

¶ 3 Respondents appeal, asserting the trial court erred in finding them unfit and determining it was in H.W.'s best interest to terminate their parental rights. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 On December 17, 2013, the State took protective custody of H.W. and filed a petition for adjudication of wardship, (1) alleging H.W.'s environment was injurious to her welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2012)) due to Weston's drug use (count I), (2) asserting H.W. was neglected under section 2-3(1)(c) of the Juvenile Act in that she was born with a controlled substance in her system (count II), and (3) requesting termination of respondents' parental rights pursuant to section 2-21(5) of the Juvenile Act (count III). On December 26, 2013, the State filed an amended petition for adjudication of wardship, which added an additional ground for finding Weston unfit. Specifically, the request for termination of respondents' parental rights (count III) asserted Weston (1) failed to maintain a reasonable degree of interest, concern, and responsibility as to H.W.'s welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)); (2) had been subject to habitual drunkenness or addiction to drugs for at least one year prior to the State filing the petition pursuant to section 1(D)(k) of the Adoption Act; and (3) gave birth to H.W., who had a controlled substance in her system, and she previously had one of her children adjudicated neglected and failed to address her drug problem, pursuant to section 1(D)(t) of the Adoption Act,. As to Gilbert, the State argued for the termination of his parental rights because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility for H.W.'s welfare pursuant to section 1(D)(b) of the Adoption Act; and (2) was deprived as defined by section 1(D)(i) of the Adoption Act.

¶ 6

A. Adjudicatory Hearing

¶ 7 At the February 2014 adjudicatory hearing, the State presented numerous exhibits for the trial court's consideration. First, the State provided H.W.'s medical records, which showed H.W., in the days following her birth, suffered withdrawal symptoms from an unknown substance. Second, the State presented a certified copy of a prior finding of unfitness against Weston as to another child, J.W., in July 2011 (Vermilion County case No. 10-JA-94). Third, the State submitted a prior certified finding of unfitness against Gilbert as to another child, M.C., in 2013 (Vermilion County case No. 13-JA-08). Finally, the State presented four certified felony convictions for Gilbert: (1) possession of a controlled substance (720 ILCS 570/402(c) (West 2002)) in 2004; (2) possession of methamphetamine (720 ILCS 570/402(a)(6.5)(A) (West 2004)) in 2004; (3) aggravated battery (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)) in 2012; and (4) driving while license revoked (625 ILCS 5/6-303(a) (West 2012)) in 2013, the case for which Gilbert was incarcerated throughout the pendency of this case.

¶ 8 Tracy Vincent, an investigator for the Department of Children and Family Services (DCFS) testified, on December 10, 2013, she received a hotline call regarding the welfare of newborn H.W, who was suffering from withdrawal symptoms. Weston had a history of opiate use and had three prior indicated reports for abuse or neglect. Previously, in October 2012, Weston gave birth to another child who tested positive for opiates and methamphetamines. Weston did not have custody of her four other children. She surrendered her parental rights as to three of the children and gave one child up for a private adoption.

¶ 9 When Vincent met with Weston in the hospital following H.W's birth, Weston informed Vincent she had an addiction to opiates, specifically, hydrocodone and Vicodin. During her pregnancy, in November 2013, Weston said she began methadone treatment and

attended treatment each day until she gave birth to H.W. After her birth, H.W. suffered from withdrawal from either the opiates or methadone, which resulted in her remaining in the hospital for approximately 10 days while she received treatment. Both Weston's and H.W.'s urine screens at the time of birth tested negative for opiates. Vincent testified she did not speak with Gilbert about the case because he was incarcerated at the time of H.W.'s birth.

¶ 10 Next, Gilbert's son, Kane Huber, testified. According to Huber, he lived with Gilbert "a lot more than with my mom and my grandma." He specifically remembered living with Gilbert when he was 15- or 16-years old. Huber stated his father made sure his needs were met, that he attended school, and that he followed household rules. Additionally, Huber testified Gilbert maintained consistent employment when not incarcerated.

¶ 11 Gilbert testified he was currently incarcerated but expected to be released in May 2014. Prior to his incarceration, Gilbert resided with Weston and provided for her during the early stages of her pregnancy. He said he provided furniture for H.W. and helped decorate the nursery. However, he later admitted he and Weston were preparing the nursery in hopes of having a child, but they were not aware she was pregnant until after he began his May 2013 incarceration. Gilbert represented he engaged in substance-abuse treatment during his 2004 imprisonment. He said he had not used any illegal substances since that period of time. Further, Gilbert testified he maintained consistent employment after each term of imprisonment. He indicated he wanted an opportunity to raise his child upon his May 2014 release from prison.

