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2016 IL App (4th) 160004-U

NO. 4-16-0004

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 26, 2016

Carla Bender

4th District Appellate Court, IL

In re: the Adoption of D.M.W., a Minor,)	Appeal from
THERESE R. WILSON, n/k/a THERESE R. COPSY,)	Circuit Court of
and JAMES DAVID COPSY,)	Coles County
Petitioners-Appellees,)	No. 14AD30
v.)	
BRUCE E. WILSON, JR.,)	Honorable
Respondent-Appellant.)	James R. Glenn,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In August 2014, petitioners, Therese R. Wilson, n/k/a Therese R. Copsy, and James David Copsy, filed a petition for the adoption of D.M.W. (born September 9, 2008). Therese was the biological mother of D.M.W. and sought to have the parental rights of respondent, Bruce E. Wilson, Jr., D.M.W.'s biological father, terminated so her husband, James, could adopt D.M.W. In September 2015, the trial court found Bruce unfit. In November 2015, the court found it was in D.M.W.'s best interest to terminate Bruce's parental rights and grant the petition for adoption.

¶ 3 Bruce appeals, asserting the trial court's fitness and best-interest findings were against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 4

I. BACKGROUND

¶ 5

A. Procedural History

¶ 6 In December 2009, the trial court entered an order dissolving the marriage of Therese and Bruce and granting sole custody and care of their son, D.M.W., to Therese (Coles County case No. 08-D-263). The court also granted Bruce visitation and ordered him to pay \$74.20 in weekly child support. Subsequently, in March 2012, Therese entered into a relationship with James, and the two married in August 2014. D.M.W. continued to reside with Therese and James. Bruce received a sentence to the Illinois Department of Corrections in April 2014 and remained imprisoned throughout the pendency of this case.

¶ 7

In August 2014, petitioners filed a petition to adopt D.M.W. As part of the petition, petitioners asked the trial court to terminate Bruce's parental rights. The petition alleged Bruce was an unfit parent, in part, because he (1) was depraved and (2) failed to exercise his alternate-weekend visitation with D.M.W. in the seven months prior to his incarceration. The trial court later interpreted the latter claim to allege Bruce failed to maintain a reasonable degree of interest, concern, or responsibility for D.M.W. If the court found Bruce unfit, petitioners requested the court terminate Bruce's rights and grant petitioners leave to adopt D.M.W.

¶ 8

On September 11, 2015, Bruce filed a motion to continue the adoption proceedings until the appeal of his most recent criminal conviction, which went to Therese's request for a finding of depravity, had been resolved. On September 17, 2015, the trial court denied the motion.

¶ 9

B. Fitness Hearing

¶ 10

On September 21, 2015, the case proceeded to the fitness stage of the adoption proceedings, where the parties presented the following evidence.

¶ 11

1. *Therese*

¶ 12 Therese testified she married Bruce in January 2008, after they had dated for several years. Shortly before they married, Therese learned she was pregnant with D.M.W. Prior to the marriage, Therese testified Bruce was physically abusive and, at one time, broke her wrist. According to Therese, she married Bruce because she thought she could change him. However, while she was pregnant with D.M.W., the physical and emotional abuse continued. She described occasions on which Bruce (1) held her by the throat, (2) shoved her and made a motion like he was about to hit her, (3) punched her in the back, and (4) called her names. Shortly after D.M.W.'s birth, Therese testified Bruce slapped her while she was holding D.M.W. Additionally, Therese gave Bruce \$17,000 to pay outstanding criminal fines, which he used to buy a truck.

¶ 13 In November 2008, Therese and Bruce separated after an incident where Bruce threatened her. Therese explained she did not want to live with the instability and Bruce's volatility. As a result of Bruce's threat, Therese obtained an order of protection, which prohibited Bruce from any contact with Therese or D.M.W. (Coles County case No. 08-OP-225). However, once the parties finalized their divorce in December 2009, the trial court granted Bruce overnight visitation with D.M.W. on alternate weekends and two hours of visitation every Wednesday. He was also awarded extended visitation over the summer. As part of its judgment, the court ordered Bruce to pay weekly child support. Therese testified Bruce failed to pay his court-ordered child support and provided no assistance with medical bills or school supplies.

¶ 14 Therese testified, in the seven months prior to Bruce's April 2014 incarceration, his visits with D.M.W. were "sporadic at best." She said Bruce kept D.M.W. for a full weekend visit once. Therese specifically recalled Bruce did not exercise his visitation the weekend prior

to his sentencing. According to Therese, Bruce always had an excuse to cancel his weekend visits with D.M.W. He also never exercised his extended summer visitation. He did, however, frequently exercise his Wednesday evening visitation.

¶ 15 The night before Bruce left for his current incarceration, Bruce appeared at Therese's house to see D.M.W. Because it was a school night and D.M.W. was asleep, Therese denied his request to see D.M.W. According to Therese, since his incarceration, Bruce sent D.M.W. a birthday card, which D.M.W. refused to open, but otherwise sent no letters and attempted no contact. She admitted she blocked her phone number from receiving Bruce's calls from prison at D.M.W.'s request. However, she never heard from anyone that Bruce noticed the number was blocked, and her parents' phone number remained available.

¶ 16 *2. Bruce*

¶ 17 Bruce, who has a criminal history extending back more than 20 years, testified D.M.W.'s birth changed his life and made him realize he needed to make major changes. However, he also admitted committing crimes after D.M.W.'s birth. He also testified he sought forgiveness from Therese for mistreating her.

