2015 IL App (5th) 150154-U

NO. 5-15-0154

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ADOPTION OF L.J.E. and J.L.E., Minors	)	Appeal from the
	)	Circuit Court of
(Timothy R.,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	
	)	
Bobby Gene E.,	)	No. 11-F-284
	)	
Respondent-Appellee	)	
	)	Honorable
(Catherine Manning and Alberta Manning,	)	Philip B. Alfeld,
Intervening Petitioners-Appellants)).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The trial court's order denying the intervening adoptive parties' petition for adoption seeking termination of petitioner's parental rights was not against the manifest weight of the evidence where the intervening adoptive parties failed to establish by clear and convincing evidence that petitioner was an unfit parent.

¶ 2 This appeal is taken from the trial court's order following a hearing on the termination of the parental rights of petitioner, Timothy R. The trial court found that

intervenors, Catherine Manning and Alberta Manning (Mannings), failed to meet their burden of proof in establishing petitioner was an unfit parent pursuant to section 1(D) of the Illinois Adoption Act (750 ILCS 50/1(D) (West 2012)). We affirm.

¶ 3 BACKGROUND

¶ 4 Petitioner engaged in a sexual relationship with respondent, Bobby Gene E., which resulted in respondent becoming pregnant with twin girls. There were several breakups between the two parties during respondent's pregnancy. When the two parties tried "working things out" on one occasion, respondent told petitioner she "had aborted the girls and it was over with." Thereafter, petitioner refused to give respondent money for an abortion. On May 2, 2011, respondent gave birth to her and petitioner's twin girls.

¶ 5 Approximately two months prior to respondent giving birth to the twin girls, Catherine Manning received a telephone call from a family member asking if she wanted to adopt two unborn twin girls. Catherine discussed this opportunity with her wife, Alberta Manning, and the two agreed to adopt the girls. After the girls were born on May 2, 2011, the Mannings took them from the hospital to their home in Pontoon Beach.

¶ 6 Petitioner learned of the births of his twin daughters through a cousin of respondent. Petitioner testified he went to the hospital the day after the children were born to sign an acknowledgement of paternity, but could not sign the acknowledgement because "[petitioner] was listed unknown." On May 11, 2011, nine days after the birth of his twin daughters, petitioner filed a petition to establish paternity and custody. In response, on June 28, 2011, the Mannings filed a petition to intervene and for temporary custody. On October 12, 2011, the court granted the Mannings' petition to intervene and

for temporary custody over petitioner's objection.

¶ 7 On February 8, 2012, after DNA verification, an order was entered finding petitioner to be the father of the twin girls. A separate order was also entered which awarded the Mannings temporary custody and provided petitioner with a limited visitation schedule. On March 28, 2012, the Mannings filed a petition for adoption which alleged petitioner was an unfit parent and, therefore, subject to termination of his parental rights pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)).

¶ 8 On November 16, 2012, an order was entered creating a separate adoption file. At the same time, the court consolidated the two cases for purposes of all future hearings and ruled that the adoption matter be heard first. On August 6, 2013, the court stayed a motion to reconsider filed by petitioner concerning the Mannings' standing. The order also stayed the proceedings in the case until there was a determination of fitness concerning the adoption.

¶ 9 The matter subsequently involved several judges before being set for hearing in October 2014. On September 24, 2014, petitioner's counsel filed a motion to withdraw which was granted. Petitioner was appointed new counsel on October 2, 2014, and a hearing date was set for January 8, 2015. On December 2, 2014, petitioner's newly appointed counsel also filed a motion to withdraw which was granted. The hearing date remained set for January 8, 2015, and petitioner proceeded *pro se*.

¶ 10 On January 8, 2015, the hearing on the termination of petitioner's parental rights was held. On January 20, 2015, after hearing testimony from petitioner and the Mannings, the trial court entered an order denying the Mannings' petition seeking

termination of petitioner's parental rights, finding the Mannings had not met their burden of proof in establishing petitioner as an unfit parent pursuant to section 1(D) of the Adoption Act. The Mannings subsequently filed a motion to reconsider which was denied. On April 20, 2015, the Mannings timely filed a notice of appeal.

