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2014 IL App (3d) 130722-U  
(Consolidated with 130723 and 130724)

Order filed January 24, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

A.D., 2014

<i>In re</i> C.P., L.J., and L.J., Jr.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors,	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	Appeal Nos. 3-13-0722, 0723, 0724
	)	(Consolidated)
Petitioner-Appellee,	)	Circuit Nos. 10-JA-289; 10-JA-290;
	)	11-JA-164 (Consolidated)
v.	)	
	)	
A.P.,	)	Honorable
	)	Chris Frederickson,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The court's finding that the State proved by clear and convincing evidence that mother was unfit based on depravity was not against the manifest weight of the evidence.

¶ 2 On March 20, 2013, the State filed three separate petitions for termination of parental rights on behalf of three minor children, C.P., L.J., and L.J., Jr., who had previously been found neglected based on living in an injurious environment with their mother. The termination petitions alleged the mother of the minors, A.P., was an unfit parent based on depravity after the court convicted mother of first degree murder of the minors' two-month old sibling. The trial court found the State proved mother's depravity during an unfitness hearing. At a later best interests hearing, the court found it was in the best interests of the minors to terminate mother's parental rights and allow the minors to be placed for adoption with their foster parents. Mother appeals the court's decision finding her unfit, but does not challenge the best interests findings. We affirm.

¶ 3

#### BACKGROUND

¶ 4 On October 4, 2010, the State filed multi-count neglect petitions on behalf of C.P., born October 3, 2007, and L.J., born November 24, 2008. Two of the counts involved the appellant mother in the instant case. The first count against mother alleged mother provided an injurious environment for the minors because the minors' two-month old sibling, J.P., died as a result of malnourishment and dehydration, on September 22, 2010, and mother did not follow through with necessary care and medical treatment for the baby. As a result of its investigation, the Department of Children and Family Services (DCFS) indicated a finding against mother for "Death by Neglect." The second count against mother, as set out in the petition filed on October 4, 2010, alleged, prior to J.P.'s birth, mother gave birth at home to twins, on June 20, 2009, but the babies were stillborn. Count II further alleged, after mother gave birth to the first twin at 5:30 a.m., on June 20, 2009, mother placed the baby in a plastic bag and went back to sleep. After

mother gave birth to the second twin at 9:30 a.m., mother also placed that baby in a plastic bag, placed the bag outside, and waited approximately six hours before contacting a doctor or the authorities.<sup>1</sup>

¶ 5 On July 13, 2011, the State filed a petition on behalf of a third child, L.J., Jr., who was born prematurely on June 23, 2011, after the 2010 death of two-month old J.P. This petition alleged mother continued to provide an environment injurious to her children's welfare because mother had not completed services necessary to have C.P. and L.J. returned to her care after the death of their two-month old sibling, J.P., on September 22, 2010. The court also adjudicated this minor, L.J., Jr., neglected, and named DCFS his guardian to allow placement of L.J., Jr., with his siblings outside of the care of mother.

¶ 6 On September 13, 2011, the Peoria County grand jury issued a three-count bill of indictment against mother (A.P.), charging two alternate counts of first degree murder and one count of endangering the life and health of a child, resulting from the 2010 death of J.P. After a bench trial, on October 1, 2012, Judge Stephen Kouri found mother guilty of one count of first degree murder (count II), one reduced charge of involuntary manslaughter (count I), and one count of endangering the life and health of a child (count III). Judge Kouri held a sentencing hearing, on November 30, 2012, and entered a judgment and conviction against mother for one count of first degree murder (count II), pursuant to 720 ILCS 5/9-1(a)(2) (West 2010), and sentenced her to a 29-year commitment to the Illinois Department of Corrections (DOC).

¶ 7 On March 20, 2013, the State filed three separate petitions for termination of parental

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<sup>1</sup> The trial court found C.P. and L.J. neglected pursuant to these petitions, found mother dispositionally unfit, and placed these two minors under the guardianship of DCFS.

rights on behalf of the three minor children, C.P., L.J., and L.J., Jr. All three petitions contained similar allegations that mother was an unfit parent, pursuant to section 50/1(D)(i)(2) of the Adoption Act (750 ILCS 50/1(D)(i)(2) (West 2012)), claiming mother was “a depraved person in that she was convicted of first degree murder of a child being the minor’s sibling who was two months of age at the time of the murder.”

