

**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).

2014 IL App (3d) 130925-U

Order filed April 7, 2014

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> Y.H.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-13-0925
	)	Circuit No. 10-JA-158
v.	)	
	)	
G.H.,	)	
	)	
Respondent-Appellant).	)	Honorable Peter W. Church,
	)	Judge, Presiding.

---

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

**ORDER**

¶ 1 *Held:* The trial court did not err when finding respondent to be an unfit parent or when terminating respondent's parental rights.

¶ 2 The State filed a petition alleging respondent, G.H., neglected his minor child. The State asked the trial court to find respondent unfit. Following a hearing, the trial court granted the State's motion and found respondent an unfit parent. The matter then proceeded to a best

interests hearing after which the circuit court of Rock Island County found it was in the minor's best interests to terminate the parental rights of G.H. He appeals, claiming the finding of unfitness and decision to terminate his parental rights were against the manifest weight of the evidence.

¶ 3

### BACKGROUND

¶ 4

Respondent is the father of Y.H. Respondent's date of birth is February 2, 1987, and Y.H.'s date of birth is May 7, 2010. The mother of the minor is K.P.

¶ 5

On August 9, 2010, when the minor was only a few months old, the State initiated this case by filing a petition alleging neglect. Specifically, the petition alleged that the minor's environment was injurious to his welfare and that his parents "left the minor without supervision for an unreasonable period of time without regard for the mental or physical health, safety, or welfare of the minor." The petition continued by noting that on August 6, 2010, the minor and his two siblings, ages 21 months and 6 years old, were found alone in the home with a 5-year-old cousin. The six-year-old sibling stated she was often left in charge of the younger two children. The petition concluded by noting that other indicated reports existed, the most recent of which was filed on July 24, 2010, that claimed K.P. stabbed respondent in the hand with a knife while the children were present. The report noted that blood was found on the minor's bassinet after the incident, and K.P. found with "a large black eye and swollen left cheek, forehead and eye."

¶ 6

The day after the State filed the petition, the trial court held an evidentiary hearing and issued an order awarding temporary custody of the minor to the State. The matter proceeded to an adjudicatory hearing and, on October 8, 2010, the trial court entered a dispositional order finding the minor to be neglected. The dispositional order directed the Illinois Department of Children and Family Services (DCFS) to develop a permanency goal. The court further ordered

the respondent to attend and successfully complete parenting classes, domestic violence counseling, and to obtain and maintain appropriate housing. The trial court set the permanency goal of returning the minor home.

¶ 7 The trial court conducted a permanency review on May 10, 2011, at which time it found that the mother had not made satisfactory progress or even a reasonable effort toward returning the minor home. The court further found that respondent had made "nominal progress" toward returning the minor home. The court found the appropriate permanency goal to be returning the minor "home within twelve (12) months, where the progress of the parent is substantial, giving particular consideration to the age and individual needs of the minor."

¶ 8 The trial court's next permanency order, entered November 8, 2011, did not change the permanency goal of returning the minor home within 12 months. It noted, however, that the "parents are not making progress" and more specifically that the father had not made reasonable and substantial progress nor reasonable efforts toward returning the minor home.

¶ 9 Similarly, on January 27, 2012, the trial court entered another permanency order in which it did not change the permanency goal, yet found the parents failed to make reasonable progress toward the return of the minor. Subsequently, on May 4, 2012, the trial court changed the permanency goal to "substitute care pending determination of termination of parental rights" after, again, finding that the parents have not made reasonable efforts or substantial progress toward the return home of the minor. After three more permanency orders, dated August 17, 2012, November 16, 2012, and April 5, 2013, all of which found the parents failed to make reasonable progress, the State filed a supplemental petition to terminate parental rights.