¶ 11 ANALYSIS

¶ 12 The Mannings allege the trial court erred in denying their petition seeking termination of petitioner's parental rights after finding the Mannings had not met their burden of proof in establishing petitioner to be an unfit parent pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). In particular, the Mannings allege the trial court applied the incorrect time period to determine whether petitioner was habitually drunk or addicted to drugs and whether petitioner had shown a reasonable degree of interest and concern towards his children. Additionally, the Mannings allege they have proven petitioner was depraved by clear and convincing evidence.

¶ 13 As this appeal concerns the interpretation of statutes and application of law, the standard of review is *de novo*. *Douglas R.S. v. Jennifer A.S.*, 2012 IL App (5th) 110321, ¶ 4, 968 N.E.2d 201. Therefore, we turn our attention to the language of the Adoption Act, in particular to sections 1(D)(k), 1(D)(b), and 1(D)(i) (750 ILCS 50/1(D)(k), (b), (i) (West 2012)).

¶ 14 A proceeding to involuntarily terminate parental rights may only be brought under the statutory authority of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) or the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). *In re A.S.B.*, 381 Ill. App. 3d 220, 221, 887 N.E.2d 445, 447 (2008). In either case, the goals of the

termination proceedings are the same: (1) to determine whether the natural parents are unfit, and if so (2) to determine whether adoption is in the child's best interests. *A.S.B.*, 381 Ill. App. 3d at 221-22, 887 N.E.2d at 447.

¶ 15 A parent's rights may be terminated upon proof by clear and convincing evidence that the parent is unfit as that term is defined in section 1(D) of the Adoption Act. *In re G.L.*, 329 Ill. App. 3d 18, 23, 768 N.E.2d 367, 371 (2002). The burden of presenting this clear and convincing evidence is upon those who have petitioned for the adoption of the children–in this case, the Mannings. *In re Adoption of Syck*, 138 Ill. 2d 255, 274, 562 N.E.2d 174, 183 (1990). Clear and convincing evidence is defined as "proof which should leave no reasonable doubt in the mind of the trier of the facts concerning the truth of the matter in issue." *In re Jones*, 34 Ill. App. 3d 603, 607, 340 N.E.2d 269, 273 (1975).

¶ 16 When determining a parent's fitness, the court does not consider the best interests of the child but, rather, must focus on whether the parent's conduct falls within one or more of the several grounds of unfitness as described in section 1(D) of the Adoption Act. *G.L.*, 329 Ill. App. 3d at 23, 768 N.E.2d at 371. Each case concerning parental unfitness is *sui generis* and requires a close analysis of its unique facts. *In re C.E.*, 406 Ill. App. 3d 97, 108, 940 N.E.2d 125, 135 (2010). Consequently, factual comparisons to other cases by reviewing courts are of little value. *C.E.*, 406 Ill. App. 3d at 108, 940 N.E.2d at 135.

¶ 17 Since the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and

weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, the trial court is given broad discretion and great deference in matters involving minors. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a trial court's determination that clear and convincing evidence of a parent's unfitness has not been shown will not be disturbed on review unless it is against the manifest weight of the evidence. *G.L.*, 329 Ill. App. 3d at 23, 768 N.E.2d at 371. A finding is against the manifest weight of the evidence only if the opposite conclusion is readily apparent. *In re A.M.*, 358 Ill. App. 3d 247, 252-53, 831 N.E.2d 648, 653 (2005).

¶ 18 A. Habitual Drunkenness or Drug Addiction

¶ 19 The first issue raised by the Mannings concerns whether the trial court assessed and applied the correct time period under section 1(D)(k) of the Adoption Act, which provides that a parent's rights may be terminated for engaging in "[h]abitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding." 750 ILCS 50/1(D)(k) (West 2012).

¶ 20 In its order, the trial court indicated the following concerning the time period under section 1(D)(k) of the Adoption Act:

> "The Mannings filed their petition to terminate either on June 28, 2011, when they filed a petition to intervene in [petitioner's] paternity/custody case, or March 28, 2012, when they filed the adoption proceedings. So, the 'critical time period in this case' is either June 28, 2010, to June 28, 2011 or March 28, 2011, to March 28, 2012. The Mannings are defeated which ever period is used."

¶ 21 The Mannings indicate they filed a petition to intervene and for temporary custody of the children on June 28, 2011, and did not request termination of petitioner's rights until their petition for adoption was filed on March 28, 2012. The Mannings assert the sole relevant time period for the court's evaluation under section 1(D)(k) is from March 29, 2011, through March 28, 2012, as the March 28, 2012, date is when the petition for adoption was filed which marks the commencement of the unfitness proceedings.