¶ 8 The court held the unfitness hearing on the termination petitions on August 14, 2013. The family caseworkers testified about issues concerning the deceased minor, J.P., as well as mother’s involvement with the service plans for the family. The court took judicial notice of the petitions, adjudication, and disposition orders in the three consolidated juvenile cases involving these minors (Nos. 10-JA-289, 10-JA-290, and 11-JA-164). Additionally, the court admitted exhibits into evidence at the unfitness hearing including: State’s Exhibit No. 1, J.P.’s birth certificate; and State’s Exhibit No. 2, a certified copy of documents regarding mother’s murder charges and conviction in Peoria County case No. 11-CF-870, which included the three counts of indictment; the arraignment order; the trial order; an order indicating the court, on October 1, 2012, found mother guilty of “first degree murder, involuntary manslaughter and endangering the life and health of a child;” and the judgment and sentencing order indicating the court “adjudged” mother guilty of first degree murder (count II) and sentenced her to 29 years commitment to DOC.<sup>2</sup>

¶ 9 At the close of the hearing, the court found the statute provided that a parent is depraved if he or she is convicted of first or second degree murder of a child (750 ILCS 50/1(D)(i)(2)

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<sup>2</sup> The court also admitted additional evidence consisting of other reports presented as part of the service plans relevant to the pending juvenile proceedings.

(West 2012)). The court found it was clear that mother had been convicted of the murder of one of her children based on the evidence and the State proved mother unfit based on clear and convincing evidence.

¶ 10 Subsequently, the court held a best interests hearing on September 18, 2013. The court found it was in the minors' best interests to terminate mother's parental rights. Mother filed a notice of appeal challenging the court's September 18, 2013, order "finding that it was in the best interest of her minor children that her parental rights be terminated."

¶ 11 ANALYSIS

¶ 12 Initially, we note mother's notice of appeal specified she was challenging the court's order from September 18, 2013, finding it was in the best interests of the children to terminate mother's parental rights. However, mother's appellate brief does not address the 2013 best interests order but, rather, claims "the State failed to prove by clear and convincing evidence that mother was unfit and said finding was against the manifest weight of the evidence." The State has not challenged mother's deficient notice of appeal.

¶ 13 Supreme Court Rule 303(b)(2) requires a notice of appeal to "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. June 4, 2008). In addressing a similar issue in *In re D. R.*, this court noted the appeal from a subsequent final judgment draws into question all prior non-final orders and rulings which produced the judgment. *In re D.R.*, 354 Ill. App. 3d 468, 471 (2004) (citing *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979)). The *D.R.* case dealt with original juvenile proceedings, and specifically held that an adjudicatory order is a step in the procedural progression leading to the dispositional order. *D.R.*, 354 Ill. App. 3d at 473.

¶ 14 In the case at bar, we are dealing a latter phase of juvenile court proceedings involving the termination of parental rights. Proceedings on a petition for termination of parental rights involve a two-step, bifurcated approach where the court first conducts an unfitness hearing (705 ILCS 405/2-29 (West 2012); 750 ILCS 50/1(D) (West 2012)) and, if the trial court adjudicates the parent unfit based on the content of the petition to terminate parental rights, the court then must set the matter for a dispositional, or best interests, hearing where the court considers whether it is in the best interests of the child that parental rights be terminated. 705 ILCS 405/2-29 (2) (West 2012); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). Thus, the court's finding of unfitness is not a final and appealable judgment, but is an adjudicatory order in the procedural progression leading to the final dispositional judgment order when the court determines whether it is in the best interests of the minors to terminate the parental rights of their parent. *D.R.*, 354 Ill. App. 3d at 473. Accordingly, we conclude that, although mother did not identify the 2013 finding of unfitness entered prior to the best interests judgment terminating her parental rights in her notice of appeal, in the interests of justice, we elect to address the merits of the issue of unfitness, argued in mother's brief, with respect to the allegations of the 2013 petition seeking to terminate parental rights.