¶ 12 Following the presentation of evidence, the trial court found the State proved H.W. neglected in that Weston subjected her to an injurious environment due to Weston's ongoing drug addiction (count I). However, the court determined the State failed to prove H.W. was born with a controlled substance in her system, as H.W.'s urine and umbilical-cord samples

returned negative results for drugs (count II). Finally, the court determined the State sustained its burden in proving respondents unfit (count III). With respect to count III as to Weston, the court noted Weston continued to take opiates after learning of her pregnancy, demonstrating a lack of interest, concern, or responsibility toward H.W. (count III(1)(a)). The court then determined the State failed to sustain its burden as to the other paragraphs. As to Gilbert, the court found he failed to maintain a reasonable degree of interest, concern, or responsibility toward H.W. (count III(2)(a)) and that he was deprived (count III(2)(b)), saying, "Don't think I really need to get into a long recitation as to why. It's pretty clear by the record."

¶ 13

B. Dispositional Hearing

¶ 14

In April 2014, the trial court conducted a dispositional hearing to determine the best interest of H.W. Weston failed to appear for the hearing, but the case proceeded despite her attorney's request for a continuance. Her attorney could not explain her absence from the proceedings.

¶ 15

The best-interest report compiled by DCFS documented the progress by respondents. Weston had been engaged in methadone treatment prior to the birth of H.W.; however, she quit the program in January 2014, stating she wanted to quit "cold turkey." Thereafter, Weston engaged in traditional substance-abuse treatment through New Directions, where she completed 26 of the 36 recommended hours of treatment before independently discontinuing services in February 2014. At the beginning of the case, Weston visited H.W. weekly, submitting clean drug drops on each occasion. Following the trial court's finding of unfitness, Weston missed a March 18, 2014, drug test, which was a prerequisite for visits, and did not visit H.W. from that point forward. When Weston regularly visited H.W., her caseworker noted Weston "was very attentive and affectionate toward" H.W. and the caseworker

had no concerns over Weston's parenting during those visits. As to Gilbert, the best-interest report indicated he remained incarcerated during the pendency of the case and, as such, no services had been provided.

¶ 16 According to the report, H.W. was bonded with her foster parents, who expressed an interest in adopting her. H.W. was meeting developmental milestones, eating appropriately, and sleeping well.

¶ 17 Linda Campbell, H.W.'s caseworker, testified her last contact with Weston was on March 5, 2014. Weston failed to appear for her April 9, 2014, appointment, and when Campbell attempted to contact her at her last known address, she learned Weston had moved. The phone numbers provided by Weston had been disconnected. According to Campbell, Weston discontinued substance-abuse treatment after the February 2014 fitness hearing. Campbell testified she had an opportunity to observe Weston and H.W. together during visits. She agreed Weston was attentive and affectionate during those visits. Prior to the adjudicatory hearing, Weston was cooperating fully with the service plan.

¶ 18 As to Gilbert, Campbell said he had not contacted DCFS, nor had he sent any gifts, money, or letters to H.W. DCFS had not provided Gilbert with any visits at the prison because the trial court denied visitation due to H.W.'s age.

¶ 19 When asked about H.W.'s current foster placement, Campbell said, "I feel like it's a wonderful home. It would be a good long-term placement for her." She testified H.W. had bonded with her foster parents. Additionally, she stated the foster family brought H.W. home from the hospital and cared for her during the period of withdrawal.

¶ 20 Gilbert testified he was going to be released from prison in May 2014. He stated he wanted to raise his daughter or, in the alternative, allow his father to adopt her. Gilbert said that through the pendency of the case, he had received no communication from DCFS.

¶ 21 On this evidence, the trial court terminated respondents' parental rights.

¶ 22 Both parties filed timely notices of appeal. We have consolidated respondents' cases for review.

¶ 23 **II. ANALYSIS**

¶ 24 On appeal, respondents argue the trial court erred in finding them unfit and determining it was in H.W.'s best interest to terminate their parental rights. We address these arguments in turn.

¶ 25 **A. Fitness Finding**

¶ 26 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.* We now turn to the finding of unfitness as to each parent.

¶ 27 **1. Gilbert**

¶ 28 Gilbert asserts the trial court erred by finding him unfit. In this case, the court determined the State proved Gilbert was unfit because he (1) failed to exercise a reasonable degree of interest, concern, and responsibility toward H.W. pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)); and (2) was deprived as defined by section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)). As the State points out, on

appeal, Gilbert fails to challenge the court's first finding with regard to Gilbert's fitness but, rather, challenges only the finding of depravity. This omission results in a concession that Gilbert was unfit on the unchallenged basis (*i.e.*, that Gilbert failed to exercise a reasonable degree of interest, concern, and responsibility), which obviates the need for this court to review the issue of depravity. See *In re J.J.*, 307 Ill. App. 3d 71, 76, 716 N.E.2d 846, 850 (1999) ("a finding of unfitness on any one ground obviates the need to review other statutory grounds"). This concession aside, the court's finding of unfitness based on depravity is supported by the manifest weight of the evidence.