¶ 22 The Mannings allege the court's use of two separate critical periods under section 1(D)(k) was in error because the court considered evidence from before the one-year critical period and after the petition was filed. While the Mannings concede this may be a "harmless error in other applications," they argue section 1(D)(k) must be construed literally and strictly because the termination of parental rights involves a fundamental liberty interest. We disagree.

¶ 23 We cannot find the trial court erred in referring to two separate critical periods under section 1(D)(k) in its order. Section 2-101(a) of the Illinois Code of Civil Procedure provides that "[e]very action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint." 735 ILCS 5/2-201(a) (West 2012). Illinois Supreme Court Rule 132 acknowledges that a complaint "or other document" can commence a "civil action or proceeding." Ill. S. Ct. R. 132 (eff. Jan. 4, 2013). Section 2-29 of the Juvenile Court Act of 1987 indicates the initial document is to be termed a "petition." 705 ILCS 405/2-29 (West 2012).

¶ 24 In the instant case, the Mannings filed two separate petitions concerning custody of the children: a petition to intervene and for temporary custody on June 28, 2011, and a

petition for adoption on March 28, 2012. Therefore, it was reasonable for the trial court to conclude either petition could commence the critical one-year period under section 1(D)(k). Further, we note the trial court's recognition of two separate critical periods was to the benefit of the Mannings, as this expanded time to discover evidence of petitioner's habitual drunkenness or drug addiction. However, even with the benefit of an expanded critical period, the Mannings failed in their burden to demonstrate petitioner's unfitness by clear and convincing evidence.

¶ 25 While there is evidence that petitioner faced alcohol-related problems as late as 2007, we have no evidence to consider regarding petitioner's habitual drunkenness or drug addiction after 2007 until Alberta Manning's claim that she smelled alcohol on petitioner during the early visitation period beginning after February 8, 2012. While petitioner has admitted that he drinks beer and occasionally consumes a mixed drink, this is insufficient to establish as a ground for terminating petitioner's parental rights. "While the exact amount of alcohol consumed in any specific instance need not be established, there must be clear and convincing evidence showing that [petitioner] suffered significant impairment in [his] ability to supervise and parent [his] children due to the consumption of alcohol." *In re J.J.*, 201 Ill. 2d 236, 251, 776 N.E.2d 138, 147 (2002). "[T]ermination may only be justified when there is factual certainty." *J.J.*, 201 Ill. 2d at 245, 776 N.E.2d at 144.

¶ 26 Here, this evidence is entirely lacking during the critical one-year periods referenced by the trial court under section 1(D)(k) of the Adoption Act. The most recent evidence we find dates back to 2007, which is approximately four years prior to the births

of petitioner's daughters. The evidence between 2007 and 2012 is nonexistent.

¶ 27 The Mannings do not dispute there is no evidence of petitioner's habitual drunkenness or drug addiction during the 12 months preceding the filing of their petition to intervene and for temporary custody or their petition for adoption. The Mannings' argument concerns the trial court's reference to two separate critical one-year periods under section 1(D)(k) of the Adoption Act. For the reasons stated above, we reject this argument and proceed to the Mannings' next allegation.

¶ 28 B. Children's Welfare

¶ 29 The Mannings' next argument concerns the trial court's assessment of petitioner's fitness under section 1(D)(b) of the Adoption Act, which provides that a parent's "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" is a ground for finding the parent unfit. 750 ILCS 50/1(D)(b) (West 2012). The Mannings allege our supreme court has held that the relevant time period for a fitness assessment under section 1(D)(b) is the time period prior to the date the petition for adoption is filed, and argue the trial court in the instant case improperly considered evidence concerning petitioner's interest, concern or responsibility as to his children's welfare after the petition for adoption was filed. The Mannings allege "[s]ince the trial court relied on the antecedent evidence, namely the information that [petitioner] developed care and concern for his children after he was notified he could lose rights to his children under 750 ILCS 50/1(D)(b), due process requires review *de novo*."