¶ 15 In the instant case, the sole issue mother raises on appeal is whether the State presented clear and convincing evidence to prove she was depraved based on her recent murder conviction as alleged in the three separate petitions seeking to terminate her parental rights with respect to her three remaining children following the death of infant J.P. The State contends the court's unfitness finding was not against the manifest weight of the evidence due to mother's criminal conviction.

¶ 16 During termination proceedings, the court must find that the State proved the parent’s unfitness, as defined in the Adoption Act (750 ILCS 50/1(D) (West 2012)), by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). On review, the trial court’s decision that a parent is unfit will not be reversed unless it is against the manifest weight of the evidence. *Id.* at 495. A trial court’s decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result. *Id.* at 498.

¶ 17 In the case at bar, the State claimed mother was unfit under section 50/1(D)(i)(2) of the Adoption Act. 750 ILCS 50/1(D)(i)(2) (West 2012). That section provides:

“ ‘Unfit person’ means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following \* \* \* :

\* \* \*

(i) Depravity. Conviction of any one of the following crimes shall create a presumption that a parent is deprived which can be overcome only by clear and convincing evidence: \* \* \* (2) first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012. 750 ILCS 50/1(D)(i)(2) (West 2012).

This section further provides, “[t]here is a rebuttable presumption that a parent is deprived if that parent has been criminally convicted of either first or second degree murder of any person as defined in the Criminal Code of 1961 or the Criminal Code of 2012 within 10 years of the filing date of the petition or motion to terminate parental rights.” *Id.*

¶ 18 On appeal, mother argues the State presented insufficient evidence to prove the existence

of her recent murder conviction, related to the death of infant J.P., because “[t]here is no order included in the Certified Copy Exhibit where the [d]efendant was found guilty by the trial court of any offenses.” Upon review of the record, State’s Exhibit No. 2, which the court admitted into evidence at the unfitness hearing, includes several certified documents from mother’s criminal case, Peoria County case No. 11-CF-870. State’s Exhibit No. 2 contains a copy of count II of the bill of indictment charging mother with first degree murder of J.P, “a child born prematurely on July 6, 2010,” in that mother, “without lawful justification while under a duty to provide care for and monitor the health of her son, J.P., knowingly withheld adequate nutrition and hydration from J.P. and ignored his heart and apnea monitor knowing said acts would cause great bodily harm or death to J.P., thereby causing the death of J.P. in violation of 720 ILCS 5/9-1(a)(2).”

¶ 19 Also included in State’s Exhibit No. 2 was an “Order,” entered by Judge Kouri on November 30, 2012. This order specifically included language that the court previously found defendant (mother) guilty, on Oct. 1, 2012, “of the charges of first degree murder, involuntary manslaughter and endangering the life and health of a child,” and set the matter for a sentencing hearing.

¶ 20 Finally, State’s Exhibit No. 2 contained a document entitled “Judgment - Sentence to Illinois Department of Corrections,” which indicated that defendant had been “adjudged guilty of the offenses enumerated below.” Thereafter, this document showed the court sentenced mother to a 29 year commitment to DOC for the offense of first degree murder (count II), 720 ILCS 5/9-1(a)(2) (West 2010). Page 2 of the judgment specifically provided, “That the \* \* \* Court’s finding of guilty to the charge(s) of First Degree Murder (Ct. II) is accepted and entered of record

and the court hereby enters judgment of the \* \* \* findings of guilty and convicts defendant of said charge(s).”

¶ 21 Based upon the evidentiary evidence, including the certified records of mother’s murder conviction, we conclude the trial court’s finding that the State proved, by clear and convincing evidence, mother’s depravity based on her conviction of first degree murder of her two-month old child, J.P., was not against the manifest weight of the evidence.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the decision of the circuit court of Peoria County finding mother unfit and terminating mother’s parental rights.

¶ 24 Affirmed.