2019 IL App (4th) 190152-U

NO. 4-19-0152

FILED
July 18, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re B.A., a Minor;	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 15JA50
v.	)	
Benjamin S.,	)	Honorable
Respondent-Appellant.)	)	Thomas M. O'Shaughnessy,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding respondent unfit and that termination of his parental rights was in his child's best interests.

¶ 2 Respondent, Benjamin S., appeals the trial court's termination of his parental rights to his minor child, B.A. (born October 4, 2010). He challenges both the court's finding that he was unfit and its best-interest determination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Termination of Shannon A. and Juan A.'s Parental Rights

¶ 5 In May 2015, the State filed a petition for adjudication of wardship, alleging B.A. was a neglected minor under sections 2-3(1)(b) and (d) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b), (d) (West 2014)) because (1) his environment was

injurious to his welfare due to his parents' (mother Shannon A. and putative father Juan A.) substance abuse; (2) he was under the age of 14 years and Shannon A. left him without supervision for an unreasonable period of time without an adequate plan of care and without regard for B.A.'s mental or physical health, safety, or welfare; and (3) his environment was injurious to his welfare due to his parents' failure to engage in services through the Center for Youth and Family Services (CYFS). Shannon A. and Juan A., who are not parties to this appeal, are also parents to minor children E.A. (born December 12, 2002) and I.A. (born December 23, 2008). At a September 2015 adjudicatory hearing, Shannon A. and Juan A. stipulated to being unfit parents.

¶ 6 In October 2015, CYFS filed a dispositional report with the trial court in which Shannon A. stated that respondent, rather than her husband Juan A., might be B.A.'s biological father. CYFS did not contact respondent at this time to determine whether he was B.A.'s father. On September 14, 2016, the State filed a petition to terminate the parental rights of Shannon A., Juan A., and "any unknown fathers." On September 16, 2016, Juan A. and Shannon A. filed a "Final and Irrevocable Consent to Adoption by a Specified Person or Persons" in which they voluntarily surrendered their parental rights to B.A. They consented to the adoption of B.A., E.A., and I.A. by Juan A.'s daughter from a previous relationship, Gina A. The record shows service upon "Unknown Fathers" of E.A., I.A., and B.A. by publication on September 30, 2016.

¶ 7 At an October 28, 2016, hearing, the court noted that Shannon A. and Juan A. had voluntarily surrendered their parental rights and concluded it was in the best interests of B.A. that the parental rights of Shannon A., Juan A., and "any unknown parents" be terminated. On November 1, 2016, the court entered a dispositional order finding it was in B.A.'s best interest that the parental rights of Shannon A., Juan A., and any unknown fathers be terminated.

¶ 8 In an adoption status report filed on April 18, 2017, CYFS stated:

> "One potential barrier in this case is there were two possible fathers named for [B.A]. The father that was listed on the birth certificate surrendered his rights. However, the father named in the initial integrated assessment was never terminated on. The case worker has completed a diligent search and already sent out certified letters to the potential address, looking for the other named father. The case worker and the Assistant State's Attorney are working together to resolve this issue."

¶ 9 B. May 2017 Petition and Determination of Paternity

¶ 10 On May 11, 2017, the State filed a petition to terminate the parental rights of respondent, alleging he was an unfit parent under section 50/1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) because (1) he abandoned B.A. (*id.* § 1(D)(a)); (2) he failed to maintain a reasonable degree of interest, responsibility, or concern as to B.A.'s welfare (*id.* § 1(D)(b)); (3) he deserted B.A. for more than three months preceding the commencement of the action (*id.* § 1(D)(c)); (4) he was depraved (*id.* § 1(D)(i)); (5) he failed to make reasonable efforts to correct the conditions that were the basis for the removal of B.A. during any 9-month period following the adjudication of neglect, abuse, or dependency (*id.* § 1(D)(m)(i)); (6) he failed to make reasonable progress toward the return of B.A. during the period of September 11, 2015, to June 11, 2016, following the adjudication of neglect, abuse, or dependency (*id.* § 1(D)(m)(ii)); (7) he evidenced an intent to forgo his parental rights as manifested by his failure to visit B.A. for a period of 12 months (*id.* § 1(D)(n)(1)); and (8) B.A. was in the temporary custody and guardianship of the Department of Children and Family Services (DCFS), respondent was incarcerated at the time the petition for termination of parental rights was filed, respondent had been repeatedly incarcerated as a result of criminal convictions, and his repeated incarceration

had prevented him from discharging his parental responsibilities to B.A. (*id.* § 1(D)(s)). At the time the petition was filed, respondent was incarcerated at Putnamville Correctional Facility (Putnamville) in Greencastle, Indiana.