¶ 18 When D.M.W. was born, Bruce and Therese lived on Sixth Street in Mattoon, Illinois. A few months after D.M.W.'s birth, Therese filed for divorce and Bruce moved in with his father on Lakeland Boulevard. Thereafter, he moved into a residence on Lafayette Boulevard. He then lived with a roommate on Illinois Avenue, where he was eventually evicted. He also lived in a home on the corner of Illinois Avenue and Second Street with a roommate. All of these residences are also located in Mattoon, Illinois.

¶ 19 Bruce agreed he was nearly \$17,000 in arrears on his child support. In 2010, Bruce paid \$1,132.51 in child support. In 2011, he paid \$1,118 in child support. The records

reflected an absence of payments in 2012. In 2013, Bruce paid \$1,000 in child support when the trial court ordered Bruce's bond money from his criminal case transferred to the balance. In 2014, he paid \$275 in child support. In 2015, Bruce paid no child support due to his incarceration. During a period of unemployment, the trial court ordered Bruce to provide \$1,897.40 of a workers' compensation settlement to Therese (Coles County case Nos. 08-D-263 and 08-OP-225). Bruce testified he failed to pay child support during the times he was injured and therefore out of work, and his failure to pay was not intentional. He stated he planned to pay whenever possible.

¶ 20 Bruce then testified regarding the allegations contained within the petition. Bruce first disagreed he failed to exercise his visitation in the seven months prior to his incarceration. Although he did not exercise all his visits for various reasons, it was usually due to D.M.W. being ill, Bruce testified he failed to exercise visitation approximately three times in the seven months prior to his incarceration. Bruce stated he documented all his visits in his diary, but he did not have the diary due to his incarceration, nor did he ask anyone to obtain it from his storage facility. He also attempted to visit D.M.W. the day before his April 2014 sentencing hearing after Therese refused to return his calls, but Therese denied his request.

¶ 21 Bruce testified he filed a petition for visitation that remained pending until the termination of the adoption proceedings. According to Bruce, since his incarceration, he sent six or seven letters and a birthday card to D.M.W. He also testified he attempted to call D.M.W. numerous times while incarcerated, but Therese blocked his number. Bruce provided his attorney with numerous photographs of D.M.W. Bruce kept with him in prison.

¶ 22 Bruce testified he made changes after realizing he might lose D.M.W. due to his criminal behavior. While imprisoned, he took substance-abuse classes, attended church services

and Bible studies, and engaged in educational coursework. In his substance-abuse counseling, Bruce said he learned more about why he abused drugs. He also noted that living in the same small community was hurting his ability to change, but he remained in town because of his son. Although he declined the trial court's offer to order substance-abuse counseling as part of his criminal sentence, he voluntarily engaged in counseling once incarcerated and presented the court with a certificate of completion. Bruce admitted having a "problem" with drugs in 2012, but he testified he no longer had that problem due to his 18 months of incarceration and receiving substance-abuse treatment in prison.

¶ 23 From his religious studies, Bruce learned new coping skills and how to treat others. Prior to his incarceration, sometime between 2011 and 2013, Bruce had dated a woman from church and taught Bible school classes with her. Upon release, he hoped to continue his religious studies by playing a larger role in his church. He provided certificates demonstrating he had completed numerous religious-studies courses. Bruce acknowledged that all of the certificates were obtained after Therese filed the petition for adoption, though he testified he began the classes prior to Therese filing the petition.

¶ 24 Bruce also testified he was taking classes through Lake Land College, which provided him with college credit and professional certificates. While incarcerated, he attended classes from 8 a.m. to 4 p.m. four days a week, which allowed him to obtain certificates in construction technology and carpentry within seven months. After his release, he planned to continue his education and make himself a productive member of society. Bruce testified he obtained his associate's degree in science in 1993 from Lake Land College, but the college withheld his degree when he failed to pay his tuition. He engaged in additional coursework during prior periods of incarceration.

¶ 25 When asked about his conduct while incarcerated, Bruce admitted he received a disciplinary ticket for providing false information that resulted in the loss of 30 days of good-conduct credit.

¶ 26 *3. Bruce's Criminal Convictions*

¶ 27 The trial court took judicial notice of the presentence investigative report filed in Coles County case No. 12-CF-308, which detailed Bruce's prior convictions. Since the 1990s, Bruce had been convicted of 14 felonies and numerous misdemeanors. Of the 14 felonies, 12 were theft-related offenses. Bruce accrued 11 felony convictions in the 1990s, with 6 of those resulting from a single theft-related case (Coles County case No. 94-CF-267). Between 2000 and 2010, Bruce committed two felonies, one for deceptive practices (Coles County case No. 05-CF-635) and one for driving on a revoked license (Champaign County case No. 06-CF-1762). All of these convictions accrued prior to D.M.W.'s birth.

¶ 28 After D.M.W.'s birth, Bruce received one felony theft conviction, in Coles County case No. 12-CF-308, for which he was currently serving a five-year prison sentence. In that case, an individual paid Bruce \$1,400 to purchase and install stereo speakers, but Bruce kept the money without purchasing or installing the speakers. Bruce testified he had been incarcerated since April 2014, with a projected release of July 2016. The case is currently pending on appeal in *People v. Wilson*, No. 4-15-0500. Also since D.M.W.'s birth, Bruce accrued five misdemeanor convictions. Three of those convictions were theft-related (Coles County case Nos. 10-CF-414, 12-CM-427, 14-CM-423). Bruce also had misdemeanor convictions for domestic battery against Therese (Coles County case No. 08-CM-649) and disorderly conduct (Coles County case No. 09-CM-356).

