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2015 IL App (5th) 150136-U

NO. 5-15-0136

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

<i>In re</i> H.H., A.H., and K.H., Minors)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Washington County.
)	
Petitioner-Appellee,)	
)	
v.)	Nos. 13-JA-1, 13-JA-2, &
)	13-JA-3
)	
Scott H.,)	Honorable
)	Daniel J. Emge,
Respondent-Appellant).)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Cates and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's determination that the respondent was an unfit person was not against the manifest weight of the evidence where his repeated incarceration has prevented him from discharging his parental responsibilities for his children and where his conduct showed clear and convincing evidence of depravity. The trial court's determination that it was in the children's best interests to terminate the respondent's parental rights was not against the manifest weight of the evidence where the respondent did not provide for the children's safety or welfare for most of their lives and could not provide for these needs until 2019, where the foster parents have provided the children with an appropriate home, where the children's identity has been shaped or significantly influenced by the foster parents, where the children are attached to the foster parents and thrive under their care, where the children have little attachment to the

respondent, and where the foster parents have expressed a willingness to adopt the children and provide them with a permanent home.

¶ 2 On April 23, 2013, the Washington County State's Attorney filed neglected/abused minor petitions, for A.H., K.H., and H.H., alleging neglect of the minors. Scott H., the children's father, was named a respondent in the petitions. The respondent waived the adjudicatory hearing and entered an admission as to one of the allegations in each of the petitions. The court found that because of drug use in the home, the children were in an injurious environment and were neglected. An order of disposition was entered placing the children in the custody/guardianship of the Department of Children and Family Services (DCFS). The State filed motions for termination of parental rights and for appointment of guardian with power to consent to adoption. Following a fitness hearing, the respondent was found unfit. Following a best interest hearing, the court determined that it was in the best interest of the children to terminate the respondent's parental rights. The respondent filed a timely notice of appeal. We affirm.

¶ 3 **BACKGROUND**

¶ 4 The respondent and Angela H. had one child, A.H., born February 15, 2007. The respondent pleaded guilty to aggravated domestic battery for intentionally causing great bodily harm to Angela for striking her in the face with his fist and breaking her jaw on July 10, 2008. He was sentenced to six years' imprisonment in the Department of Corrections. When he was released from prison in 2011, he was banned from contacting Angela. During that no-contact period, he and Angela had K.H., born January 5, 2012, and H.H., born September 10, 2012. The respondent and Angela married in March 2013.

On April 20, 2013, the respondent struck Angela in the head causing permanent brain injury and paralysis to the right side of her body.

¶ 5 On April 23, 2013, the State filed neglected/abused petitions alleging that the respondent and Angela abused and/or neglected A.H., K.H., and H.H. At the adjudicatory hearing on August 20, 2013, the respondent stipulated to one of the allegations set forth in each of the petitions. He stipulated that "he and the mother had been using methamphetamines, that [he] had the night before the incident obtained some methamphetamine, that [he] and the mother argued, that [he] went to his cousin's house and smoked marijuana, and that upon returning to the residence, [he] found drug paraphernalia in the house, namely a spoon and a needle." The court found that he and Angela abused and/or neglected the children by placing them in an injurious environment due to drug use in the home. On September 24, 2013, the court entered an order of adjudication adjudging the children wards of the court and placing their custody and guardianship with DCFS.

¶ 6 On February 27, 2014, the respondent pleaded guilty to aggravated battery for knowingly causing great bodily harm and permanent disability to Angela by striking her in the head causing permanent brain injury and paralysis to the right side of her body. The court sentenced the respondent to 10 years' imprisonment in the Department of Corrections.

¶ 7 On April 8, 2014, the court held a permanency review hearing. The guardian *ad litem* for the children recommended suspending the children's visitation with the respondent. She urged the court to allow custody and guardianship to remain with DCFS.

The children's foster mother testified that A.H. told her she loved the respondent, but was afraid to be alone with him. The court found that the appropriate goal remained for the children to return home within 12 months. The court suspended the children's visitation with the respondent.