¶ 11 On May 22, 2017, respondent sent a letter to the trial court, stating, "I have never been acknowledged as the father of [B.A.] However if through genetic testing I am found to be the minor child[']s biological father, I intend to contest the petition [to terminate parental rights] filed in this case." Respondent attached to the letter a petition requesting a blood or genetic test to determine whether he was B.A.'s father.

¶ 12 At a June 14, 2017, status hearing, the State explained that during the adoption process, "it was determined that [respondent] is a potential father for [B.A.] and he was never addressed." The trial court ordered deoxyribonucleic acid (DNA) testing to determine paternity as to B.A. On July 14, 2017, CYFS filed a letter with the trial court stating that the results of the paternity test indicated respondent was the biological father of B.A.

¶ 13 On October 31, 2017, DCFS filed a permanency report with the trial court. The report stated that on September 27, 2017, a caseworker from DCFS spoke with respondent on the phone. Respondent "indicated that he does want to have the chance to get [B.A.] back and would cooperate with CYFS." Respondent also informed the case worker he had completed anger management and Volunteers of America courses while incarcerated. On October 18, 2017, respondent sent a letter to the caseworker indicating he would be released from prison on March 29, 2018, and that "he already [had] an address in Greencastle, a job at the local saw mill," which would begin the date of his release.

¶ 14 On December 4, 2017, CYFS filed an addendum containing respondent's service records and certificates of completed programs from Putnamville. The report indicated that while

incarcerated, respondent successfully completed Inside Out Dad, Thinking for a Change, Kairos Inside Weekend, Celebrate Recovery Inside, and Bible Telling programs; a Career Planning Workshop; Kamps & Pen Products Continuous Improvement Lean Manufacturing Training; and an Anger Resolution Seminar.

¶ 15 C. December 2017 Permanency Hearing

¶ 16 At a December 8, 2017, permanency hearing, the trial court addressed respondent, stating:

> "[B]ecause you had been identified [in the 2015 dispositional report] but not given personal notice of these proceedings the court will find that the notice by publication, the—while effective as to unknown fathers did not confer upon the court personal jurisdiction over [respondent]. What that means is that your appearance today would then be your first appearance before the court in this case."

¶ 17 The court then admonished respondent that he must cooperate with DCFS and comply with the service plan that would be developed for him, a failure to follow the plan and to correct any conditions could result in termination of his parental rights, and he had nine months to correct any conditions. Following the admonishment, the State withdrew the petition to terminate respondent's parental rights.

¶ 18 The State called Shelby Moreland from CYFS as a witness. Moreland stated she had been B.A.'s caseworker since May 2017 and that B.A. was currently in a relative foster placement that was willing to provide permanency for him and his half-siblings. Respondent was cooperative with Moreland, maintained regular contact with CYFS, and participated in the services available to him at Putnamville. Respondent wanted to participate in services for a

return-home goal. His release date was set for March of 2018 and he reported he would obtain housing in Greencastle, Indiana, upon his release.

¶ 19 Moreland stated respondent had a job lined up at a sawmill upon his release and had some family support. She intended to conduct a background check on respondent and agreed that an integrated assessment would need to be completed. Respondent's residence in Greencastle was over two hours from B.A.'s current foster placement, which would be an issue for respondent with respect to scheduling a face-to-face visit. Moreland stated B.A. does not know respondent and has never had contact with him. She believed a therapeutic session would be required for a face-to-face visit to occur between respondent and B.A. If the court changed the permanency goal to return home, respondent would be permitted to write letters and send gifts to B.A.

¶ 20 The court changed the permanency goal for B.A. to return home in 12 months. The permanency goal for B.A.'s half-siblings, E.A. and I.A., would remain adoption. The court ordered visitation would be discretionary with CYFS due to respondent's incarceration.