¶ 10 In the State's petition, dated May 10, 2013, it alleged that the trial court adjudicated the minor neglected on October 8, 2010. The mother's address was currently unknown and the

respondent resided in the Western Illinois Correctional Center. The petition continued by alleging that respondent failed to complete a substance abuse evaluation, failed "to complete all but one UA (urinary analysis), and that was positive for THC, has been incarcerated since January 19, 2012 \*\*\* and has therefore failed to maintain appropriate housing or income, and \*\*\* has been convicted of at least 3 felonies under the laws of this State and at least one of those convictions took place within the past 5 years."

¶ 11 The matter proceeded to a fitness hearing on October 21, 2013, at which Monica Kindig from the Center for Youth and Family Services testified. Kindig noted that she was the caseworker for this case from its initiation until November of 2010. The minor was taken into protective custody due to domestic violence and inadequate supervision in the household. She created the initial service plan that called for respondent to complete domestic violence, mental health, and substance abuse assessments. The plan further called for respondent to complete parenting education and maintain housing and financial stability.

¶ 12 Janet Taylor took over the handling of the case in November of 2010. Kindig noted she supervised Taylor and that, "Overall, there was not significant progress made on the part of either of the parents towards having the children return home." She continued by noting that respondent started parenting classes, but was unsuccessfully discharged from them on January 3, 2011, for failing to comply with class guidelines, being disrespectful toward the instructor, and for smelling of marijuana.

¶ 13 Respondent did not complete the diagnostic assessment or substance abuse evaluation during the reporting period. He submitted one urine sample, which tested positive for THC. He did not complete his domestic violence assessment. Kindig noted that respondent was incarcerated while this matter was pending. Respondent attended 20 out of 23 scheduled visits

with the minor prior to May 10, 2011. This led the court to find on May 10, 2011, that respondent was making "nominal efforts" to comply with the service plan.

¶ 14 Kindig stated that respondent claimed to be a full-time student who installed car stereos on the side for extra money. He presented a certificate suggesting he completed 7.5 hours of parenting classes from March 1, 2011, through March 10, 2011. She did not consider this a completion of his parenting class requirement as the certificate did not come through Bridgeway's parenting program.

¶ 15 Kindig acknowledged there were no incidents of domestic violence between respondent and the minor's mother during the review period. She concluded her testimony, noting that respondent cooperated with the diagnostic assessment that took place at Robert Young Center for Community Mental Health on June 24, 2011.

¶ 16 Katie Morford testified that she is a family caseworker for the Center for Youth and Family Services and assumed responsibility for this case in July of 2011. She created the report filed with the court on October 25, 2011. The report indicates that respondent had been arrested for possession of cocaine and marijuana on August 14, 2011. She noted that respondent did well during visitations, but struggled to maintain focus on the minor due to preoccupation with his telephone. Visits ceased due to his incarceration.

¶ 17 Morford noted that respondent was released from jail during her second reporting period. He did not complete any urine drops during that time and made three out of four scheduled visits with the minor. Respondent was arrested during the next reporting period for possession with intent to deliver a controlled substance. He was convicted in April of 2012 and sentenced to three years' incarceration. These facts led the court to find that respondent had failed to make satisfactory progress toward the return home of the minor.

¶ 18 Morford noted that during the May of 2012 to August of 2012 review period, respondent was incarcerated and made no progress toward return. He engaged in no services while incarcerated. Respondent remained incarcerated during the August 2012 through October 2012 review period, as well as the October of 2012 through March of 2013 reporting period, failing to complete any services during these periods.

¶ 19 Morford noted that respondent completed a diagnostic assessment on June 24, 2011. The results of the assessment produced no recommendations for substance abuse treatment. Nevertheless, the agency required urine drops. She noted that respondent was "hostile" at his individual counseling sessions leading to termination of those sessions by counselor Penny Cain. He did not complete his parenting program. Morford did not know what services were available to him while incarcerated in the Department of Corrections and doubted he could have completed the recommended programs while incarcerated.

¶ 20 Morford stated that respondent was released from prison in July of 2013 and visited with his son three times after his release. He enrolled in parenting education with the Center for Youth and Family Solutions following his release, but had not been attending consistently.