¶ 8 On July 7, 2014, the respondent filed a motion for visitation. On August 14, 2014, the court continued the hearing on the motion for visitation to allow the guardian *ad litem* to observe a visit between the respondent and the children.

¶ 9 On September 8, 2014, the State filed motions for termination of parental rights and for the appointment of a guardian with power to consent to the adoption of the children. The State alleged that the respondent was an unfit parent because he had failed to protect the children from injurious conditions within their environment, his repeated incarceration prevented him from discharging his parental duties, and he is deprived in that he has been convicted of at least three felonies in Illinois and at least one of the convictions took place within five years of the filing of the motion to terminate parental rights.

¶ 10 On September 9, 2014, the respondent had supervised visitation with the children at the courthouse. Following the visitation, the trial court heard the respondent's motion for visitation. The court denied the motion and changed the permanency goal to substitute care pending the ruling on the motion for termination of parental rights.

¶ 11 On October 14, 2014, a permanency review hearing was held. The children's caseworker testified that the respondent had completed life skills training and had registered, but not started, substance abuse treatment and mental health counseling. He

recommended the termination of the respondent's parental rights. The court found that the respondent had made reasonable efforts toward his goals, but had not made substantial progress. The court reaffirmed the permanency goal of substitute care pending determination of termination.

¶ 12 On November 18, 2014, the court held a fitness hearing. The State did not call any witnesses. The State entered into evidence certified copies of the respondent's 1997 conviction for criminal sexual abuse, his 2001 conviction for burglary, his 2008 conviction for aggravated domestic battery, and his 2014 conviction for aggravated battery. The court took judicial notice of the respondent's stipulation to the allegation in the neglected minors' petitions regarding the use of methamphetamine and drug paraphernalia in the house.

¶ 13 The respondent testified that sometime after K.H. and H.H. were born, he and Angela separated temporarily. Angela failed a drug test and DCFS placed the children with him. He testified that his brother moved into his house and he took care of his and his brother's children while his brother worked and provided for them financially. This arrangement lasted about two months.

¶ 14 The respondent testified that he is scheduled to be released from the Department of Corrections on February 7, 2019. Prior to his incarceration he did general contract work, and he anticipates that he will be able to find similar employment when released. Prior to being incarcerated, the family lived together in a home the respondent owned and he provided for the children financially. The respondent testified that, after he pleaded guilty, he gave his home to a friend because he would not be able to pay the real estate

taxes or take care of the house while in prison. He admitted he did not sell his friend the house or use the home to contribute to the financial welfare of his children.

¶ 15 The respondent has not seen the children since his incarceration. The respondent testified that, for the past few months, he has written the children letters once or twice per month. He stated that while in prison he has participated in an anger management class, a drug treatment program, and a parenting class.

¶ 16 The respondent denied taking drugs on April 20, 2013, the night he battered Angela. He claimed he told police that he took drugs because he thought it might prevent him from being arrested. He testified that his "problem isn't [his] relationship with [his] kids. The problem is [his] relationship with Angela."

¶ 17 The court found the respondent an unfit person pursuant to section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)), which provides that a person is unfit if the children are in the temporary custody or guardianship of DCFS, the parent is incarcerated at the time the motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarcerations have prevented him from discharging his parental duties. The respondent was incarcerated at the time the motion for termination of parental rights was filed, and he had been repeatedly incarcerated as a result of his criminal convictions. The court found that the only dispute was whether the respondent's repeated incarcerations had prevented him from discharging his parental responsibilities to the children. The court found that the respondent had been completely absent and unable to support the children financially, physically, and emotionally for one-third to one-half of their lives

due to his repeated incarcerations. It held that the amount of time the respondent had spent incarcerated during his children's lives, even without considering the effect his 1997 and 2001 incarcerations had on his life skills and earning potential, had prevented him from providing his children with the necessary emotional and financial support required of a parent. The court stated that it did not consider the respondent's incarceration from the present until 2019, because section (D)(s) focuses on whether the parent's incarceration *has prevented* the parent from discharging his parental duties, not whether it will prevent the parent from discharging his parental duties.

