NOTICE
Decision filed 08/25/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 150147-U

NO. 5-15-0147

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).

In re J.C. and J.C., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 12-JA-73 & 12-JA-74
	)	
John C.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment finding the respondent an unfit parent and terminating his parental rights is affirmed.

¶ 2 The respondent, John C., appeals from the circuit court's judgment finding him an unfit parent for his minor children, J.C. and J.C., and terminating his parental rights. The respondent was found unfit due to depravity. On appeal, the respondent argues that the finding of depravity was against the manifest weight of the evidence. This court disagrees with the respondent and affirms the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 In July 2012, the State filed petitions for adjudication of wardship for J.C., born November 27, 2011, and J.C., born August 4, 2010, who were sisters. The petitions alleged that both minors were neglected and dependent under sections 2-3(1)(b) and 2-4(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b), 2-4(1)(a) (West 2012)). The petitions alleged that the minors' mother, L.C., had been murdered and that their father, the respondent, was a suspect in the murder. The circuit court held a temporary custody hearing (see 705 ILCS 405/2-10 (West 2012)) and ordered that both minors be placed in the temporary custody of the Illinois Department of Children and Family Services (DCFS).

¶ 5 In February 2014, after numerous continuances, the court held a hearing on the petitions for adjudication of wardship. The respondent did not contest those petitions. The circuit court adjudicated J.C. and J.C. neglected, made them wards of the court, and placed them in the custody and guardianship of DCFS.

¶ 6 On June 5, 2014, the State filed a motion for termination of the respondent's parental rights and for vesting the guardian, DCFS, with the power to consent to adoption. In its motion, the State claimed that the respondent was unfit to have a child, and it alleged two different statutory grounds of unfitness. The first ground need not be specified here. The second ground was depravity under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)), in that the respondent had been convicted of first-degree murder within 10 years of the filing date of the motion. The State also claimed that the best interests of the two minors would be served by terminating the

respondent's parental rights and vesting DCFS with the power to consent to the minors' adoption.

¶ 7 On October 21, 2014, the circuit court held an unfitness hearing. The State proceeded solely on the ground of depravity under section 1(D)(i) of the Adoption Act. The State adduced a certified copy of conviction showing that on April 28, 2014, the circuit court of St. Clair County sentenced the respondent to imprisonment for 41 years for the first-degree murder of L.C. on July 9, 2012. Without objection, the certified copy of conviction was admitted into evidence. Allison Nance, the minors' DCFS caseworker, testified that while the respondent was incarcerated in the St. Clair County jail, he was unable to comply with any of the requirements of the service plan that DCFS had established for him, due to a lack of services at the jail. Nance also testified that in the Department of Corrections, where the respondent was serving his murder sentence, two points in the service plan–substance abuse treatment and a mental health assessment–were available to the respondent, but she was unaware of the wait times for such treatment and assessment. The respondent had not contacted her about those two items, Nance testified.

¶ 8 The respondent testified that he was imprisoned at the Menard Correctional Center. Upon his arrival at the prison, he immediately requested enrollment in anger management, mental health counseling, and substance abuse counseling, but as of the date of the unfitness hearing, he had not been accepted into any of those programs. He acknowledged that after a bench trial, he was convicted of the first-degree murder of the

mother of the two minors, but stated that he was appealing from the judgment of conviction.

¶ 9 The circuit court found that the State had proved, by clear and convincing evidence, that the respondent was an unfit parent due to depravity. Having concluded the unfitness hearing, the court proceeded immediately to the best-interests hearing.

¶ 10 Caseworker Nance testified that the two minors, J.C. and J.C., were living with their maternal grandmother, and that they were not experiencing any medical, educational, or other problems. Nance opined that both minors and their grandmother had bonded, the respondent was an unfit parent, and the termination of the respondent's parental rights would be in the minors' best interests. The respondent testified that he wanted his family to be able to visit with the minors. He stated that he was trying his best to be a good father, that he was trying to take classes in prison, even though he was unsure why he needed the classes, but he had not yet been admitted to the classes.

¶ 11 The court found that the State had proved that it was in the best interests of the minors, J.C. and J.C., to terminate the respondent's parental rights. The court ordered his rights forever terminated, vested DCFS with the power to consent to adoption, and set a permanency goal of adoption.

¶ 12 On November 14, 2014, the respondent filed a *pro se* motion to reconsider the finding of unfitness and the termination of his parental rights. On March 17, 2015, the court, in a written order, denied the motion to reconsider. On April 16, 2015, the respondent filed a notice of appeal from the judgment entered October 21, 2014.

¶ 13 ANALYSIS

¶ 14 Before this court, the respondent's sole argument is that the circuit court's finding that he is an unfit parent due to depravity was against the manifest weight of the evidence.

¶ 15 At an unfitness hearing, the State has the burden of proving, by clear and convincing evidence, a parent's unfitness to have a child. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). The circuit court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only if the opposite conclusion is readily apparent. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 16 One of the grounds of parental unfitness is depravity. 750 ILCS 50/1(D)(i) (West 2012). Depravity is defined as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 23. "There is a rebuttable presumption that a parent is depraved if that parent has been criminally convicted of either first or second degree murder of any person *** within 10 years of the filing date of the petition or motion to terminate parental rights." 750 ILCS 50/1(D)(i) (West 2012). Once this presumption has been established, the respondent is required to present clear and convincing evidence to rebut the *prima facie* case of depravity. *In re Donald A.G.*, 221 Ill. 2d 234, 253 (2006). In order to rebut or overcome the presumption of depravity, a parent must show that he has changed, or has been rehabilitated, since the time he committed the murder, and that he is no longer depraved.

In re A.M., 358 Ill. App. 3d 247, 253 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167-68 (2003).

¶ 17 Here, the certified copy of the respondent's conviction for first-degree murder created a presumption of depravity. The respondent failed to rebut the presumption with clear and convincing evidence. His only evidence of rehabilitation was his testimony that he had applied for classes and counseling in prison but had not yet been accepted. Such evidence cannot rebut the presumption of depravity. The circuit court did not err in finding that the respondent was unfit due to depravity.

¶ 18 In his brief, the respondent argues that the State failed to create the presumption of depravity because it did not present any evidence or testimony to establish the facts surrounding the murder of which the respondent was convicted. According to the respondent, the simple fact of conviction was not enough to create the presumption. In support of this contention, the respondent cites *In re Abdullah*, 85 Ill. 2d 300 (1981), wherein our Illinois Supreme Court considered the facts behind the respondent-father's murder conviction before affirming the finding of depravity. The respondent misstates the law applicable to this case. At the time of *In re Abdullah*, the Adoption Act was very different than it is today. Most importantly, for the purposes of this case, the presumption of depravity was not a part of the Adoption Act. See Ill. Rev. Stat. 1977, ch. 40, ¶ 1501(D). Now, the presumption of depravity certainly is part of the Adoption Act. Under the plain terms of section 1(D)(i), the mere fact of conviction is enough to create the presumption.

¶ 19 The circuit court's finding that the respondent was unfit due to depravity was not against the manifest weight of the evidence.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 22 Affirmed.