

NOTICE
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2015 IL App (5th) 140624-U

NO. 5-14-0624

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> A.R., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-JA-154
)	
John B.,)	Honorable
)	David Grounds,
Respondent-Appellant).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's determinations that the respondent was unfit and that the termination of his parental rights was in the minor's best interests are not contrary to the manifest weight of the evidence.
- ¶ 2 The respondent, John B., appeals the judgment of the circuit court of Madison County terminating his parental rights to A.R. He argues that the circuit court's determinations that he was unfit and that the termination of his parental rights was in the minor's best interests are contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 We note that pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010), the decision in this case was due to be filed on or before May 21, 2015, absent a showing of good cause. However, disposition of this appeal was delayed by John B.'s lengthy delay in filing a docketing statement, requests by both parties for extensions of time in which to file their briefs, and the need to supplement the record on appeal with the transcripts from the fitness and best interests hearings. As a result of these delays, the briefing schedule was not completed until June 29, 2015. Based on the foregoing, we find that good cause exists for filing our decision after May 21, 2015.

¶ 4 **BACKGROUND**

¶ 5 John B. and Alyse R. are the biological parents of A.R., who was born on August 27, 2007.¹ On October 23, 2012, the State filed a petition for the adjudication of wardship alleging that A.R. was an abused and neglected minor as defined by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)). Following adjudicatory and dispositional hearings, A.R. was found to be abused and neglected, made a ward of the court, and placed in the custody of the Illinois Department of Children and Family Services (DCFS).

¶ 6 On February 26, 2014, the State filed a petition to terminate the parental rights of John B. and Alyse R., alleging that they were unfit persons as defined by section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2012)). With respect to John B. the State alleged that he was unfit in that he (1) had abandoned A.R. (750 ILCS 50/1(D)(a)

¹Alyse R. is not a party to this appeal.

(West 2012)), (2) had failed to maintain a reasonable degree of interest, concern, or responsibility as to A.R.'s welfare (750 ILCS 50/1(D)(b) (West 2012)), (3) had deserted A.R. for more than three months next preceding commencement of the proceedings (750 ILCS 50/1(D)(c) (West 2012)), (4) had failed to make reasonable efforts to correct the conditions which led to A.R.'s removal during the nine-month period following the adjudication of abuse and/or neglect (750 ILCS 50/1(D)(m)(i) (West 2012)), (5) had failed to make reasonable progress toward A.R.'s return during any nine-month period following the adjudication of abuse and/or neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)), and (6) was deprived (750 ILCS 50/1(D)(i) (West 2012)).

¶ 7 On March 18, 2014, Alyse R. executed a final and irrevocable consent to A.R.'s adoption by Vicki and Daniel R., Alyse R.'s parents, thereby voluntarily surrendering her parental rights to A.R.

¶ 8 At the hearing on parental fitness, the State introduced certified copies of John B.'s June 16, 2009, conviction for felony domestic battery, his November 3, 2010, Missouri conviction for felony domestic assault, and his March 18, 2011, conviction for unlawful possession of cannabis with the intent to deliver.

¶ 9 Kayla Kinser testified as follows. She was the foster care worker assigned to A.R.'s case from October of 2012, when A.R. first came into care, through November 8, 2013. A.R. came into care because a man overdosed on heroin at Alyse R.'s residence. When the police arrived, they found drug paraphernalia mixed in with A.R.'s clothes and toys. After A.R. was taken into care, a diligent search for John B. was conducted, without result. Kinser's first contact with John B. came on December 9, 2013, when she

received a telephone call from him. John B. stated that he was unaware that A.R. was in protective custody and that his last contact with her had been in 2009. Kinser advised John B. that he needed to have an integrated assessment performed by Erin Wright, A.R.'s caseworker at that time, and provided him with contact information. She also advised him that an order of protection was in place and that no visitation could take place until it was lifted. Kinser explained that the order of protection had been issued in 2009 because John B. had been violent toward Alyse R. and members of her family. A.R. was listed as a protected party. John B. did not contact Kinser again and she never met with him. A.R.'s foster parents, who were her maternal grandparents, told Kinser that John B. had never tried to contact A.R. A.R. did not know John B. and believed that Christopher S., Alyse R.'s boyfriend, was her father.