¶ 30 The Mannings cite to several cases in support of their contention that evidence concerning petitioner's degree of interest, concern or responsibility as to his children's

welfare may not be considered after the date the petition for adoption was filed: *In re Adoption of Syck*, 138 Ill. 2d 255, 562 N.E.2d 174 (1990); *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 869 N.E.2d 214 (2007); and *In re Adoption of H.B.*, 2012 IL App (4th) 120459, 976 N.E.2d 1193.

¶ 31 After careful review of the record and the cases cited by the Mannings, we cannot conclude the trial court erred in considering evidence of petitioner's interest, concern or responsibility as to his children's welfare after the Mannings' petition for adoption was filed on March 28, 2012. Moreover, even when considering only evidence of petitioner's conduct prior to the date the Mannings' petition for adoption was filed, we find the Mannings have still failed to meet their burden in establishing petitioner's unfitness pursuant to section 1(D)(b) of the Adoption Act.

¶ 32 First, we note that unlike section 1(D)(k) of the Adoption Act discussed above, which specifically designates the court to consider evidence of habitual drunkenness or addiction to drugs for at least one year immediately prior to the commencement of the unfitness proceeding, section 1(D)(b) makes no reference to a specific time frame. Rather, section 1(D)(b) provides, in its entirety, that the "[f]ailure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" is a ground for finding a parent unfit. 750 ILCS 50/1(D)(b) (West 2012).

¶ 33 Our supreme court has noted that the primary objective in construing a statute is to give effect to the intent of the legislature, and the most reliable indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. *In re J.L.*, 236 Ill. 2d 329, 339, 924 N.E.2d 961, 967 (2010). Where the statutory

language is clear and unambiguous, it will be given effect as written without resort to other aids of construction. *J.L.*, 236 Ill. 2d at 339, 924 N.E.2d at 967. A court may not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express. *J.L.*, 236 Ill. 2d at 339, 924 N.E.2d at 967. Accordingly, by the plain language of section 1(D)(b), we find no limitation that constrains the court to only consider evidence of petitioner's conduct concerning his children's welfare prior to the filing of the petition for adoption.

¶ 34 Second, we cannot agree with the Mannings' assertion that the cases they reference "clearly indicate" the relevant time period under section 1(D)(b) is the time period before the petition for adoption is brought and, therefore, "the trial court is constrained and can only look at the evidence in existence when the petition is brought."

¶ 35 The Mannings assert the court in *Syck* cautioned that when considering a parent's unfitness, the child's welfare and best interests are not the issue. Rather, the Mannings allege the court indicated "the issue is the conduct of the parents giving rise to the petition." After a careful review of the supreme court's opinion in *Syck*, we find nothing that indicates the time period for review under section 1(D)(b) is limited to the parent's conduct prior to the filing of the petition for adoption.

¶ 36 While the Mannings point out the supreme court stated "[a]t this point, it is the parent's past conduct in the then-existing circumstances that is under scrutiny," we find the court was indicating the parent's past conduct is to be considered in a ruling on parental unfitness rather that the child's best interests, which may only be considered after a parent is found to be unfit by clear and convincing evidence. *Syck*, 138 Ill. 2d at 276-

77, 562 N.E.2d at 184. We find nothing to suggest only evidence of a parent's conduct prior to a petition for adoption may be considered under section 1(D)(b).

¶ 37 Our finding is supported by another case cited by the Mannings, namely *C.A.P.* In *C.A.P.*, the appellate court cited to *Syck* and indicated a child's best interests may not be considered in a ruling on parental unfitness:

> "At this stage, it is the parent's past conduct that is under scrutiny; evidence of whether allowing the adoption would be in the child's best interests is not to be considered. *Syck*, 138 Ill. 2d at 276. If the court determines that petitioners have met their burden of establishing by clear and convincing evidence the existence of one or more grounds for unfitness, it must then determine whether termination of parental rights and allowance of the adoption petition would be in the child's best interests. *Syck*, 138 Ill. 2d at 277." *C.A.P.*, 373 Ill. App. 3d at 426, 869 N.E.2d at 218.

¶ 38 We find no indication from either court in *Syck* or *C.A.P.* that suggests only evidence of a parent's conduct prior to the petition for adoption may be considered under section 1(D)(b). Similarly, we find no such indication from the court in *H.B.* which the Mannings mention in their brief. Furthermore, given the lengthy period this case remained pending, we find it would be irrational for the trial court not to have considered petitioner's conduct concerning his children's welfare after the petition for adoption was filed. A timeline of the events of this case is imperative to reflect this point.