¶ 29 Bruce agreed his mistakes were serious. Bruce also admitted numerous civil judgments had been entered against him. One of those judgments was in the amount of \$10,000, where Bruce failed to complete construction work for which he had already been paid (Coles County case No. 06-SC-634).

¶ 30 *4. Stacey Fisher*

¶ 31 Stacey Fisher testified she was a probation officer who supervised Bruce's probation in Coles Co. case No. 12-CM-427 from January 2013 until April 2014. According to Fisher, Bruce denied any issues with drugs or alcohol, admitting only minimal use of both. While Bruce completed moral recognition therapy in 2008, she noted he had committed new offenses since receiving that therapy. While Fisher supervised Bruce, he reported as required for probation but failed to pay his court-ordered costs, which included making regular child-support payments.

¶ 32 *5. James Jenkins*

¶ 33 James Jenkins testified he was Bruce's roommate from October 2013 until January 2014. Bruce's name was the only name on the lease, so Jenkins paid his portion of the rent to Bruce, who was supposed to pay the landlord. However, Jenkins later discovered Bruce never used Jenkins' money to pay the rent. Jenkins was aware Bruce had court-ordered visitation with D.M.W., but over a four-month period, Jenkins said Bruce engaged in visitation only about five times. During those visits, Jenkins described Bruce as a stern parent, but not abusive. Jenkins also noted a few occasions when Bruce opted not to exercise his visitation.

¶ 34 *6. Larry Bain*

¶ 35 Larry Bain testified Bruce performed carpentry work for him during the time Bruce lived on Sixth Street, a period from approximately October 2013 through February 2014.

Bain recalled transporting Bruce for his visitation with D.M.W. once or twice a month. During those occasions, Bain observed Bruce as being "loving" toward D.M.W.

¶ 36

7. The Trial Court's Ruling

¶ 37

After considering the evidence presented during the fitness hearing, the trial court determined Bruce was unfit due to depravity and his failure to maintain a reasonable degree of interest, concern, or responsibility for D.M.W. As to the latter, the court noted Bruce failed to regularly exercise his weekend visitation, even though he routinely saw D.M.W. for Wednesday visitation. The court also found Bruce failed to pay approximately 77% of the child support he owed and never filed a petition to stop or modify his support, nor did he help pay for any of D.M.W.'s expenses. The court found Bruce provided only a single birthday card to D.M.W. during his incarceration, with no evidence of any other gifts or tokens of affection.

¶ 38

As to the count of depravity, the trial court found Bruce had been convicted of at least three felonies, and one within the last five years, which created a presumption of depravity. At that point, the burden shifted to Bruce to rebut the presumption he was deficient of moral sense or rectitude.

¶ 39

The trial court considered Bruce's testimony about becoming a better person and the evidence of his coursework, religious studies, and counseling. The court also considered Bruce's long history of committing crimes of dishonesty that continued after D.M.W.'s birth. The court agreed with the comments of the trial judge who sentenced Bruce in the 2012 felony case, who stated:

"Your actions are absolutely consistent with a person who has the gift of deceit. A gift of fraud. You have the ability to have others trust you, whether they be girlfriends or clients, to extract money

from them with, at the same time, with the intent never to pay them back, or only pay them back when you are caught and the matter goes to the police, and then you scurry around and you rob Peter to pay Paul. And that is the pattern that is so obvious to me. It isn't a pattern of addiction. Your dishonesty is more evidence that that is who you are, and that is your character.' "

The evidence also demonstrated Bruce took money from Therese and Jenkins for certain costs but kept the money for himself instead. Accordingly, the court found Bruce failed to overcome the presumption of depravity.

¶ 40 C. Best-Interest Hearing

¶ 41 In November 2015, the best-interest phase of the adoption proceedings commenced, where the parties presented the following evidence.

¶ 42 1. *Bruce*

¶ 43 Bruce testified he was scheduled to be released from prison by July 2016. Bruce admitted that subsequent to D.M.W.'s birth and prior to his incarceration, he had lived in five different residences. Bruce acknowledged his child-support obligation was nearly \$17,000 in arrears. Even when sporadically working, Bruce failed to meet his child-support obligation of \$74.20 per week. To his knowledge, all of D.M.W.'s financial support came from Therese and James, whom Bruce described as "two responsible adults."

¶ 44 Bruce testified he had an on-again, off-again addiction to cocaine starting in 2005, but he was no longer addicted after attending substance-abuse counseling in prison. He admitted using illegal drugs the night he committed the domestic-battery offense against Therese.

¶ 45 Bruce's top priority upon being released from prison was to take care of D.M.W. That would include filing bankruptcy to avoid paying criminal restitution to the victim in one of his criminal cases. Upon release, he planned to work in the construction field and he had job prospects he was "not at liberty to discuss." He blamed his inability to find work on Therese's family influencing employers.

¶ 46 According to Bruce, he had become a better person since becoming incarcerated, as evidenced by the growth in his faith and his enrollment in classes. He wanted to be a better father figure for his son. He said he was disciplined after being accused of forging papers at the prison in March 2015, but he had been in no trouble otherwise. However, he acknowledged he also received two prison tickets in July 2014 for disobeying a direct order and providing false information to an employee.