¶ 21 D. May 2018 Permanency Review

¶ 22 On April 30, 2018, DCFS filed a permanency hearing report with the trial court. The report stated respondent had made satisfactory progress and reasonable efforts toward the permanency goal of return home within 12 months. It further indicated respondent was released from Putnamville on March 28, 2018, and secured housing in Greencastle, Indiana. B.A. began counseling with CYFS for the purpose of informing him that respondent was his biological father. B.A. reacted positively to this news, exchanged letters with respondent, and spoke to respondent twice on the telephone. CYFS planned to arrange a face-to-face meeting between B.A. and respondent in the presence of B.A.'s counselor.

¶ 23 On May 9, 2018, the trial court entered a permanency order indicating a permanency review hearing was held on May 3, 2018. The record does not contain a report of proceedings from this hearing. The court found the appropriate permanency goal for B.A. remained return home within 12 months and remained adoption for E.A. and I.A. The court further found respondent had made both reasonable progress and reasonable efforts toward the permanency goal.

¶ 24 E. August 2018 Proceedings

¶ 25 On August 7, 2018, the Court Appointed Special Advocate (CASA) for B.A. filed a report with the trial court following her visit with B.A. on July 30, 2018. The CASA noted that E.A. and I.A. had been adopted by their half-sister, Juan A.'s daughter Gina. Gina informed the CASA that respondent had ceased all contact with B.A. and had not called or attended visits. B.A. did not show any new behaviors since he discovered respondent was his father or when respondent ceased contact. B.A. did not ask about respondent but did have a picture of respondent that he showed to people. The CASA indicated B.A. had a strong bond with his half-siblings and foster family and appeared to be a happy and healthy child. The CASA recommended B.A. remain in his current placement.

¶ 26 DCFS also filed a permanency hearing report on August 7, 2018. The report indicated respondent had moved from his last known residence in Greencastle and did not report the move to DCFS. DCFS indicated they had no recent communications with respondent and his phone was no longer active. A caseworker with Indiana DCFS did a home visit for Illinois DCFS on May 24, 2018, to inspect respondent's residence. The Indiana caseworker indicated respondent had forgotten about their appointment and the encounter with him was "bizarre." Respondent became "verbally aggressive" in response to the caseworker's requests that he

replace the battery in the smoke detector and when the caseworker attempted to take pictures of the food in the refrigerator. However, the caseworker noted the home was clean, had working utilities, flushable toilets, running water, and "met minimum sufficient level."

¶ 27 CYFS attempted to arrange several visits for B.A. and respondent to meet in person. Respondent canceled the first meeting because he had a rash that required medical treatment. When CYFS attempted to reschedule, respondent stated he "thought that the visit was to be at a later date." When CYFS attempted to reschedule again, respondent's phone was inactive and the letter was returned because respondent had moved and had not informed anyone. B.A.'s therapist reported:

> "[B.A.] needs stability and it is unfair to him to be left in limbo. [Respondent] has access to several people within the agency to notify of any change in contact information in order to maintain connection with [B.A.] and he has failed to do so. This is confusing to [B.A.], and it is upsetting to him to have been let down by having several 'first visits' planned/scheduled and then [respondent] not following through with attending."

¶ 28 The report recommended the permanency goal remain return home within 12 months but indicated, "It is in [B.A.]'s best interest to establish a relationship with [respondent] prior to being placed with him. If no contact is made case will be taken to legal screening for goal change."

¶ 29 At the August 10, 2018, permanency hearing, the court indicated that B.A.'s half-siblings, E.A. and I.A., had been adopted by Gina. Respondent appeared in the custody of Danville Public Safety Building (PSB) personnel.

¶ 30 Andrew Wilson testified he was the current caseworker for B.A. but a new caseworker had been assigned and would take over after that day. Wilson relayed the events of the May 2018 inspection of respondent's home in Greencastle. Respondent had apparently moved sometime in July 2018 but did not notify the agency of his change of address, and his phone was no longer active. Respondent had not had contact with B.A. since a counseling session in June. After several attempts to schedule visits with B.A., respondent ceased all contact with the agency.