¶ 10 Sarah Vadnais testified as follows. She had been the foster care caseworker assigned to A.R.'s case since January 17, 2014. Alyse R. had signed a voluntary termination and consent to adoption in March 2014, and was no longer a part of the case. Vadnais first saw John B. at a pretermination conference in March 2014. She advised John B. that an integrated assessment would need to be performed to determine what services he would need, and that such services would include substance abuse treatment and domestic violence counseling. The integrated assessment was performed in April 2014, and Vadnais added parenting classes, anger management, and psychiatric counseling. Approximately one week later John B. contacted Vadnais and informed her that he was working on getting the order of protection lifted. Vadnais spoke with John B. by phone in May 2014, but there was no further contact. John B. did not complete any of

the tasks in his service plan. A.R. did not know John B. and considered Christopher S. to be her father.

¶ 11 Elizabeth B. testified that she was married to John B. She began dating him in May 2012. She testified that John B. had attempted to contact A.R. numerous times by phone but her grandparents would hang up on him. He also sent emails to Alyse R. but she never responded. She had four children from a previous relationship and John B. was a wonderful father to them.

¶ 12 John B. testified as follows. He last saw A.R. in March 2010, shortly before going to prison.² He was released from prison on April 27, 2012. Since being released from prison he made multiple attempts to contact A.R.'s grandparents by phone, but they hung up on him. He first learned that A.R. had been taken into protective care in November 2013 when he received a letter from DCFS. He contacted DCFS and was shocked to learn that A.R. had been in protective custody since October 2012. On February 18, 2014, he received a letter advising him that a pretermination conference would be held on March 18, 2014. He had not contacted DCFS between December 2013 and February 2014 because the caseworker had told him that he needed to have the order of protection lifted before he could do anything else. Subsequent to the pretermination conference John B. had an integrated assessment performed, but never received a service plan. He was aware of some of the tasks required by the service plan, but had not started on them

²The record indicates that John B. was taken into custody on March 9, 2010, on the Missouri charge of felony domestic assault.

because he believed that the order of protection had to be lifted first. Since getting out of prison he had been performing odd jobs to earn money, but had not been regularly employed. He had applied for social security disability benefits. John B. acknowledged that charges of possession of a controlled substance, possession of a firearm by a felon, and possession of drug paraphernalia were pending against him in Arkansas.

¶ 13 A best-interests hearing was held on September 15, 2014. John B. did not appear, but was represented by counsel. Kinser testified that A.R. was placed with Daniel and Vicki R., A.R.'s maternal grandparents, at the beginning of the case and has remained with them throughout the case. A.R. already had a bedroom at her grandparents' home and needed no time to adjust to being there. A.R. stated on several occasions that she wanted to live with her grandparents. Kinser testified that A.R. is strongly bonded with her grandparents and opined that it would be in her best interests to remain there permanently.

¶ 14 Vadnais testified that A.R. does not know John B. and that Christopher S. is the only man she has ever considered to be her father. A.R. had a very close relationship with her grandparents even prior to the case being opened and often stayed with them. A.R. was very comfortable in the home. She was doing well in school and was involved in numerous activities, including sports, cheerleading, and karate. A.R. told Vadnais that she had never felt safe until she came to live with her grandparents, and that she wanted to be adopted by them. Donald and Vicki R. had signed permanency commitments indicating their desire to adopt A.R.

¶ 15 On October 4, 2014, the circuit court entered an order terminating John B.'s parental rights to A.R. The court found that the State had proved by clear and convincing evidence that John B. was an unfit person as defined by the Act in that he (1) had abandoned A.R., (2) had failed to maintain a reasonable degree of interest, concern, or responsibility as to A.R.'s welfare, (3) had failed to make reasonable efforts to correct the conditions which were the basis of A.R.'s removal during any nine-month period following the adjudication of abuse and/or neglect, (4) had failed to make reasonable progress toward A.R.'s return during any nine-month period following the adjudication of abuse and/or neglect, and (5) was depraved in that he had been convicted of at least three felonies and that one of those convictions had taken place within five years of the filing of the petition seeking termination of his parental rights. The court further found that termination of John B.'s parental rights was in A.R.'s best interests because (1) there was an active order of protection against John B. in which A.R. was the protected party, (2) John B. had not visited with A.R. since the case was opened, (3) A.R. did not know John B. and there is no bond between them, (4) A.R. had been placed with her maternal grandparents since the case was opened and had resided with them periodically prior to the opening of the case, (5) A.R.'s grandparents wanted to adopt A.R. and had signed permanency commitments to that effect, (6) A.R. was strongly bonded to her grandparents and wished to be adopted by them, and (7) A.R.'s emotional, psychological, and financial needs were being met in her grandparents' home. John B. appeals.