¶ 18 The court also held that pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)) the respondent was depraved and an unfit parent because he had been criminally convicted of at least three felonies and at least one of them took place within five years of the filing of the motion to terminate his parental rights. The court found that all of the respondent's criminal convictions, when viewed collectively, were of sufficient duration and repetition to establish a deficiency in his moral sense and an inability or an unwillingness to conform to the accepted morality of our society. It stated that "[o]nly a person deficient in moral sense and rectitude would break the jaw of their daughter's mother. Only a person deficient in moral sense and rectitude would inflict permanent brain injury and loss of bodily function on his then wife and mother of three of his children." The court held that the respondent's actions have taken both of the children's parents away from them because his actions have resulted in lengthy prison sentences for him which have prevented him from being a father to the children and his

actions caused permanent brain damage to Angela which may prevent her from ever being a maternal figure in the children's lives.

¶ 19 On March 3, 2015, the court held the best interest hearing on the petition to terminate parental rights. Vincent Sadowski, a child welfare specialist for Lutheran Child and Family Services, testified that he had been the children's caseworker for one year. He testified that the children have lived with their foster parents for 1 year and 10 months. The foster mother is Angela's sister and the children's maternal aunt.

¶ 20 Mr. Sadowski testified that the foster parents work outside the home and are able to provide financially for the children. K.H. and H.H. attend a licensed daycare. A.H. attends grade school. She thrives at school and has developed friendships. When Mr. Sadowski started as the children's caseworker, K.H. needed developmental and speech therapy and H.H. needed physical and developmental therapy. Both children received the therapies and successfully completed the therapies with the help of the foster parents. Now they are both developmentally on target.

¶ 21 Mr. Sadowski performed monthly home visits lasting from 30 minutes to 1 hour. He testified that the home is a warm and nurturing environment that is physically appropriate for the children and that the foster parents act in a nurturing and loving manner toward the children. Mr. Sadowski testified that the children are very close to the foster parents and that they have expressed a willingness to adopt the children and provide a permanent home for them. He testified that based on his observations, it would be in the best interest of the children, as far as maintaining permanent stability and continuity in their lives, that they be adopted or in the guardianship of the foster parents.

He stated that the children have developed an attachment to the family and removing them would be detrimental to their functioning as children and to their future.

¶ 22 Mr. Sadowski testified that the children have visited the respondent only once since the case was transferred to him. The visit took place in the courthouse prior to the hearing on the respondent's motion for visitation and the respondent was in shackles. He testified that A.H. was excited to see the respondent, while K.H. and H.H. "looked at him like a stranger." He stated that K.H. and H.H. did not exhibit any attachment to the respondent, but that A.H. had some attachment to him.

¶ 23 Erin Schaub, a child welfare specialist with DCFS, testified that she was the children's caseworker from the time the case was opened in April 2013 until it was transferred to Lutheran Child and Family Services in January 2014. During the time she was the caseworker, the respondent had visitation with the children. She observed the weekly hourly visits at the DCFS office. She testified that the respondent did not visit every week and complained that he had difficulty getting to the DCFS office. At times the children came to the DCFS office for a scheduled visit and the respondent did not show up or telephone to cancel. Concern about the respondent's hostility and behavior during the visits caused DCFS to keep the visits at its office so a visitation specialist could closely monitor them. She further testified that during visitation the respondent struggled dealing with and maintaining control of all three children and that he paid more attention to H.H. than the other children. Ms. Schaub stated that the respondent exhibited anger toward her during the visits, and there were visits where she felt more of his energy was directed at her in frustration and anger rather than spending time with the children.

¶ 24 The respondent admitted to arguing with the visitation specialist once in the presence of his children. He further admitted to arguing with Ms. Schaub in private. The respondent testified that he missed several visits with his children because he had no transportation or because he had to work. He denied that he just failed to show up for scheduled visits and claimed that he always called to cancel.