¶ 39 The children were born on May 2, 2011. On March 28, 2012, less than a year after the children were born, the Mannings filed a petition for adoption seeking

termination of petitioner's parental rights. This matter was then pending for nearly three years before the trial court's order was entered on January 20, 2015, denying the Mannings' petition. In view that the petition for adoption was filed only 11 months after the children's births and taking into account that this case was pending for nearly three years after the petition for adoption was filed, we find it reasonable that the trial court considered evidence of petitioner's conduct concerning his children's welfare throughout the children's entire lives leading up to the date of the trial court's order rather than only the first 11 months of the children's lives. This allowed the trial court, which noted this case had been pending far too long, to gain a better perspective of petitioner's interest, concern or responsibility as to his children's welfare.

¶ 40 Lastly, even when considering only evidence of petitioner's conduct prior to the petition for adoption, we still find the Mannings failed to meet their burden in establishing petitioner's unfitness pursuant to section 1(D)(b) of the Adoption Act. The Mannings' allegations of petitioner's unfitness prior to the petition for adoption include petitioner's failure to request temporary visitation, failure to reach out to the Mannings, and failure to put effort into obtaining a relationship with his children. The Mannings allege petitioner's interaction with his children prior to the petition for adoption was "short and awkward," and that petitioner exhibited little interest, care or concern for his children during that time.

¶ 41 In contrast, petitioner asserts he has shown requisite interest in his children, including during the time period prior to the petition for adoption. Upon learning that his daughters were born, petitioner almost immediately went to the hospital to sign a

paternity acknowledgement, but was turned away. Thereafter, petitioner hired an attorney, and, within nine days of his daughters' births, filed a petition to establish paternity and custody. Further, Alberta Manning acknowledged petitioner "made most visitations," and also admitted his cancellations to visitation did not begin until petitioner took a job in August 2012, which was after the petition for adoption was filed. Thus, evidence has been presented demonstrating a reasonable degree of petitioner's interest and concern regarding his children's welfare prior to the date the petition for adoption was filed.

¶ 42 In determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, we have to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred. *Syck*, 138 Ill. 2d at 278, 562 N.E.2d at 185. As we note above, we find no time constraint under section 1(D)(b) that limits a court to only consider evidence of a parent's conduct prior to the petition for adoption. However, even when only considering evidence prior to the Mannings' petition for adoption, we cannot conclude petitioner's unfitness was established by clear and convincing evidence.

¶ 43 Circumstances that warrant consideration may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. The parent may be found unfit for failing to maintain either interest,

concern, or responsibility; proof of all three is not required. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004). The court must examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185.

¶ 44 As we have already indicated, the termination of a parent's parental rights requires a finding of clear and convincing evidence that a reasonable degree of interest, concern or responsibility for the children's welfare was not maintained by the parent. Here, we find there was not clear and convincing evidence that petitioner failed to maintain a reasonable degree of interest, concern and responsibility as to his children, as petitioner has presented evidence, both before and after the petition for adoption was filed, that he has exhibited the requisite interest, concern or responsibility in his children under section 1(D)(b) of the Adoption Act.

¶ 45 "A judgment that a parent is unfit to rear his or her own child is one of the most devastating of judicial decisions. A fundamental right is involved; parents have rights superior to others *** in the rearing of their child unless it is shown by clear and convincing evidence they have forfeited one of mankind's most important rights." *In re Paul*, 101 Ill. 2d 345, 354-55, 461 N.E.2d 983, 987 (1984). Under these circumstances, we conclude the trial court's finding that the Mannings failed to meet their burden in establishing petitioner's unfitness had been established by clear and convincing evidence pursuant to section 1(D)(b) of the Adoption Act was not against the manifest weight of the evidence. Therefore, the trial court's decision should not be disturbed.

¶ 46 C. Depravity

¶ 47 One of the grounds for unfitness is depravity. 750 ILCS 50/1(D)(i) (West 2012). The depravity statute states "[t]here is a rebuttable presumption that a parent is depraved 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 *** seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2012). The Mannings allege they have proven petitioner is depraved by clear and convincing evidence. We disagree.