¶ 29 When the State alleges depravity as grounds for terminating parental rights, it is incumbent upon the trier of fact to closely scrutinize the parent's character and credibility. *In re J'America B.*, 346 Ill. App. 3d 1034, 1046, 806 N.E.2d 292, 303-04 (2004). "Depravity of a parent may be shown by a course of conduct that indicates a moral deficiency and an inability to conform to accepted moral standards." *Id.* at 1047, 806 N.E.2d at 304. With regard to depravity, 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 2012).

A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003).

¶ 30 Here, the State presented evidence Gilbert accrued four felony convictions over the course of 10 years: (1) possession of a controlled substance (720 ILCS 570/402(c) (West 2002)) in 2004, (2) possession of methamphetamine (720 ILCS 570/402(a)(6.5)(A) (West 2004)) in 2004, (3) aggravated battery (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)) in 2012, and (4) driving while license revoked (625 ILCS 5/6-303(a) (West 2012)) in 2013. Both the aggravated-battery conviction and the driving-while-license-revoked conviction occurred within five years of the State filing its petition to terminate Gilbert's parental rights. Thus, the State met the statutory requirements to establish a rebuttable presumption of depravity.

¶ 31 It was then incumbent upon Gilbert to rebut the presumption of depravity. See *Shanna W.*, 343 Ill. App. 3d at 1166, 799 N.E.2d at 851. Huber, Gilbert's son, testified that Gilbert made him follow house rules, required school attendance, and provided Huber with necessities over the course of the few years Huber resided with Gilbert. Gilbert testified he had not "been really in any trouble in ten years," thereby downplaying his 2012 and 2013 felony convictions. Gilbert emphasized his steady employment between his periods of incarceration and testified he overcame his drug use after his 2004 incarceration. However, he failed to offer an explanation for his numerous convictions or demonstrate he has the ability to conform his behavior to accepted moral standards. Over the course of 10 years, Gilbert accrued drug offenses, an aggravated battery, and a driving offense. This demonstrates Gilbert's ongoing unwillingness or inability to follow the law, which supports the trial court's finding of unfitness.

Therefore, we conclude the court's finding of unfitness due to Gilbert's depravity was not against the manifest weight of the evidence.

¶ 32

2. *Weston*

¶ 33

Weston asserts she demonstrated a reasonable degree of interest, concern, or responsibility for H.W., and the trial court erred by finding to the contrary. In determining fitness, the court may find a parent unfit "for failing to maintain either interest, *or* concern, *or* responsibility; proof of all three is not required." (Emphases added.) *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1202 (2007). In reaching a decision, the court must consider the context and circumstances surrounding the parent's conduct. *In re K.B.*, 314 Ill. App. 3d 739, 753, 732 N.E.2d 1198, 1209 (2000). It is not enough for the parent to demonstrate some interest or affection; rather, the parent must demonstrate objectively reasonable interest, concern, or responsibility. *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 35, 999 N.E.2d 817. "[I]t is the parent's efforts to carry out parental responsibilities, rather than their success, which should be considered." (Internal quotation marks omitted). *In re Adoption of C.A.P.*, 373 Ill. App. 3d 423, 428, 869 N.E.2d 214, 219 (2007).

¶ 34

During the adjudicatory hearing, the caseworker testified Weston had numerous indicated findings against her and that she no longer had custody of her other four children. Weston was between eight and nine months' pregnant when she finally sought treatment for her drug addiction, at which time she began methadone treatment. Following her December 2013 birth, H.W. began suffering from withdrawal symptoms from either the opiates or methadone. Weston's choice to seek treatment prior to the birth of her child was commendable; however, her continued drug use throughout the majority of her pregnancy supported the trial court's finding that she lacked interest, concern, or responsibility for H.W. Given her self-professed history of

substance abuse, her brief period of confirmed sobriety as discussed during the adjudicatory hearing does not necessarily demonstrate *objectively reasonable* interest, concern, or responsibility. Although later volumes of the record reveal additional progress by Weston, such as her continued drug treatment, regular visits with H.W., and consistently negative drug drops, that evidence was not before the court at the adjudicatory hearing.

¶ 35 The trial court had the opportunity to listen to the witnesses and determine their credibility. Therefore, based on the evidence presented, we conclude the court's decision was not against the manifest weight of the evidence.

¶ 36 B. Best-Interest Finding

¶ 37 Respondents next assert the trial court erred in terminating their parental rights. We disagree.

¶ 38 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. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State 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.

¶ 39 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 2012). 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." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 40 Here, the record demonstrates H.W. had resided with a foster family since her release from the hospital at approximately 10 days old. According to her caseworker, H.W. had developed a bond with her foster family, and the foster family expressed interest in adopting her. The foster family assisted H.W. as she battled her withdrawal symptoms, providing both medication and comfort as needed. Her caseworker expressed no reservations about H.W. remaining in the home. Thus, the State demonstrated H.W.'s foster family protected her physical safety and welfare and provided her permanency with a family to whom she was attached.