¶ 25 Ms. Schaub testified that she visited the children at the foster parents' house at least 10 times. She stated that the children were comfortable in the home, they had bedrooms set up specifically for them, and they had lots of toys. She felt that the foster parents loved the children and the children loved them. She testified that H.H. and K.H. received birth-to-three services in the home. A.H. received counseling at the Community Resource Center and the foster parents facilitated the counseling. Ms. Schaub testified that, in her opinion, the children should remain with the foster parents.

¶ 26 The foster mother testified that H.H. was 7 months old and K.H. was 15 months old when they came to live with her and they were both developmentally delayed. H.H. could not hold a bottle, sit up, or roll over. K.H. could not speak or play with toys. He drooled and she was told that his mouth muscles were not "built up correctly." H.H. received developmental and physical therapies, K.H. received speech and developmental therapies, and both children were currently developmentally up to date.

¶ 27 The foster mother testified that she loved the children and was attached to them and that they loved her and were attached to her. She stated that she provides for their daily needs and was committed to doing so in the future. The foster father testified that

the children are happy in their home and that he felt it was the best place for them. He stated that he loved the children and was willing to provide them with a permanent home.

¶ 28 The respondent testified that in prison he has participated in anger management and parenting classes and is in college. He stated that the prison has two drug programs and that he had been enrolled in one for the past year and that he was on the waiting list for the more in-depth program. He testified that once released from prison he could provide a home for his children and could provide for them financially. He stated that he was employed before he was incarcerated and that he still has the skills to obtain employment.

¶ 29 The respondent's mother testified that prior to the respondent's incarceration she saw A.H. almost daily. She stated that the respondent had a "real good relationship" with the children. She testified that she felt it was in the children's best interest that they continue to have contact with the respondent and that she is willing to take the children to the correctional institution to visit with the respondent. She testified that the children are bonded to the respondent and that termination of his parental rights would have a negative impact on the children.

¶ 30 The respondent's sister-in-law testified that prior to the respondent's incarceration she saw the children one to two times per week. She said that the children were bonded to the respondent and that A.H. was particularly close to her father. She stated that she has not seen the children since a few days before the respondent was arrested. She testified that she did not think it would be fair to terminate the respondent's parental rights.

¶ 31 The court took the case under advisement and on March 16, 2015, entered an order terminating the respondent's parental rights. The court found that the children had lived with the foster parents for about two years, that the home was suitable for the children, that the foster parents both work and have sufficient income to provide the children with a safe and secure home, and that since the children's removal from their parents' care the foster parents have been their sole providers. The court held that the respondent would be unable to provide for the children until his release from prison. The court found that while the respondent testified that, once released from prison, he could provide the children with the necessities of life, that aspiration did little to satisfy their immediate needs.

¶ 32 The court found that K.H. and H.H. had been in the care of the foster parents the majority of their lives and had virtually no identity other than the one created since their placement with the foster parents. It further found that A.H. had been placed in the care of the foster parents for one year once before and had spent three of her eight years in their care. It held that the foster parents had "a huge influence in shaping A.H.'s identity since they were her sole provider, and [the respondent's] influence was minimal at best." The court found that while the respondent blamed K.H. and H.H.'s lack of familiarity with him on the infrequency of visitation and the circumstances surrounding the visitation, it attributed the children's unfamiliarity with him to his inability to care for and provide for them on a day-to-day basis for the past two years. The court noted that prior to incarceration, the respondent did not show up for many of his scheduled visitations. The court found that based on the testimony, the children feel loved by the foster parents,

are attached to them, and are thriving. The court felt that the children's bond to the foster parents will grow over time. The court found that while the children may have been attached to the respondent at one time, the bond is lessening as evidenced by the fact that K.H. and H.H. hardly recognized him at visitation. It found that even if the children visited the respondent their bond to him would decrease over time because of his incarceration in the Department of Corrections until 2019.