¶ 31 Wilson stated the Indiana caseworker told him the reason respondent did not want to have the home inspection in May was because he was moving soon. Respondent ultimately allowed the inspection, but the caseworker "just didn't have a good feeling about it." Wilson was not aware of respondent's present circumstances, and there were only "two or three" phone calls total between B.A. and respondent. Wilson stated that "it's been hard on B.A." B.A. was upset because respondent did not show up to the scheduled visits. Wilson was unaware that respondent was incarcerated and did not know how long he had been at PSB.

¶ 32 When the court asked whether DCFS had ever developed a service plan for respondent, Wilson stated it had not been completed because "[B.A.] was up for adoption," the agency had to open a new case, and "DCFS just finally cleared it to come through." Wilson did not know the status of respondent's parole.

¶ 33 At the conclusion of the hearing, the court changed the permanency goal to substitute care pending determination of termination of parental rights, stating:

> "As to the father, the court finds that during this reporting period he has not made either reasonable and substantial progress nor reasonable efforts toward returning the minor home. In order to justify such a finding, he must reengage in the case,

engage in the child's life and be consistent in his contacts with the child and the agency."

¶ 34 On August 10, 2018, the court entered an order changing the permanency goal for B.A. from return home within 12 months to substitute care pending determination of termination of parental rights.

¶ 35 F. August 2018 Petition to Terminate Parental Rights

¶ 36 On August 20, 2018, the State filed a petition to terminate respondent's parental rights, alleging he was an unfit parent under section 50/1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) because (1) he failed to maintain a reasonable degree of interest, responsibility, or concern as to B.A.'s welfare (*id.* § 1(D)(b)); (2) he was depraved (*id.* § 1(D)(i)); (3) he deserted B.A. for more than three months preceding the commencement of the action (*id.* § 1(D)(c)); and (4) B.A. was in the temporary custody and guardianship of DCFS, respondent was incarcerated at the time the petition for termination of parental rights was filed, respondent had been repeatedly incarcerated as a result of criminal convictions, and his repeated incarceration had prevented him from discharging his parental responsibilities to B.A. (*id.* § 1(D)(s)).

¶ 37 G. October 2018 Adjudicatory Hearing

¶ 38 At the October 25, 2018, adjudicatory hearing, the State presented the court with certified copies of respondent's criminal convictions. Over respondent's objection, the court admitted a certified copy of an order for sentencing filed September 26, 2013, in the circuit court of Benton County in Benton, Indiana. The court took judicial notice of its own records, including respondent's convictions in Vermilion County case Nos. 11-CF-431, 10-CF-58, 95-CF-31, and 94-CF-46.

¶ 39 1. *Respondent*

¶ 40 The State called respondent as a witness. Respondent admitted to a conviction for forgery in Vermilion County case No. 94-CF-46, for which he served three years in prison. Respondent served that sentence concurrently with a conviction for deceptive practices and forgery in Vermilion County case No. 95-CF-31. Respondent received probation for his convictions for misuse of a credit card and forgery in Vermilion County case Nos. 10-CF-58 and 11-CF-431, respectively. Respondent served 12 years in the Indiana Department of Corrections for two convictions in Benton County, Indiana. He was released from prison on March 28, 2018.

¶ 41 Respondent stated he was currently incarcerated at PSB. He was arrested on July 18, 2018, for two counts of battery of a peace officer, one count of disarming a peace officer, one count of attempt to disarm a peace officer, and two counts of resisting arrest. Respondent had not visited B.A. since his incarceration, but he had "written him every week since [he] was told [he] could." He had no visitation with B.A. during his previous prison sentences, had never paid child support, and was not able to care for B.A. while he was in custody.

¶ 42 Respondent stated he was given the opportunity to work towards reunification with B.A. in September 2017. While in prison, he took parenting classes, anger management classes, and life skills classes "without being asked by the Court or anybody." Upon his release from prison in March 2018, he obtained a job as a line worker at a sawmill. He made enough income from this job to support both himself and B.A. He rented a property at that time where he would have been able to care for B.A. He was baptized as a Jehovah's Witness and attended church. He was also involved in a Christian organization called My Kingdom Hall.