¶ 48 Our supreme court has defined "depravity" as an inherent deficiency of moral sense and rectitude. *A.M.*, 358 Ill. App. 3d at 253, 831 N.E.2d at 654. Depravity must be shown to exist at the time of the petition to terminate parental rights, and " 'the "acts constituting depravity *** must be of sufficient duration and of sufficient repetition to establish a 'deficiency' in moral sense and either an inability or an unwillingness to conform to accepted morality." [Citation.]' " *A.M.*, 358 Ill. App. 3d at 253, 831 N.E.2d at 654 (quoting *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000)). Where the presumption of depravity is rebuttable, the parent may still present evidence showing that, despite his convictions, he is not depraved. *A.M.*, 358 Ill. App. 3d at 253, 831 N.E.2d at 654.

¶ 49 In the instant case, petitioner acknowledges he had a number of encounters with the law when he was younger. In 1997, at the age of 19, petitioner was charged with possession of cocaine, cannabis and drug paraphernalia in Florida. These charges were dismissed because petitioner entered a drug court program. Petitioner testified he participated in nearly the entire program, but did not complete it because he obtained a

job that took him out of the area. The record indicates the charges were not reinstated or converted into convictions.

¶ 50 Petitioner returned to Illinois in 1999, and was subsequently charged with several alcohol-related offenses. These offenses included a felony DUI in 2003 that was amended to misdemeanor DUI to which petitioner pleaded guilty in 2004, a 2004 guilty plea to felony DUI and misdemeanor driving on a revoked license, and a 2007 guilty plea to felony driving on a revoked license for which he was sentenced to two years in prison. Petitioner was released from prison for his 2007 felony conviction after 4½ months because he voluntarily entered an alcohol treatment program while in prison.

¶ 51 Petitioner was also charged with felony domestic battery related offenses after returning to Illinois in 1999, but these charges were dropped. Thus, although petitioner has been charged with a number of felonies since his return to Illinois, petitioner only has two felony convictions, a guilty plea in 2004 and a guilty plea in 2007. While this court does not condone petitioner's conduct concerning these two felony convictions, section 1(D)(i) of the Adoption Act requires that petitioner be "criminally convicted of at least 3 felonies" to [be presumed] depraved. 750 ILCS 50/1(D)(i) (West 2012).

¶ 52 The Mannings allege petitioner has been found guilty of three felonies and seven misdemeanors, and make several additional arguments for why petitioner should be found depraved. These arguments include petitioner's driving of an automobile without a license, being confused concerning past criminal charges and convictions against him, his continuous use of alcohol and spending habits concerning alcohol, and an indifference shown towards his daughters.

¶ 53 While the Mannings may have established a rebuttable presumption that petitioner is depraved, we find they still failed to meet their burden. As stated above, where the presumption of depravity is rebuttable, the parent may still present evidence showing that, despite his convictions, he is not depraved. *A.M.*, 358 Ill. App. 3d at 253, 831 N.E.2d at 654.

¶ 54 Here, petitioner has offered evidence that he was not depraved which we find defeats the Mannings' presumption. We acknowledge that petitioner has rehabilitated himself since his last encounter with law enforcement approximately eight years ago, as he has not had a single criminal charge during that time span. Further, we acknowledge that after petitioner went to prison in 2007, his two-year sentence was reduced to 4½ months because he voluntarily completed an alcohol treatment program. Moreover, petitioner successfully completed the one-year period of mandatory supervised release following prison without incident or complaint by law enforcement.

¶ 55 Given petitioner's evidence, the presumption of petitioner's depravity ceased to exist and the burden remained with the Mannings to prove by clear and convincing evidence that petitioner was unfit because of depravity. We find the Mannings failed to meet their burden. The Mannings' evidence was not clear and convincing, as petitioner has two felony convictions rather than the three that are required under section 1(D)(i) of the Adoption Act to create a rebuttable presumption of depravity. 750 ILCS 50/1(D)(i) (West 2012). Furthermore, the Mannings failed to meet their burden after petitioner entered evidence showing that, despite his convictions, he is not depraved. Accordingly, we hold it was not against the manifest weight of the evidence for the trial court to

conclude the Mannings failed in their burden to establish petitioner's depravity by clear and convincing evidence.

¶ 56 CONCLUSION

¶ 57 In sum, we conclude the trial court's findings concerning petitioner's fitness under the Adoption Act were not against the manifest weight of the evidence. For the reasons stated herein, we affirm the judgment of the circuit court of Madison County.

¶ 58 Affirmed.