¶ 33 Because no evidence was presented about the children's wishes or long-term goals, or of any unique need or concerns, the court did not consider these factors. The court noted that the children attended daycare, school, and activities in Carlyle where the foster parents lived.

¶ 34 The court found that that the children need permanence and stability in their lives. The children have a relationship with the respondent's mother and the foster parents have allowed her to visit the children and are willing to facilitate those visits in the future. The court found that the respondent will be unable to provide any financial, physical, emotional, or mental support for the children until February 7, 2019, but the foster parents are ready, willing, and able to provide the children with stability and permanence in their lives for the next four years and beyond. The court held that any adverse effects that the children may suffer as a result of the termination of the respondent's parental rights would be outweighed by the stability, permanence, and support that they would receive from the foster parents. The court terminated the respondent's parental rights.

¶ 35 The respondent filed a timely notice of appeal seeking the reversal of the trial court's orders of unfitness and termination his parental rights.

¶ 37 The respondent argues that the trial court's determination that he was unfit was against the manifest weight of the evidence. A court's statutory authority to involuntarily terminate a parent's rights is governed by the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2014)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)). Because termination of parental rights constitutes a permanent and complete severance of the parent-child relationship, a higher evidentiary standard must be applied to reduce the risk that the parent's fundamental rights to his child will be improperly terminated. *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004). Under the Juvenile Court Act, a parent's rights cannot be terminated without consent unless the court first determines, 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 2014)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). The State bears the burden of proof. *Id.* Every matter concerning parental fitness is *sui generis*; therefore, each case must be decided on the particular facts and circumstances presented. *Id.* "Only one ground of unfitness needs to be proved by clear and convincing evidence in order to find a parent unfit." *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). We accord a trial court's finding of unfitness great deference and will not overturn it unless it is contrary to the manifest weight of the evidence and the record shows the opposite conclusion is clearly apparent. *Id.*

¶ 38 The respondent argues that the trial court's determination that the State proved by clear and convincing evidence that his repeated incarceration has prevented him from discharging his parental responsibilities for the children and that he was unfit was against

the manifest weight of the evidence. The basis for lack of fitness due to repeated incarceration is defined in section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)), which provides that a parent may be found unfit if:

"[t]he child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child."

There is no dispute that the first three conditions set forth in this statute were satisfied. The children were in the temporary custody and guardianship of DCFS, the respondent was incarcerated at the time the motion to terminate his parental rights was filed, and the respondent had been repeatedly incarcerated as a result of criminal convictions. The only issue is whether the respondent's repeated incarceration has prevented him from discharging his parental duties for his children.

¶ 39 "Section 1(D)(s) recognizes that, despite a respondent's demonstrated interest in his child's welfare, a child needs permanency in a stable home with a positive, caring role model." *In re Brandon A.*, 395 Ill. App. 3d 224, 238 (2009). Section 1(D)(s) is applicable in situations where the parent, during the child's lifetime, has had recurring absences caused by incarcerations which have prevented him from providing his children with a stable home environment. *In re D.D.*, 196 Ill. 2d 405, 420 (2001). Section 1(D)(s) directs courts "to consider how incarceration has affected a person's ability to parent

throughout the period beginning when the person went to jail and continuing until the time the termination hearing is conducted." *In re Gwynne P.*, 215 Ill. 2d at 358. Courts may consider the overall impact that repeated incarceration may have on a parent's ability to discharge his parental responsibilities including circumstances which flow from the incarceration, such as the diminished capacity to provide financial assistance, physical, and emotional support for the child. *In re D.D.*, 196 Ill. 2d at 421.