¶ 47 When D.M.W. was born, Bruce testified he would often take care of him at night, changing diapers and giving him a bottle. He said he loved D.M.W. "with all [his] heart." He admitted he never exercised his summer visitation that would allow him to keep D.M.W. for extended periods because he was always working. However, the child-support records did not reflect regular payments in the summer months. Bruce also admitted missing numerous visitation days due to work. He provided numerous photographs of himself and D.M.W. together, with D.M.W. smiling or laughing. Bruce denied any allegations that he had abused D.M.W. He said his children—D.M.W. and a daughter from another relationship—were all the family he had left.

¶ 48 Bruce testified it was not in D.M.W.'s best interest to terminate his parental rights. Even if his rights were terminated, he would continue to send birthday cards and Christmas cards.

¶ 49

2. *Therese*

¶ 50 Therese testified she introduced D.M.W. to James around March 2012, approximately one month after they began dating. In July 2012, James moved in with Therese and D.M.W. According to Therese, if James and D.M.W. did not get along, she would never have continued her relationship with James.

¶ 51 Therese testified James treated D.M.W. like a biological son, and they would play together and take trips together. James would buy gifts and provide entertainment for D.M.W. When D.M.W. required discipline, James would have him take a time out or stand in a corner; afterwards James would explain why D.M.W. received his punishment. She said D.M.W. was close to James, and often went to him with problems instead of her. She noted D.M.W. calls James "dad" and Bruce "Bruce." D.M.W. also identified himself as having James' last name. James provided medical insurance for D.M.W. Therese observed D.M.W. listened to James and showed him proper respect.

¶ 52 Therese also acknowledged James had a 1999 domestic-battery conviction. From her understanding, James walked in on his wife having an affair and he acted out; his children were not at home or harmed. James also received community service for a misdemeanor incident 25 years ago, after he attempted to break up a bar fight where his wife was the victim.

¶ 53 James had adult children from his previous marriage, and D.M.W. considered them his older siblings. When one of those siblings had a child, D.M.W. considered himself the uncle of the child. Therese also testified D.M.W. had regular contact with her parents and they were very close. She also shared numerous candid photographs of D.M.W. with James.

¶ 54 D.M.W. was involved in soccer and Cub Scouts. Both Therese and James attended D.M.W.'s soccer games and practices. Either James or Therese would take D.M.W. to

bimonthly Cub Scouts' meetings and remain throughout the meeting. James taught D.M.W. how to ride a bicycle. Conversely, Bruce was not involved in D.M.W.'s Cub Scouts or soccer because he was in prison. He also was not involved during the summer, when D.M.W. played T-ball, because he was incarcerated. Although he was not incarcerated at the time, Bruce also did not participate in D.M.W.'s Bible school.

¶ 55 According to Therese, Bruce did not contribute to D.M.W.'s activities or education. He attended one Christmas program because it occurred on a Wednesday night, when Bruce had visitation. However, Bruce regularly celebrated D.M.W.'s birthday with him separately. He also purchased him Christmas gifts.

¶ 56 Therese testified she has been employed by Motion Industries in Mattoon, Illinois, since March 2014. Her joint-tax return with James reflected a gross income of nearly \$80,000. She testified her income allowed her to support D.M.W.

¶ 57 In the two months after D.M.W. was born but prior to her separation from Bruce, Therese testified she was on maternity leave. If she needed to leave the house for any reason, such as for grocery shopping, her mother would watch D.M.W. She refused to leave D.M.W. alone with Bruce.

¶ 58 Out of seven years of D.M.W.'s life, Bruce had been in prison for a year and a half and in jail for six months. He also had six months of sporadic visits. She admitted blocking Bruce from calling D.M.W. from prison at D.M.W.'s request. Prior to blocking Bruce's number, she attempted to convince D.M.W. to speak with Bruce when he called. Therese testified D.M.W. thought Bruce was in prison for doing "bad things" to D.M.W., but Therese told him that was untrue. Regardless, D.M.W. believed Bruce to be a "bad" person because "bad people" go to prison.

¶ 59 According to Therese, prior to Bruce's incarceration, D.M.W. became increasingly reluctant to attend visitation with Bruce. Therese noted that even as a toddler, D.M.W. would run from her when it was time for visitation with Bruce. According to Therese, Bruce would often call her during his visits with D.M.W. to ask why D.M.W. never wanted to spend time with him. He would also become upset because D.M.W. thought of James as his father.

¶ 60 In February 2014, Therese audio-recorded an incident at her home wherein D.M.W. purportedly had a temper tantrum about visiting Bruce. Though the trial court permitted the recording to be played in court, the contents were not transcribed for the record. Therese stated D.M.W. was still throwing a fit over going to Bruce's house when Bruce arrived to pick him up. Since his incarceration, D.M.W. rarely asked about Bruce.

¶ 61 In September 2013, Therese sought medical attention for D.M.W. when he fell from a shopping cart. While at the hospital, D.M.W. told the nurse Bruce slapped him on two occasions. He also said Bruce threw D.M.W.'s bicycle at the garage door. Therese said she did not confront Bruce with that information because she did not believe he would tell the truth. Also in 2013, Therese sought counseling for D.M.W. to address some behavioral issues. He stopped going for awhile but reengaged when he started to experience anxiety that Bruce might try to kidnap him.

