

NOTICE
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2014 IL App (5th) 140187-U

NO. 5-14-0187

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> J.F., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	White County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 11-JA-6
)	
Phillip N.,)	Honorable
)	Mark R. Stanley,
Respondent-Appellant).)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Stewart and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's finding that respondent had been convicted of at least three felonies, at least one within five years, was not against the manifest weight of the evidence.

¶ 2 The respondent, Phillip N., appeals the judgment of the circuit court of White County terminating his parental rights to J.F. On appeal, he argues that the circuit court's determination that termination of his parental rights was in J.F.'s best interests was contrary to the manifest weight of the evidence. For the following reasons, we affirm.

BACKGROUND

¶ 3

¶ 4 J.F. was born on October 24, 2009, to Angela F. and the respondent, Phillip N. Angela F. is not a party to the present appeal.

¶ 5 On March 9, 2011, the State filed a petition for the adjudication of wardship alleging that J.F. was neglected in that he was in an environment that was injurious to his welfare. In addition to numerous allegations of neglect directed at Angela F., the petition alleged that Phillip N. was incarcerated in the Illinois Department of Corrections and was not an appropriate caretaker for J.F. Following adjudicatory and dispositional hearings, J.F. was found to be a neglected minor, made a ward of the court, and placed in the custody of the guardianship administrator of the Illinois Department of Children and Family Services.

¶ 6 Between March 28, 2012, and November 6, 2013, five permanency orders were entered. Ultimately, the permanency goal was changed from returning J.F. home to substitute care pending termination of parental rights.

¶ 7 On November 7, 2013, the State filed a petition to terminate the parental rights of Angela F. and Phillip N., alleging that they were unfit persons as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). With respect to Phillip N. the State alleged that he was unfit in that, *inter alia*, he was depraved as defined by section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)).

¶ 8 At the hearing on parental fitness, the State introduced a certified copy of Phillip N.'s 2011 conviction for possession of methamphetamine. At the State's request and without objection from Phillip N., the court took judicial notice of Phillip N.'s 2010

convictions for home invasion and aggravated battery, and his 2002 conviction for aggravated criminal sexual abuse. Phillip N. testified that he was presently incarcerated for home invasion, aggravated battery, and possession of methamphetamine. He stated that he had been incarcerated on these convictions for four years and his projected release date was September 29, 2015. He further testified that he had completed a Lifestyle Redirection class and was entering a nine-month substance abuse program.

¶ 9 Following the parental fitness hearing, Angie F. and Phillip N. were found to be unfit persons as defined by the Adoption Act. The circuit court found Phillip N. to be unfit on the basis of depravity, in that he had been convicted of at least three felonies and that one of those felony convictions had occurred within five years of the filing of the petition seeking termination of his parental rights, and that he had not overcome the statutory presumption of depravity raised by those convictions.

¶ 10 The cause then proceeded to a best-interests hearing. Emily Beever testified as follows. She had been J.F.'s foster mother since he was 18 months old, almost three years. J.F. called Beever "mommy," and she wanted to adopt J.F. He had his own bedroom in his foster home and Beever had medical insurance covering J.F. J.F. has two siblings, one of whom is another foster child and one of whom is Beever's biological child. J.F. was very close to Beever's sister, with whom he attended church every Sunday, and at whose house he would occasionally spend the night. J.F. attended prekindergarten and has friends there.

¶ 11 Phillip N. testified that J.F. calls him "daddy." He also testified that when he is released from prison he planned to spend time with J.F. and get a job and look after J.F.

¶ 12 The court found that termination of Phillip N.'s parental rights was in J.F.'s best interests. The court noted that J.F. had been in foster care since he was 18 months old and now thought of his foster family as his family. With respect to Phillip N., the court noted that he would not be out of prison until September 2015. Phillip N. appeals.

¶ 13

ANALYSIS

¶ 14 On appeal, Phillip N. argues that the circuit court erred in finding that termination of his parental rights was in J.F.'s best interests. Although he frames his argument as a challenge to the circuit court's best-interests determination, his claims that he continued to exercise visitation with J.F. and that he completed a Lifestyle Redirection program and a substance abuse program could be interpreted as a claim that the circuit court's finding that he was unfit is contrary to the manifest weight of the evidence. Consequently, we will review both the unfitness determination and the best-interest determination.

¶ 15 The Juvenile Court Act of 1987 establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2012)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 16 In the present case, the circuit court found Phillip N. to be unfit based on depravity. "Depravity," for purposes of determining whether a parent is unfit, is an inherent deficiency of moral sense and rectitude (*In re S.W.*, 315 Ill. App. 3d 1153, 1158 (2000)) and is demonstrated by a series of acts or a course of conduct that indicates a moral deficiency and an inability or unwillingness to conform with accepted morality. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). Section 1(D)(i) of the Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2012). Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not depraved. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24.

¶ 17 At the hearing on parental fitness, the State introduced evidence that Phillip N. had been convicted of at least three felonies and that one of those convictions had occurred in 2011, thereby raising the statutory presumption of depravity. The only evidence Phillip N. offered which could rebut this presumption is that he completed several programs while in prison. While the completion of classes while in prison is commendable, it does not show rehabilitation. *In re A.M.*, 358 Ill. App. 3d at 254; *In re Shanna W.*, 343 Ill. App. 3d at 1167. We cannot say that the circuit court's determination that Phillip N. was an unfit person based upon depravity was contrary to the manifest weight of the evidence.

¶ 18 If the trial court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2)

(West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (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, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 19 In the present case, we cannot say that the circuit court's determination that termination of Phillip N.'s parental rights was in J.F.'s best interests is contrary to the manifest weight of the evidence. J.F. had been with his foster family a majority of his life and had bonded with them. Beaver testified that she would like to adopt J.F. By contrast, Phillip N. testified that he would not be released from prison until September

2015, and had only vague plans to get a job and take care of J.F. once he was released. In short, J.F. was fully integrated into his foster family, and Phillip N. failed to demonstrate that he would be able to provide for any of J.F.'s material or emotional needs.

¶ 20

CONCLUSION

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

¶ 22 Affirmed.