¶ 43 CYFS contacted respondent on several occasions to set up a visit for him to meet B.A. Respondent canceled the first visit because he contracted a "rash of some sort" that required

medical treatment. The second time, he canceled for financial reasons. He admitted that he had not complied with the terms of his parole up until he was arrested in July 2018. Respondent stated:

> "I was having problems getting my parole officer and CYFS to cooperate and I tried to find a job over here [in Illinois]. I obtained employment at Coultas Recycling. When I got over here it wasn't what I thought it would be. It didn't pay enough, it didn't cover the gas, it wasn't—it didn't work and plus the fact I left Indiana without asking my parole officer."

¶ 44 Respondent wanted to move to Illinois to be closer to B.A. and start a life there. The distance between him and B.A. had caused difficulties in his case. Respondent explained, "DCFS and CYFS sa[id] they couldn't cross state lines, and my parole officer told me I had to set up travel movement 30 days in advance and [DCFS] wanted me to travel every week to see [B.A.] They just weren't agreeing on anything."

¶ 45 2. *Suzzen Borcz*

¶ 46 Suzzen Borcz testified she was B.A.'s caseworker from February to May 2018. When she took over the case, her task was to refer B.A. for family counseling and establish a therapeutic relationship between respondent and B.A. When Borcz first became involved with the case, there was no service plan. Respondent had completed many of the services available to him in prison on his own, and the agency only asked respondent to comply with the terms of his parole and continue building a relationship with B.A. Respondent was compliant and cooperative while he was in prison and during the period of time leading up to the permanency hearing in May 2018.

¶ 47 3. *Cassandra Carter*

¶ 48 Cassandra Carter testified she worked for CYFS. She served as the supervisor on B.A.'s case from May 2018 to August 2018. Carter met with respondent in late May of 2018 to discuss visitation with B.A. The plan was to introduce B.A. and respondent at a therapeutic visit, and thereafter schedule standard visits that a caseworker or assistant would monitor. Respondent canceled the meeting scheduled for May 22, 2018, because he had a rash. There were no child and family team meetings or administrative care reviews scheduled for June, July, or August of 2018. The case never reached a point where respondent would participate in regular supervised visits outside of therapy.

¶ 49 4. *Gwen Parker*

¶ 50 Gwen Parker testified she worked for CYFS and had been B.A.'s caseworker since August 2018. Parker confirmed respondent was already incarcerated when she took over the case. Parker submitted a service plan to respondent for him to sign, but respondent never returned it. Since Parker had the case, respondent had not had any phone calls or in-person visits with B.A., but respondent did send B.A. several letters. The only service respondent needed to complete at that time was counseling, which he was unable to do while incarcerated at PSB.

¶ 51 At the conclusion of the State's evidence, the parties agreed to proceed with arguments in writing rather than orally.

¶ 52 On January 10, 2019, the court determined the State did not establish that respondent failed to maintain a reasonable degree of interest or concern for B.A. as alleged in the petition to terminate respondent's parental rights. However, the court found the State established by clear and convincing evidence respondent failed to maintain a reasonable degree of responsibility as to B.A.'s welfare. The court stated:

"[T]he things [respondent] was asked to do by the Agency, comply with the conditions of his parole and participate in family therapy intended to introduce him to a child he did not know, he failed in and failed within four months of his release. And he did so knowingly. He canceled each of the therapist visits. And although there was a medical reason for the first cancellation, the second reason was due to a failure to either properly budget his resources or to ask for assistance. He violated his parole by leaving the State of Indiana without permission and was arrested for a new offense. He remains in custody here to this day.

By knowingly violating his parole at a critical stage of this case, he has not demonstrated the reasonable degree of responsibility necessary to care for a child. There were no impediments to his compliance with his parole or his participation in family therapy. Those were the two things requested of him for reunification that would allow him to participate in the life of his child. The only impediments were his own detrimental behavior and lifestyle choices. Despite his expressions of interest and concern and affection, his conduct has not evidenced a reasonable degree of responsibility for his child's welfare."

¶ 53 The court also concluded the State proved by clear and convincing evidence respondent was depraved under section 50/1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)), stating:

"[Respondent] has nine prior felony convictions, at least one of which was within five years prior to the filing of the petition to terminate. That raises a rebuttable presumption under that section. It was incumbent upon [respondent] to rebut that

> presumption, coming forward with evidence, efforts, and rehabilitation or likelihood of rehabilitation. [Respondent] presented evidence that he obtained employment, obtained housing, obtained transportation, engaged in his church, upon being released from the Indiana Department of Corrections in March of 2018. Then within four months violated the terms of his parole and was arrested here in Illinois, failing to rebut then the presumption of depravity."