¶ 40 The respondent's repeated incarceration has prevented him from providing the children with the necessary emotional and financial support and stability required of a parent. On April 10, 1997, at age 17, the respondent pleaded guilty to criminal sexual abuse and was sentenced to five years' imprisonment. On June 21, 2001, the respondent pleaded guilty to burglary and was sentenced to five years' imprisonment. On July 22, 2008, the respondent pleaded guilty to aggravated domestic battery and was sentenced to six years' imprisonment. On February 27, 2014, the respondent pleaded guilty to aggravated battery and was sentenced to 10 years' imprisonment. The respondent's February 2014 conviction resulted from his battery of Angela on April 20, 2013. As a result of this incident, on April 23, 2013, the State filed petitions alleging that the respondent abused and/or neglected the children. The children went to live with their foster parents; A.H. was 6 years old, K.H. was 15 months old, and H.H. was 7 months old. The respondent has been imprisoned for nearly all of his adult life and has been imprisoned for one-third to one-half of his children's lives. These repeated incarcerations have diminished his capacity to provide financial, physical, and emotional support for his children.

¶ 41 The respondent's repeated incarcerations demonstrate an inability to conform to societal norms. In 2011 he was released from prison after serving his sentence for breaking Angela's jaw. His parole forbade contact with Angela; nevertheless during his parole term, he fathered both K.H. and H.H. He resumed using drugs, and in 2013 he battered Angela causing her brain damage and paralysis to the right side of her body. The respondent's criminal act caused him to return to prison. While the respondent's current incarceration has precluded him from providing for the children's physical and material needs, the cumulative effect of his repeated incarceration has rendered him incapable of meeting their moral, mental, and emotional needs, and from discharging his parental duties. The trial court's determination that the respondent is an unfit person under section 1(D)(s) is not against the manifest weight of the evidence.

¶ 42 While the State proved the respondent was unfit under section 1(D)(s) and it only needs to prove one ground of unfitness for the court to find a parent unfit, the respondent was also proved to be unfit under section 1(D)(i).

¶ 43 The respondent argues that the trial court's determination that the State proved by clear and convincing evidence that he was depraved was against the manifest weight of the evidence. One of the grounds for unfitness is depravity. 750 ILCS 50/1(D)(i) (West 2014). Section 1(D)(i) 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 *** 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 2014).

¶ 44 This rebuttable presumption creates a *prima facie* case of unfitness and has the practical effect of requiring the party against whom it operated to come forward with evidence to meet the presumption. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). Once evidence opposing the presumption is presented, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption ever existed. *Id.*

¶ 45 The Illinois Supreme Court has defined depravity as " 'an inherent deficiency of moral sense and rectitude.' " *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). The State presented certified copies of the respondent's convictions for four felonies, one of which occurred within five years of the filing of the petition to terminate his parental rights. Therefore, under section 1(D)(i), the State's evidence created a rebuttable presumption that the respondent was depraved. The respondent offered evidence that he was not depraved thus, the presumption of depravity ceased to exist.

¶ 46 "In determining depravity, the trier of fact is required to closely scrutinize the character and credibility of the parent." *In re J'America B.*, 346 Ill. App. 3d 1034, 1046 (2004). "Depravity of a parent may be shown by a course of conduct that indicates a moral deficiency and an inability to conform to accepted moral standards." *Id.* at 1047. On the record before us, we conclude that the trial court's finding of unfitness based on

depravity was not against the manifest weight of the evidence because a conclusion that the respondent was not depraved or had been rehabilitated was not clearly evident.

¶ 47 The respondent's convictions for four felonies showed clear and convincing evidence of his inherent deficiency of moral sense and rectitude. In 1997 he was convicted of criminal sexual abuse for committing an act of sexual conduct with a person under 13 years of age. In 2001 he was convicted of burglary of a country club. In 2008 he was convicted of hitting Angela in the face and breaking her jaw. In 2014 he was convicted of aggravated battery for striking Angela in the head causing permanent brain injury and paralysis to the right side of her body. The respondent's criminal actions took him out of his children's lives and took their mother away because her disability rendered her unable to parent. The crimes the respondent committed directly affected his children and show a father with an inherent deficiency of moral sense and rectitude.