¶ 62 Therese testified D.M.W. had normalcy and stability in his life since Bruce had gone to prison. She admitted she never saw Bruce and D.M.W. interact after the divorce because she or someone else would drop D.M.W. off at Bruce's house. Thus, her opinion of Bruce's parenting came from D.M.W.'s reactions. D.M.W. did not want Bruce's last name; in fact, he refused to wear the Wilson brand of shin guards for soccer. Rather, he wanted James' last name.

When Therese asked D.M.W. his thoughts on adoption, he said he wanted to be adopted by James. He explained he had a "nice daddy" (James) and a "bad daddy" (Bruce).

¶ 63 According to Therese, regardless of whether her petition for adoption was granted, James would continue to play the same role in D.M.W.'s life. However, Therese testified that D.M.W. going back to visitation with Bruce would cause D.M.W. to be troubled again. She believed adoption to be in D.M.W.'s best interest. Therese also believed the termination of Bruce's parental rights was in D.M.W.'s best interest and for Bruce to have no further contact with D.M.W. She based this on watching D.M.W.'s reaction to visitation every Wednesday.

¶ 64 *3. James*

¶ 65 James testified his relationship with his two adult children had developed into friendship. He admitted a domestic-violence incident with his first wife in 1999, but they worked through their troubles and remained married until 2011. During the marriage and after, he continued providing for his children.

¶ 66 James had been employed at Dayton Freight for the past four years, and he currently worked the night shift driving trucks. He switched to working the night shift because of the higher salary, which allowed him to provide more financial stability for D.M.W. James described his relationship with Therese as good, based mostly on their ability to communicate. With D.M.W., they would play sports together, go to the movies, and play with toys. The family had also gone on numerous vacations together.

¶ 67 James described his relationship with D.M.W. as a father-son relationship. D.M.W. regularly tells James he loves him. According to James, D.M.W. listened to him more

than he listened to Therese. James said he loved D.M.W. as he loved his biological children. James had even made D.M.W. the beneficiary on his life-insurance policy.

¶ 68 James noted Bruce did not regularly exercise his visitation with D.M.W. in the six months prior to his prison sentence. He observed D.M.W. would get very upset on visitation days.

¶ 69 If the petition for adoption was denied, James testified he would continue to love and care for D.M.W. James testified he thought adoption was in D.M.W.'s best interest because D.M.W. needed more structure and a full-time father.

¶ 70 *4. Molly Marsulis*

¶ 71 Molly Marsulis testified her husband and James were cousins. Therefore, she usually saw D.M.W. about once a month over the course of three years. D.M.W. was always with James and Therese when she saw him. She described D.M.W. and James as having a loving and friendly relationship, and she observed them joking and playing together often. She said it was clear D.M.W. looked up to James, and D.M.W. always referred to James as his father.

¶ 72 *5. Michael Nicholls*

¶ 73 Michael Nicholls, D.M.W.'s maternal grandfather, testified D.M.W. was his "buddy." Nicholls explained he often provided the transportation for D.M.W.'s visits with Bruce. As D.M.W. got older, it became a battle to get him to visits. He would plead and beg not to go. However, Bruce was unwilling to reschedule or forgo visitation when D.M.W. was upset. When D.M.W. stayed with his grandparents, he refused to read books where the author's last name was Wilson.

¶ 74 Nicholls described the relationship between James and D.M.W. as a father-son relationship. He never saw anything to cause him any concern. In fact, D.M.W. called James "daddy." He believed it was in D.M.W.'s best interest to grant the adoption.

¶ 75 *6. Bain*

¶ 76 Larry Bain testified he knew Bruce because Bruce had performed carpentry work for him and was also a neighbor. Bain transported Bruce to visits with D.M.W. on approximately three to five occasions three years ago, and he never saw D.M.W. throwing a fit. He saw nothing of concern in Bruce's interaction with D.M.W.

¶ 77 *7. Guardian Ad Litem's Report*

¶ 78 The trial court also considered the guardian *ad litem's* (GAL's) report, which was filed on September 22, 2015. The report stated the GAL contacted Bruce, Therese, James, and D.M.W. in preparing the report. She also reached out to their respective attorneys to provide any witnesses for the GAL to consider. Upon the GAL's invitation to meet and provide any witness information, Therese and James arranged for further contact; Bruce failed to do so in time for the GAL's original report.

¶ 79 The report described D.M.W. as a "happy and healthy" boy. He was doing well in school and enjoyed participating in activities. The GAL found him to be comfortable and willing to speak freely. Petitioners' home was also clean.

¶ 80 The GAL also spoke with D.M.W. alone. When asked about Bruce, he would become quiet and nervous. Despite prompting, he would not say anything positive about his interactions with Bruce and instead emphasized he no longer wanted to go on visits with "Bruce." In two separate interviews, the GAL asked D.M.W. if he understood adoption. Each time he said that he wanted his "nice dad" (James) to adopt him and not the "mean one" (Bruce).

¶ 81 The GAL also spoke with Bruce. Bruce told the GAL that he and D.M.W. laughed and had fun together, and they had a very close relationship. However, he believed James spoke poorly of Bruce in D.M.W.'s presence, thus "training and coercing" D.M.W. against Bruce. Bruce stated he wanted D.M.W. to be proud of him and to carry on the family name, as he was the last of Bruce's line. Bruce told the GAL he had paid his child support and missed "maybe" two weekend visits with D.M.W. in the months preceding his incarceration.