¶ 54 The court also found the State had not proven by clear and convincing evidence that respondent (1) deserted B.A. or (2) was incarcerated due to a criminal conviction at the time the petition to terminate parental rights was filed. Rather, respondent was incarcerated due to his inability to post bond. Thereafter, the court entered an order finding respondent unfit as alleged by the State in paragraphs 5(a)(3) and 5(b) of the petition to terminate respondent's parental rights.

¶ 55 H. Best-Interests Hearing

¶ 56 A best-interests hearing was held on March 1, 2019. Gwen Parker testified she was B.A.'s caseworker. Parker stated B.A. had been living with a relative foster placement since the case opened in 2015. His two half-siblings, who had already been adopted, lived there with him. B.A. was well-bonded to his foster placement, and he expressed a desire to be adopted like his siblings. B.A. was in second grade and doing well in school. His foster placement provided him with everything he needed, and they were willing to provide permanency through adoption. B.A. had never met respondent and had never replied to any of the letters respondent sent him. B.A. had family support in his current foster placement and enjoyed bowling and skating in the area where he lived. Parker believed B.A. felt loved and supported in his current placement.

¶ 57 Respondent testified he was B.A.'s father. Prior to his present incarceration and after he was released from prison in Indiana, respondent had been consistently employed. His work experience included work at a sawmill and construction company. He anticipated he would have the ability to pay child support upon the conclusion of his pending criminal case. Respondent stated that as soon as he found out B.A. was his son, he wrote to B.A. every week, except for several weeks in June and July of 2018. His intention when the case began was for B.A. to return to his custody. Respondent stated:

> "My wish is to care for my son myself. I have no desire to take him away from his siblings. If he wants to be with his siblings, I don't have an issue with that, because I know he loves his sisters and I know his sisters love him. I met them before he was ever born, but I have no desire to not be a part of his life. I want him to know who I am, and I feel he deserves to know that."

¶ 58 During argument, the State emphasized that because respondent had never met B.A., there was no bond between them. The State argued it was in B.A.'s best interests that he be adopted, citing B.A.'s need for stability and permanence, B.A.'s community ties in his current placement, the length of time he had spent in his current placement, and the bond he had with his current placement. The State asked the court to find it was in B.A.'s best interests that respondent's parental rights be terminated.

¶ 59 Respondent's counsel argued it was not in B.A.'s best interests to terminate respondent's parental rights. Although B.A. had spent the last several years in his current placement and had bonded with his foster family, respondent indicated he did not want to remove B.A. from his siblings or cause him any distress. Under normal circumstances,

respondent had the financial capability of caring for B.A. and was willing to take on the role of a non-custodial parent in this situation given B.A.'s attachment to his other family members.

¶ 60 The guardian *ad litem* agreed with the State that respondent's parental rights should be terminated, citing the length of time B.A. had been in care, that he was only eight years old, and he had spent the majority of his life in his current placement. He was very bonded to his siblings and foster parent. Respondent had a short period of time to maintain or build a relationship with B.A. and failed to do so.

¶ 61 The court then proceeded to its best-interests finding:

> "The Court, in considering the issue of best interest, is required to and has considered factors in the context of the child's age, the developmental needs, including the physical safety and welfare of the child, the development of his identity, his background and ties, including familial ties, ties about—to his community, his sense of attachments, including where he actually feels love, attachment and a sense of being valued. His sense of security within his current placement, his sense of familiarity with that placement; continuity of affection at that placement. It is now the least disruptive placement for this child. His wishes and long-term goals, his ties to the community, his school, his need for permanence, his need for stability and continuity of relationships with parent figures and with siblings. The risks attendant to entering and being in substitute care. The Court has considered the preferences of persons available to care for the child, including the foster parents. The Court has noted the preference of the father, and he is not available to care for this child at this time.