¶ 21 Respondent testified on his own behalf. He claimed the minor's mother victimized him. He acknowledged his failure to complete the domestic violence assessment. He claimed to support himself with student loans and money received from installing electronics prior to his incarceration. While incarcerated, he had no access to counseling services. He stated he was not homeless prior to going to prison, but acknowledged that he did not have stable housing for the minor. Transportation issues resulted in him missing some visitations.

¶ 22 Following his testimony, the trial court found respondent to be an unfit parent. The matter proceeded to a best interests hearing to determine if it was in the child's best interests to terminate respondent's parental rights. The State again called Morford to testify.

¶ 23 Morford testified consistently with her previous testimony. She also noted that the minor was placed in traditional foster care and the foster parents expressed a desire to provide permanency through adoption. It was Morford's assessment that the minor's needs were being met in his current placement and it was in his best interests to terminate respondent's rights. Morford recommended changing the permanency goal to adoption.

¶ 24 Morford noted that respondent had been offered four visits since his release from prison and he had attended two of those. He was appropriate during both visits.

¶ 25 Respondent testified on his own behalf, noting that his two visits with his son went well. He planned on obtaining employment, he thought he could create a stable life for himself, and he intended to be able to take care of the minor at some point. He stated he loved the minor child, and then rested his case.

¶ 26 Ultimately, the trial court found that the State had proven it was in the minor's best interests to terminate the parental rights of respondent. The court entered an order to that effect on November 22, 2013. Respondent filed his notice of appeal November 27, 2013. This appeal followed.

¶ 27 ANALYSIS

¶ 28 Respondent raises two issues on appeal. Initially, he argues that the trial court's finding that he is an unfit parent is against the manifest weight of the evidence. He further argues that the trial court's finding that it is in the minor's best interests to terminate respondent's parental rights is against the manifest weight of the evidence.

¶ 29

A. Finding of Unfitness

¶ 30

When deciding a parent's fitness, the court is not to consider the best interests of the child but, rather, must focus on whether the parent's conduct falls within one or more of the several grounds of unfitness described in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2010); *In re D.D.*, 196 Ill. 2d 405, 417 (2001). A court's determination that clear and convincing evidence of a parent's unfitness has been shown will not be disturbed on review unless it is against the manifest weight of the evidence. *Id.* "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *Id.*

¶ 31

In the case at bar, the State alleged multiple grounds for respondent's unfitness which included:

"A. failure to make reasonable efforts to correct the conditions that were the basis for the removal of the child;

B. failure to make reasonable progress toward the return of the child to the parent within nine months after the adjudication of neglect;

C. failure to make reasonable progress toward the return of the child to the parent during any nine-month period after the end of the initial nine-month period following the adjudication of neglect: \*\*\*, and

D. depravity."

¶ 32

Parent "rights may be terminated upon proof, by clear and convincing evidence, of a single ground for unfitness" (*id.* at 422) and, as such, a "reviewing court need not consider additional grounds for unfitness cited by the trial court" when "parental rights are terminated

based upon clear and convincing evidence of a single ground." *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 33 Section 50/1(D)(i) of the Adoption Act states that 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, \*\*\* 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 2010).

¶ 34 In the present case, the State presented certified copies of respondent's convictions in four criminal cases, all from Rock Island County. Respondent did not object to the introduction of the certified convictions into evidence. In case number 2009-CF-704, respondent was convicted for felony obstruction of justice when he knowingly concealed and destroyed physical evidence by eating a rock of cocaine. In case number 2010-CF-732, the State convicted respondent of unlawful possession of a controlled substance, cocaine. In case numbers 2011-CF-737 and 2012-CF-51, the State convicted respondent of unlawful possession with intent to deliver a controlled substance, cocaine.

¶ 35 Respondent "concedes that his \*\*\* criminal convictions entered into evidence \*\*\* created a rebuttable presumption of depravity." Respondent argues, however, that his "exceptional efforts and progress made" overcame the presumption. We disagree.