¶ 48 The respondent argues that he showed he is not depraved because he testified that he provided financial, emotional, and physical support to his children between periods of incarceration. He further asserts that while in prison he has participated in anger management, parenting courses, substance abuse treatment, and job training to assist him in providing for his children upon his release.

¶ 49 Rehabilitation can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003). The respondent's repeated incarcerations demonstrate that he cannot leave prison and maintain a lifestyle suitable for parenting children safely. His actions resulted in his incarceration twice during A.H.'s life. Even after he was released from prison for

breaking Angela's jaw, he committed another more serious crime against her causing him to return to prison and again be away from the children. The respondent testified that he owned a house and rather than sell it to obtain money to provide for his children while incarcerated, he chose to give the house to a friend. The respondent is unable to fully grasp the impact of his actions on his children as evidenced by his testimony that his "problem isn't [his] relationship with [his] kids. The problem is [his] relationship with Angela." For these reasons, we find that the trial court's finding of unfitness on the ground of depravity was not against the manifest weight of the evidence.

¶ 50 The respondent argues that the trial court's determination that it was in the children's best interest to terminate his parental rights is against the manifest weight of the evidence. At a best interest hearing, 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, 365 (2004). The State bears the burden of proof by a preponderance of the evidence that termination of parental rights is in the best interest of the child. *Id.* at 366. In making a best-interest determination, courts consider the following factors in the context of the child's age and developmental needs: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural, and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures, siblings, and other relatives; (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 2014). The court also considers the nature and length of the child's relationship with the present caretaker and the effect that a change of placement would have upon the emotional and psychological well-being of the child. *In re Desiree O.*, 381 Ill. App. 3d 854, 866 (2008). No single factor is dispositive. *Id.* A trial court's ruling terminating parental rights in the best interest of a child will not be disturbed on review unless contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d at 1001.

¶ 51 In the present case, the trial court considered statutory factors in determining the children's best interests. The evidence showed that the respondent did not provide for the children's safety or welfare for most of their lives because he could not provide an adequate home while he was repeatedly incarcerated. The evidence presented at the best interest hearing established that the foster parents provided the children with an appropriate home for two years. K.H. and H.H. have been in their foster parents' care for the majority of their life and have virtually no identity other than the one developed since their placement. In addition to the two years A.H. has currently resided with her foster parents, she lived with them for one year prior to the birth of her siblings. The foster parents have had a significant influence in shaping her identity.

¶ 52 The children have become attached to the foster parents and are thriving under their care. K.H. and H.H. were developmentally delayed when they came to live with the foster parents. They received developmental, speech, and physical therapies while living

with the foster parents and are currently on track developmentally. The children attend daycare and school, participate in activities, and have developed friendships in Carlyle.

¶ 53 The children have had little opportunity to attach to the respondent because of his repeated incarcerations. Mr. Sadowski testified that during the one visit he observed between the respondent and his children, K.H. and H.H. "looked at him like a stranger." He noted that K.H. and H.H. exhibited no attachment to the respondent and A.H. only showed some attachment. He testified that the children were very close to their foster parents. Ms. Schaub testified that when the respondent was not incarcerated he missed visitation, failed to call to cancel, and exhibited hostile behavior when he did attend visitation. She testified that on her numerous visits to the children at the foster parents' home, they appeared comfortable and very attached to the family.

¶ 54 It is undisputed that the respondent will be unable to provide for the children until his release from prison in 2019. The foster parents have expressed a willingness to adopt the children and provide them with a permanent home. Mr. Sadowski testified that it would be in the best interest of the children to terminate the respondent's parental rights and that they remain with their foster parents. Ms. Schaub testified that, in her opinion, the children should remain with their foster parents. Under the circumstances we cannot conclude that the trial court's determination that it was in the children's best interest to terminate the respondent's parental rights was against the manifest weight of the evidence.

¶ 55

CONCLUSION

¶ 56 For the reasons stated, we affirm the judgment of the circuit court of Washington County.

¶ 57 Affirmed.