¶ 82 The GAL noted Therese and D.M.W. had a very good relationship, with open communication. The GAL observed D.M.W.'s interactions with James, and noted the relationship seemed "appropriate, respectful, and close." James had been providing financial support for D.M.W. despite no legal obligation to do so, which involved opening a college-savings account, providing medical insurance, and making D.M.W. the beneficiary of James' life-insurance policy. Both Therese and James stated they loved D.M.W. very much and wanted the adoption to be approved.

¶ 83 Both Therese and James provided reasons for why they believed adoption to be in D.M.W.'s best interest. These reasons included D.M.W. (1) being afraid Therese would abandon him, (2) reporting Bruce abused him, (3) throwing fits prior to visitation with Bruce, (4) not seeing Bruce since his April 2014 incarceration, and (5) not wanting to see Bruce.

¶ 84 The GAL also spoke with several individuals with information to offer about Bruce. Charity Kowalksi told the GAL she previously dated Bruce. She observed he often became angry and yelled at D.M.W. She also stated Bruce stole one of her credit cards and made unauthorized purchases, for which he was court-ordered to pay restitution. Darlene O'Dell told the GAL Bruce had a bad temper and her own children were afraid of him. He began teaching Bible school with her, but she later discovered he had stolen her income-tax refund.

¶ 85 Brooke Haine recalled Bruce stalking an ex-girlfriend while D.M.W. was with him. Mandy Hendrix told the GAL she once dated Bruce, but she found him to be "manipulative, deceiving, and not reliable." He frequently made unauthorized credit-card charges, for which he still owed her \$14,000. During visitations with D.M.W., she was D.M.W.'s primary caretaker while Bruce engaged in other activities.

¶ 86 The GAL further considered a report by Glen Forneris, D.M.W.'s counselor. Forneris' report indicated D.M.W. feared Bruce, who was verbally harsh and physically aggressive. Thus, Forneris concluded continued visitation with Bruce would be counterproductive for D.M.W.'s mental health and well-being.

¶ 87 The GAL ultimately concluded it was in D.M.W.'s best interest to terminate Bruce's parental rights and grant petitioners' petition for adoption.

¶ 88 In October 2015, the GAL spoke with Bruce's witnesses, and she filed a supplemental report the following month. Salina Lauter told the GAL she had known Bruce for years. She said he had never lied to her and she had never known him to be mean to anyone. Lauter stated she found Bruce to be good with children, as she trusted him with her son and observed his relationship with his nieces and nephews. She said Bruce would "light up" whenever he spoke of D.M.W.; however, she had never seen Bruce with D.M.W. Lauter believed it was not in D.M.W.'s best interest to terminate Bruce's parental rights because D.M.W. deserved to know his father. Lauter believed Therese had been engaging in parental alienation rather than encouraging contact.

¶ 89 Larry Bain told the GAL Bruce had only lied to him once, and that was to deny his drug use. He said he observed Bruce and D.M.W. together "a few times" and thought they had a close relationship in which Bruce showed love for his son. He did not think adoption was

in D.M.W.'s best interest. In essence, Bain explained a future divorce could lead to further adoptions and a lack of stability for D.M.W. He also asserted D.M.W. would lose the identity his last name provided.

¶ 90 The GAL then reiterated her opinion that termination of Bruce's parental rights and proceeding with the adoption was in D.M.W.'s best interest.

¶ 91 *8. The Trial Court's Findings*

¶ 92 Following the presentation of evidence, the trial court found it was in D.M.W.'s best interest to terminate Bruce's parental rights. The court offered extensive reasoning for its finding. In considering the best-interest factors, the court noted most of the factors favored petitioners.

¶ 93 The trial court found D.M.W.'s physical safety and welfare would remain unchanged regardless of its decision, as D.M.W. resided with petitioners regardless. As to the child's identity, the court found that was the one factor that favored Bruce, as D.M.W.'s last name was part of his identity. At the same time, the evidence suggested D.M.W. no longer wanted that identity and refused to have anything to do with the name Wilson, even on sporting equipment or in books. D.M.W.'s background and cultural connection has always been through Therese's family, where he was raised, attended church, and bonded with his maternal grandparents.

¶ 94 Further, D.M.W.'s sense of attachment and feeling of being loved fell in petitioners' favor. Though the court stated he did not doubt Bruce's love for D.M.W., D.M.W. was expressing to others that Bruce abused him and he did not feel Bruce loved him.

Conversely, the court noted D.M.W. clearly felt safe and loved in petitioners' home. The continuity of affection also favored petitioners, who provided constant love and support for D.M.W. Bruce, on the other hand, exercised his visitation sporadically as D.M.W. grew older.

He was not exercising his summer vacation visitation, purportedly due to working, though the child-support records show no payments during that time. He also failed to regularly exercise his weekend visitation.

¶ 95 The trial court found the least-disruptive placement alternative would be to allow D.M.W. to remain with petitioners, but that could be attained regardless of whether it terminated Bruce's parental rights. The court also considered D.M.W.'s wishes to be adopted and change his last name. The court found evidence of this in the audio-recording, where D.M.W. clearly indicated he did not wish to be with Bruce. Moreover, Bruce was unavailable to care for D.M.W. due to his incarceration. The trial court noted Bruce had five misdemeanor convictions and one felony conviction since D.M.W.'s birth, and he was currently in prison. On the other hand, James and Therese provided stability for D.M.W.