¶ 36 The trial court specifically found that respondent did not rebut the presumption. The record reflects a LEADS (law enforcement agencies data system) search conducted on February 2, 2011, identified a total of 38 arrests attributed to respondent. Respondent continually committed drug related offenses in the period leading up to the termination petition, committing four felonies within four years. Respondent committed two felonies even after respondent had

been ordered to engage in court-mandated services and knew he was at risk of losing his parental rights. After being informed he needed to take certain steps to connect with his son, respondent impaired the process by becoming incarcerated then, shortly after his release, committing another felony that resulted in additional and prolonged incarceration. Instead of directing his attention to making reasonable efforts and progress toward the return home of his minor child, respondent continued to engage in felonious conduct. Respondent's acts were of sufficient duration and frequency to establish depravity.

¶ 37 We find the trial court's finding of unfitness based on depravity was not against the manifest weight of the evidence.

¶ 38 B. Termination of Parental Rights

¶ 39 "Once the State proves parental unfitness, the interests of the parent and the child diverge." *In re D.T.*, 212 Ill. 2d 347, 363 (2004). As such, once a trial court finds a parent unfit under one of the grounds in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)), the next step in an involuntary termination proceeding requires the court to consider whether it is in the best interests of the child to terminate parental rights, pursuant to the Juvenile Court Act. 705 ILCS 405/1-3 (West 2010); *In re D.T.*, 212 Ill. 2d at 366. The burden of proof lies with the State; it must prove by a preponderance of the evidence that termination is in the child's best interests. *Id.* The determination in this respect lies within the sound discretion of the trial court, especially when it considers the credibility of testimony presented at the best interests hearing. *In re G.L.*, 329 Ill. App. 3d 18, 25 (2002).

¶ 40 Section 1-3(4.05) of the Juvenile Court Act requires the trial court to consider a number of factors for termination within the context of the child's age and developmental needs. 705 ILCS 405/1-3(4.05) (West 2010). These include:

"(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, including;

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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 2010).

¶ 41 At the best interests hearing, the trial judge reviewed the hearing report prepared by Morford, which indicated that the minor was 3½ years old at the time of the report. He had been in foster care since he was five months old and lived with his half-sister. His foster mother met all of his needs and he referred to her as mama. The foster mother was very happy to have the minor in her life, and planned to continue contact between the minor and respondent as long as the minor wished to see respondent.

¶ 42 The minor's sense of familiarity and security were with his foster family given the length of time they cared for him. The report concluded that the minor needed permanency as more than three years had elapsed without either parent making reasonable efforts or reasonable progress in services.

¶ 43 Morford testified that she had no concerns regarding the abilities of the foster mother to provide permanence for the minor. The foster mother expressed a desire to provide permanence through adoption.

¶ 44 Ultimately, the trial court found it was in the minor's best interests to terminate respondent's parental rights. Respondent argues this finding is against the manifest weight of the evidence. Respondent reaches this conclusion claiming the evidence adduced below evinced his strong bond with the minor. We disagree.

¶ 45 The evidence below indicates that for much of the minor's life, respondent has been incarcerated and unable to meet with him. The minor was born on May 7, 2010. Due to incarceration, respondent had no visits with the minor from August 14, 2011, through November 7, 2011, or from January of 2012 through July 13, 2013. In July of 2013, the minor was 38 months old and respondent had spent roughly 23 of those months incarcerated. Between periods of incarceration, respondent attended three out of four visits and after his incarceration he

attended two out of four visits. The record very clearly shows that due to respondent's illegal activities, he has only visited with his minor child four times since August 14, 2011.

¶ 46 We find respondent's argument without merit that the evidence below evinced a strong bond between respondent and the minor. Given the record before us, we cannot say the trial court's finding that it is in the best interests of the minor to terminate respondent's parental rights is against the manifest weight of the evidence.

¶ 47 **CONCLUSION**

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 49 Affirmed.