¶ 16

ANALYSIS

¶ 17 On appeal, John B. argues that the circuit court's determination that he failed to make reasonable efforts to correct the conditions which led to A.R.'s removal, that he failed to make reasonable progress toward A.R.'s return within nine months following the adjudication of abuse and/or neglect, and that he failed to show maintain a reasonable degree of interest, concern, or responsibility as to A.R.'s welfare are contrary to the manifest weight of the evidence. He also argues that he was unable to address the rebuttable presumption of depravity raised by his criminal history because he was "not notified of the proceedings," and that he had not been given ample time to address the issues that gave rise to the petition to terminate his parental rights.

¶ 18 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 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. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 19 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the

rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, (2) the development of the child's identity, (3) the child's background and ties, including familial, cultural, and religious, (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 20 One of the bases upon which the circuit court found John B. to be unfit was depravity. "Depravity," for purposes of determining whether a parent is unfit, is an inherent deficiency of moral sense and rectitude (*In re S.W.*, 315 Ill. App. 3d 1153, 1158 (2000)) and 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). Section 1(D)(i) of the Adoption 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 (quoting *In re Shanna W.*, 343 Ill. App. 3d at 1166). "Once the parent produces evidence opposing 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)).

¶ 21 In the present case, certified copies of John B.'s three felony convictions, all of which occurred within five years of the filing of the petition to terminate his parental rights, were admitted into evidence without objection. This raised the statutory presumption of depravity. John B. argues that the failure to notify him of the proceedings prevented him from addressing the presumption of depravity. The record belies this assertion. The petition to terminate John B.'s parental rights was filed on February 26, 2014, and a copy of the petition was mailed to him. Notice of a pretermination hearing scheduled for March 18, 2014, was also mailed to John B., and he appeared at that hearing. Counsel was appointed for John B. on March 18, 2014. The parental fitness portion of the termination hearing began on July 8, 2014. Thus, the record demonstrates that John B. had ample time to prepare to address the presumption of depravity.

¶ 22 Moreover, we find that even in the absence of the presumption of depravity, the evidence supports circuit court's determination that John B. was deprived. John B. was convicted of felony domestic battery in 2009 and felony domestic assault in 2010. The victim in both cases was Alyse R. An order of protection was issued against John B. because of his violence against Alyse R. and members of her family, and A.R. was one of the protected parties. John B. also had a 2011 conviction for unlawful possession of cannabis with the intent to deliver. This evidence demonstrates an utter lack of regard for A.R.'s emotional and physical well-being, as well as a moral deficiency and an inability or unwillingness to conform to accepted morality. No evidence was presented that John B. was maintaining or attempting to maintain a lifestyle suitable for parenting children safely. See *In re Shanna W.*, 343 Ill. App. 3d at 1167. The circuit court's determination that John B. was unfit based on depravity is not contrary to the manifest weight of the evidence.

¶ 23 "When parental rights are terminated based upon clear and convincing evidence of a single ground of unfitness, the reviewing court need not consider additional grounds for unfitness cited by the trial court." *In re Tiffany M.*, 353 Ill. App. 3d at 891 (citing *In re D.D.*, 196 Ill. 2d 405, 422 (2001)). Consequently, our conclusion that the circuit court's determination that John B. was unfit based on depravity is not contrary to the manifest weight of the evidence makes it unnecessary for us to consider whether the evidence supports the other bases upon which the circuit court found John B. to be unfit.

¶ 24 John B. next argues that the circuit court's finding that termination of his parental rights was in A.R.'s best interests is contrary to the manifest weight of the evidence. We

disagree. The evidence adduced at the best-interests hearing demonstrates that A.R. did not know John B. and had no bond with him. A.R. was closely bonded with her grandparents, who provided for all of her emotional, psychological, and financial needs. She had her own room at her grandparents' house, having stayed with them periodically prior to the opening of the case, and permanently thereafter. She felt comfortable in their home and wanted to continue living there. She wanted her grandparents to adopt her and they had signed permanency commitments to adopt her. The evidence fully supports the circuit court's determination that termination of John B.'s parental rights was in A.R.'s best interests.

¶ 25 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 26 Affirmed.