> The Juvenile Court Act is designed to provide permanence and stability for children. Certainly at [B.A.]'s age, he knows and won't forget that he has a natural father out there somewhere, but he has a right to permanence and stability, and you can't provide that to him now, and he shouldn't have to wait.
>
> The Court finds that the State has established by a preponderance of the evidence that it is in the best interest of [B.A.] that the parental rights of respondent be terminated and that the Guardianship Administrator of the Illinois Department of Children and Family Services be appointed *** [t]he guardian and custodian with the power to consent to his adoption."

¶ 62 On March 21, 2019, the trial court entered an order terminating respondent's parental rights.

¶ 63 This appeal followed.

¶ 64 II. ANALYSIS

¶ 65 On appeal, respondent argues the trial court erred in finding (1) he was an unfit parent and (2) it was in B.A.'s best interests to terminate respondent's parental rights. We disagree and affirm.

¶ 66 A. Fitness Determination

¶ 67 A trial court may involuntarily terminate parental rights if it finds (1) the State proved the parent unfit by clear and convincing evidence based upon grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and (2) termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A

reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 68 In this case, the trial court found the State proved by clear and convincing evidence respondent was unfit under the Juvenile Court Act because he (1) failed to maintain a reasonable degree of responsibility towards B.A.'s welfare (750 ILCS 50/1(D)(b) (West 2016)) and (2) was depraved. *Id.* § 1(D)(i)

¶ 69 As stated, the trial court found respondent unfit for failing to maintain a reasonable degree of responsibility as to B.A.'s welfare *and* that respondent was depraved. However, in his brief respondent challenges only the former finding and not that he was depraved. "Section 1(D) of the Adoption Act [citation] sets forth numerous grounds under which a parent may be considered 'unfit.' Any one ground properly proved is sufficient to enter a finding of unfitness." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1049, 796 N.E.2d 1175, 1181-82 (2003). In this case, respondent effectively concedes his unfitness by failing to present any reasoned argument on the ground of depravity. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); see also *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001) (holding that by failing to challenge all of the grounds on which the trial court determined them unfit, the respondents conceded unfitness based on the unchallenged ground and it was unnecessary to address their additional arguments).

¶ 70 However, even if we were to address the propriety of the trial court's depravity finding, we would find the evidence in support of it was sufficient. Section 50/1(d)(i) provides that a rebuttable presumption of depravity exists if the parent has been convicted of at least three felonies and one of the convictions occurred within five years of the petition for termination of

parental rights. 750 ILCS 50/1(D)(i) (West 2016). Here, the record supports the court's finding that respondent "ha[d] nine prior felony convictions, at least one of which was within five years prior to the filing of the petition to terminate." The record further supports the court's finding respondent failed to rebut the presumption of depravity. In fact, the evidence demonstrated that respondent was arrested in July 2018, only four months after his release from prison in Indiana.

¶ 71 B. Best-Interests Determination

¶ 72 At the best-interest stage of termination proceedings, the State has the burden of proving that termination is in a minor's best interest by a preponderance of the evidence and the trial court "must give full and serious consideration to the child's best interest." *In re Jay H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). Additionally, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' " *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005) (quoting *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004)).

¶ 73 The Juvenile Court Act sets forth several factors for consideration when determining a minor's best interest. 705 ILCS 405/1-3(4.05) (West 2016). Those factors must be considered in the context of the child's age and development needs and include (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks associated with substitute care; and (10) the preferences of the persons available to care for the child. *Id.*

¶ 74 On review, a trial court's best-interest determination will not be reversed unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay H.*, 395 Ill. App. 3d at 1071.

¶ 75 We find the court's best-interests determination was not against the manifest weight of the evidence. The record showed B.A. was well-bonded with his relative foster placement and siblings, he had strong ties to his community in his current placement, and all of his needs were being met. B.A. was eight years old at the time of the best-interests hearing and had spent the majority of his life in his current placement. The court and CYFS gave respondent ample opportunity to build a relationship with B.A. Though respondent made efforts at various points in the proceedings toward the goal of reunification, he ultimately failed as a result of his own conduct and frequent incarceration. We agree with the trial court that B.A. "has a right to permanence and stability, [respondent] can't provide that to him now, and [B.A.] shouldn't have to wait." Accordingly, the trial court's finding it was in B.A.'s best interests that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 76 III. CONCLUSION

¶ 77 For the reasons stated, we affirm the trial court's judgment.

¶ 78 Affirmed.