¶ 96 Additionally, the trial court noted James had taken on financial responsibility for D.M.W. without the legal obligation to do so, and he took on a more dangerous night-shift job for the extra income to provide for D.M.W. D.M.W. had also bonded with James' family.

¶ 97 The trial court found Bruce had a history of dishonesty, including with those with whom he shared close relationships. The court determined Bruce had a history of hurting those closest to him, whether intentional or not, which caused worry for the court. Further, future visitation with Bruce would be traumatic for D.M.W., particularly if Therese were to pass away and leave Bruce as his sole parent.

¶ 98 After entering the order terminating Bruce's parental rights, the trial court granted petitioners' petition for adoption.

¶ 99 This appeal followed.

¶ 100

II. ANALYSIS

¶ 101 On appeal, Bruce asserts the trial court's fitness and best-interest findings were against the manifest weight of the evidence.

¶ 102 During the adoption process, where one parent seeks to terminate the parental rights of the other, the trial court must engage in a two-step process. First, the court must determine by clear and convincing evidence the parent against whom termination is sought is an unfit parent. *In re A.M.*, 358 Ill. App. 3d 247, 252, 831 N.E.2d 648, 653 (2005). If the court finds that parent unfit, the next step for the court is to consider whether it is in the best interest of the child to terminate that unfit parent's parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). We now turn to the court's fitness finding.

¶ 103 A. Fitness Hearing

¶ 104 The trial court found Bruce unfit after determining he (1) was deprived; and (2) failed to maintain a reasonable degree of interest, concern, or responsibility for D.M.W. We begin by addressing the court's finding as to depravity.

¶ 105 Section 1(D)(i) of the Adoption Act provides:

"There is a rebuttable presumption that a parent is deprived if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; 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).

A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not deprived. *In re Shanna W.*, 343 Ill. App. 3d 1155,

1166, 799 N.E.2d 843, 851 (2003). We will not overturn the trial court's finding unless it is against the manifest weight of the evidence. *A.M.*, 358 Ill. App. 3d at 252, 831 N.E.2d at 653.

¶ 106 In this case, Bruce had more than three felony convictions, with one of those convictions, Coles County case No. 12-CF-308, occurring within the last five years. Thus, the record demonstrates a rebuttable presumption of depravity.

¶ 107 Bruce first asserts his case in Coles County case No. 12-CF-308 is currently on appeal and, if overturned, would defeat the trial court's finding of depravity. Bruce argues he requested a continuance in September 2015 to await the results of that appeal, and the court erred by failing to grant such a continuance. Bruce provides no legal authority to support his argument that he cannot be found depraved while one of the pertinent convictions is still pending on appeal. In fact, our supreme court has held, "the Adoption Act does not call for courts to reserve ruling on findings of unfitness which are related to criminal matters until the appellate process in the underlying cause has been exhausted." *In re Donald A.G.*, 221 Ill. 2d 234, 254, 850 N.E.2d 172, 183 (2006). Thus, we find Bruce's argument unpersuasive.

¶ 108 Bruce next contends he rebutted the presumption of depravity. Depravity is defined by our courts as "an inherent deficiency of moral sense and rectitude. [Citations.]" (Internal quotation marks omitted.) *Id.* at 240, 850 N.E.2d at 175.

¶ 109 Bruce asserts the trial court gave inadequate consideration to the fact that his criminal history was largely nonviolent. In reaching its decision, the trial court found Bruce's continuous commission of crimes of dishonesty—both felony and misdemeanor—demonstrated an inherent deficiency of moral sense and rectitude. Bruce argues he has had only one felony conviction since the birth of D.M.W., which is accurate; however, he has accrued five misdemeanor convictions since D.M.W.'s birth, including three theft charges. Although most of

defendant's convictions were not for crimes of violence, Bruce's repetitive crimes of dishonesty support the court's finding that Bruce's inherent deficiency of moral sense remained unchanged. The court also noted Bruce's mindset toward repaying the victims of his financial offenses—that he intended to have the restitution discharged in bankruptcy—also demonstrated his lack of moral integrity. As the judge in Bruce's felony case stated and the trial court in the present case adopted: " 'Your dishonesty here is more evidence that that is who you are, and that is your character.' " We therefore find unpersuasive Bruce's argument that the court gave inadequate consideration to the fact that the majority of his convictions were for nonviolent offenses.

¶ 110 Additionally, Bruce argues the trial court failed to adequately consider the counseling, educational coursework, and religious training he engaged in while incarcerated. However, we note Bruce had previously engaged in educational coursework and taught a Bible school class prior to committing his most recent felony. In fact, Bruce completed the coursework for a college degree in 1993, prior to accruing most of his criminal history. Given Bruce had already engaged in educational coursework and religious training, yet continued his criminal activity, the court was not required to believe he was sincere or would be successful with his efforts on this occasion.

¶ 111 Bruce also asserts the trial court failed to take into account that Therese knew of his criminal convictions prior to marrying and having a child with him. However, Bruce provides no legal authority to support his argument the court must consider such a basis in making its decision. Moreover, Therese thought she could change Bruce through marriage, but his continued criminal behavior and acts of dishonesty after the marriage demonstrated an ongoing deficiency of moral sense and rectitude.

