently 34 years old, she began using heroin when she was 17 years old, and she has used it on and off ever since. She admitted that she used heroin and cocaine while she was pregnant with her first child, M.H.'s older brother, who was born on May 19, 2010. However, she stopped using when she found out that she was pregnant with M.H., and M.H. had no problems nor was she substance-exposed when she was born on October 31, 2011. Fifteen days after M.H.'s birth, the respondent committed retail theft while M.H. was with her. The respondent explained that her intent was to return the merchandise and obtain gift cards to buy formula for M.H. She averred that she went into the store with the intent of stealing something and she was not under the influence of any substance when she did so.

¶ 9 The respondent testified that she cared for M.H. until May 2, 2012, when she went to jail in St. Clair County. She got out of jail on June 21, 2012, and went straight to Gateway for substance abuse treatment, where she stayed until August 29, 2012, when she was released and returned home. Two weeks later she was admitted to the hospital for severe gastric issues. After two weeks in the hospital she returned home and was sentenced for the retail theft conviction and incarcerated from October 29, 2012, through June 12, 2013. According to the respondent, she was in jail and could not care for M.H. and M.H. was adjudicated dependent as a result.

¶ 10 The respondent testified that after serving her sentence for retail theft, she began using drugs again on October 5, 2013, and most recently used on October 14, 2013, just

before returning to Gateway, where she was participating in an inpatient treatment program and had been there 29 days as of the date of the hearing. The respondent explained that the treatment program was required under the terms of her parole and includes both individual and group counseling for substance abuse, emotional management, relapse prevention, domestic violence, and sexual abuse.

¶ 11 The respondent confirmed that she completed an eight-week domestic violence course called "Seeking Safety" at the Decatur Correctional Center, then repeated the same course at Gateway in 2012, and was currently taking the course again at Gateway. The respondent testified that she was unable to visit with M.H. while she was incarcerated, but she visited with her for one hour per week at Christian Social Services and later at Gateway once she arrived there. The respondent expected to be released from Gateway sometime before Christmas 2013. She testified that she lived alone at a home owned by her mother, she got a job cleaning an elderly woman's home just before going to Gateway, and she expected to resume that job upon her release from the treatment program.

¶ 12 The respondent stated that she learned in rehabilitation that she would always be an addict, but she was in recovery when she did not use. When questioned whether it was safe to return M.H. to her in light of her history of relapses, the respondent replied that she deserves a chance because she has not given up trying to fight her addiction.

¶ 13 At the conclusion of the hearing, the circuit court entered an order, finding the respondent unfit by clear and convincing evidence on the following two grounds: (1) habitual addiction to drugs other than those prescribed by a physician for at least one year

immediately prior to the commencement of the fitness proceeding (750 ILCS 50/1(D)(k) (West 2012)); and (2) depravity by having been convicted of at least three felonies in Illinois, with one of those convictions occurring within five years of the filing of the petition for the termination of the respondent's parental rights (750 ILCS 50/1(D)(i) (West 2012)). The circuit court also found it in M.H.'s best interests to terminate the respondent's parental rights. The respondent filed a timely notice of appeal.

¶ 14

#### ANALYSIS

¶ 15 The respondent's sole issue on appeal is whether the circuit court erred in finding her unfit on the two bases cited in the order. The respondent does not challenge the circuit court's finding that it is in the best interests of M.H. to terminate the respondent's parental rights. Accordingly, that issue is waived on appeal. See *In re Estate of Nicholson*, 268 Ill. App. 3d 689, 694 (1994) (citing Ill. S. Ct. R. 341(e)(7) (now R. 341(h)(7) (eff. Sept. 1, 2006)) (issues not raised in appellate brief are waived)). We review the circuit court's finding of unfitness under the manifest weight of the evidence standard. See *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). "A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the ruling is unreasonably arbitrary or not based on the evidence." *In re Marriage of Kendra*, 351 Ill. App. 3d 826, 829 (2004).

¶ 16 "A parent's rights may be terminated if a single alleged ground for unfitness is supported by clear and convincing evidence." *In re D.C.*, 209 Ill. 2d 287, 296 (2004). For purposes of our analysis, we will review section 1(D)(i) of the Adoption Act, which

provides that a parent may be found unfit on the basis of depravity. 750 ILCS 50/1(D)(i) (West 2012). There is a rebuttable presumption that a parent is depraved if she has been convicted of at least three felonies and at least one of those convictions occurred within five years of the filing of the petition for a termination of parental rights. See *id.*

¶ 17 In this case, certified copies of five felony convictions of the respondent were admitted into evidence, with no objection. The most recent conviction was entered on October 29, 2012. The petition for a termination of the respondent's rights was filed on January 16, 2013. This meets the statutory requirements of depravity, pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)). Accordingly, the circuit court's finding the respondent unfit based on depravity was not against the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d at 354. Because a parent's rights may be terminated if any single alleged ground for unfitness is shown by clear and convincing evidence, we need not address any remaining alleged grounds. See *In re D.C.*, 209 Ill. 2d at 296.

¶ 18

#### CONCLUSION

¶ 19 For the foregoing reasons, the November 12, 2013, order of the circuit court of St. Clair County that found the respondent unfit as a parent and terminated her parental rights is affirmed.

¶ 20 Affirmed.