¶ 112 Therefore, we conclude the trial court's finding of unfitness based on depravity was not against the manifest weight of the evidence. Because we have affirmed the trial court's finding of depravity, we need not consider any additional grounds for the finding of unfitness. *In re M.S.*, 351 Ill. App. 3d 779, 788, 814 N.E.2d 938, 946 (2004). We now turn to the court's best-interest finding.

¶ 113 B. Best-Interest Hearing

¶ 114 Defendant next asserts the trial court's best-interest finding was against the manifest weight of the evidence. Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *Jaron Z.*, 348 Ill. App. 3d at 261, 810 N.E.2d at 126. The petitioner must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 115 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2014). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments ***[;]

* * *

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school,
and friends;

(g) the child's need for permanence which includes the
child's need for stability and continuity of relationships with parent
figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute
care; and

(j) the preferences of the persons available to care for the
child." *Id.*

¶ 116 Bruce first asserts the trial court and GAL both noted Bruce loved D.M.W. Nonetheless, the court terminated his parental rights. As noted above, the focus of the best-interest hearing is the best interest of the child, not the parent. See *id.* Thus, the appropriate consideration is not whether Bruce loved D.M.W. Though the court did not doubt Bruce's love for D.M.W., the court noted Bruce's behavior made D.M.W. feel unloved by Bruce.

¶ 117 By considering D.M.W.'s wishes, Bruce contends the trial court improperly relied on hearsay evidence without a proper foundation, including an audio-recording that purports to record D.M.W. having a temper tantrum about going on a visit with Bruce. We note the recording does not appear to have been admitted into evidence, and it was not included in the record on appeal. Regardless, it is the appellant's duty to preserve the necessary record for appeal. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 176, 819 N.E.2d 1220, 1226 (2004).

Additionally, Bruce provides no citation to legal authority in support of this argument.

Accordingly, we conclude this argument has been forfeited. See *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 333, 815 N.E.2d 1251, 1256 (2004).

¶ 118 Bruce also argues the trial court failed to consider Therese's bias against Bruce, which served to manipulate D.M.W.'s wishes. Bruce pointed to numerous aspects of Therese's testimony that demonstrated this bias, including (1) allowing D.M.W. to refer to Bruce as "bad daddy" and James as "good daddy," (2) blocking Bruce from calling D.M.W. from prison, (3) urging D.M.W. to tell the hospital nurse about events at "daddy's house" that were unrelated to his treatment, and (4) instilling fear in D.M.W. that Bruce would kidnap him. However, the court's duty is to determine the credibility of the witnesses, and the court clearly found Therese's testimony regarding D.M.W.'s wishes more credible than Bruce's. See *In re Deandre D.*, 405 Ill. App. 3d 945, 953, 940 N.E.2d 246, 253 (2010). It is not this court's duty to reassess the credibility of witnesses. *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000). We therefore conclude the court properly considered the credibility of the witnesses and found Therese more credible, particularly where Bruce's numerous theft convictions— crimes of dishonesty—impeached his overall credibility.

¶ 119 Bruce next asserts the trial court's reliance on the GAL's report was misplaced because the facts and opinions contained in the report were formed at the onset of the case and without speaking to Bruce or his witnesses. Bruce failed to object to the report at the best-interest hearing. Moreover, this argument is refuted by the record. The report states the GAL initially reached out to Bruce in an attempt to obtain information regarding witnesses, but Bruce failed to respond in time for the original report. However, when Bruce eventually provided witnesses, the GAL filed a supplemental report, where she included information supplied by

Bruce's witnesses. The court stated it considered both the original and supplemental reports in reaching its decision. Thus, we find this argument unpersuasive.

¶ 120 The trial court stated it carefully considered the best-interest factors, explaining how each factor favored the parties. The court found the only factor favoring Bruce was the child's identity, as Bruce testified D.M.W. was the last of his line to carry on the family name. At the same time, the court found D.M.W. no longer wished for his identity as Bruce's son but, instead, he wished to identify as James' son.

¶ 121 The trial court found all the remaining factors supported petitioners, who had provided permanence and stability for D.M.W. and protected his safety and welfare. D.M.W.'s background and ties were with petitioners, as he frequently spent time with both Therese's and James' families and considered himself a brother to James' adult children. D.M.W. regularly attended church with Therese, a connection not present with Bruce. The court also determined D.M.W. clearly felt the most attachment to petitioners. Although the court did not doubt Bruce's love for D.M.W., it noted that the evidence regarding D.M.W.'s feelings did not reflect he felt love, attachment, or a sense of being valued from Bruce. Conversely, D.M.W. had developed a close sense of attachment and security with petitioners. Additionally, the evidence presented by Therese and the GAL's report demonstrated D.M.W.'s wishes to have Bruce's parental rights terminated so that James could adopt him. Moreover, the court found Bruce was not available to provide for D.M.W., whereas James had already been providing financially and emotionally for D.M.W. despite no legal obligation to do so. James had even taken a less desirable shift at work so he would have extra income to provide for D.M.W. Finally, the report from D.M.W.'s counselor indicated further contact with Bruce would be detrimental to D.M.W.'s mental health.

¶ 122 In considering all of these factors, we conclude the trial court found ample evidence in the record to support its finding. Accordingly, we conclude the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 123 III. CONCLUSION

¶ 124 For the foregoing reasons, we affirm the trial court's judgment.

¶ 125 Affirmed.