

welfare, and placed them in the custody of the Department of Children and Family Services (DCFS).

¶ 5 Over the next several years following the findings of neglect, the circuit court entered numerous permanency orders finding that the respondent had not made reasonable and substantial progress toward returning the children home. Ultimately, the children's mother, Jennifer L., voluntarily surrendered her parental rights, and the State filed petitions to terminate the respondent's parental rights and for the appointment of a guardian with the power to consent to the adoption of the children. The petitions alleged that the respondent was unfit because (1) he failed to make reasonable efforts to correct the conditions that were the basis of the removal of the children (750 ILCS 50/1(D)(m)(i) (West 2010)), (2) he failed to make reasonable progress toward the return of the children during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2010)), and (3) he was deprived in that he had been convicted of five felonies under the laws of the State of Illinois and that one of the convictions took place within five years of the filing of the petition seeking termination of parental rights (750 ILCS 50/1(D)(i) (West 2010)).

¶ 6 A fitness hearing was held on August 5, 2013, to determine the respondent's fitness as to both children. The State entered into evidence certified copies of the respondent's five felony convictions. The most recent conviction, for burglary, had occurred within five years of the filing of the termination petitions. The following testimony was introduced.

¶ 7 Whitney Franklin testified that she was a foster care case manager with Christian Social Services and had been the foster care case manager for N.M. and M.M. for almost three years. She became the case manager for the children in October 2010. When Franklin took over the case, there was a service plan in place with the following goals: attend anger management classes, attend psychological individual counseling, and obtain housing.

Franklin testified that the respondent completed parenting and anger management classes while incarcerated in 2010. Franklin testified that the parenting classes the respondent took in prison would not qualify as parenting classes for purposes of the service plan because the children were not involved in the classes. Franklin further testified that after the respondent completed anger management classes in prison, he had two major disciplinary reports and had to spend time in segregation. As a result, he would have to do the anger management classes again. The respondent did not complete the psychological evaluation until January 2013.

¶ 8 Franklin was asked to testify about a service plan from March 2012. The goals for that service plan were that the respondent attend anger management classes, attend individual counseling, obtain housing, obtain a psychological evaluation, and obtain a legal source of income. He had engaged in individual counseling, but had attended only four sessions from July 9, 2012, to August 5, 2013. Sessions were supposed to be weekly. Franklin testified that the respondent was released from prison in July 2011 but was back in prison by November 2011 because of a parole violation. He was then released in March 2012. The respondent had asked about resuming visitation when he was released and was told that he would need to discuss the matter with his attorney.

¶ 9 The next service plan was from September 2012. The goals were the same as the service plan from March 2012. The respondent's progress was graded as unsatisfactory. He did not attend weekly individual counseling and did not provide a proper proof of income. Another service plan from March 2013 had the same goals as the previous service plans. The plan indicated that the respondent had made unsatisfactory progress. Franklin acknowledged that the respondent received a certificate of participation for anger management classes. However, the respondent had subsequently demonstrated an anger problem. Franklin testified that the respondent's overall progress from March 2012 until the time of the hearing

was unsatisfactory.

¶ 10 On cross-examination, Franklin testified that the goal of attending parenting classes was removed from the service plan goals in March 2011. While the respondent continuously received a rating of "unsatisfactory" for failing to attend anger management classes, the respondent was told by the anger management group that it would not be beneficial for him to be involved in both individual counseling sessions and anger management sessions because it would be confusing to have two different counseling methods at the same time. Franklin also testified that a permanency order dated June 25, 2012, showed that the court had found that the respondent had made reasonable efforts toward returning both children home.

¶ 11 On redirect examination, Franklin testified that though she had recommended to the court that the respondent was making reasonable efforts in June 2012, her opinion had changed since that time, and she determined that he was not making reasonable efforts.

¶ 12 The respondent testified as follows. With respect to housing, he was on parole and was ordered to stay in a halfway house in Springfield, Illinois. He was not employed anywhere. His source of income, which had come from social security disability payments, stopped when he went to prison. At the time of the hearing, the respondent was attempting to get those payments reinstated. He admitted that he had only been to four counseling sessions in the course of a year when he was required to attend monthly sessions. The respondent's stated reason for missing eight counseling sessions was that he was falsely accused of stealing and was therefore incarcerated for two weeks but was released when the matter was resolved.

¶ 13 The respondent also testified regarding the burglary conviction. He and Jennifer L. were in a Moto Mart and she took a bottle of liquor and placed it in a diaper bag. They were confronted by police at a nearby bus stop. The respondent told police that he had taken the

liquor so that Jennifer L. would not be taken into custody.

¶ 14 At the close of the fitness hearing, the court noted that it had considered the testimony, the reports, and the other evidence presented at the hearing. The court found that, with respect to M.M., the State had proved by clear and convincing evidence (1) that the respondent had failed to make reasonable efforts to correct the conditions that were the basis of the removal of the child in that he had not obtained adequate housing, (2) the respondent had failed to make reasonable progress toward M.M.'s return during any nine-month period after the initial nine-month period following the adjudication of neglect in that the respondent failed to obtain a legal source of income or adequate housing, and (3) that the respondent was depraved in that he had been convicted of five felonies under the laws of the State of Illinois, and that one conviction had taken place within five years of the filing of the petition seeking termination.

¶ 15 With respect to N.M., the court found that the State had proven by clear and convincing evidence that the respondent had failed to make reasonable progress toward the return of the child during any nine-month period after the initial nine-month period following the adjudication of neglect because there was no legal source of income or adequate housing, and that the respondent was depraved because he had been convicted of five felonies under the laws of the State of Illinois, where one conviction took place within five years of the filing of the petition seeking termination.

¶ 16 Following the finding that the respondent was unfit, the circuit court held a best-interests hearing that same day. Because the respondent does not appeal the determination that the termination of his parental rights was in the children's best interests, we will not set forth the evidence adduced at the best-interests hearing. At the conclusion of the best-interests hearing, the court determined that it was in the best interest of the children to terminate the respondent's parental rights.

¶ 17 From the circuit court's order finding him to be an unfit parent, the respondent appeals.

¶ 18

ANALYSIS

¶ 19 The Act establishes a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). First, the State must prove by clear and convincing evidence that the parent is an unfit parent as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption 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. *In re M.F.*, 326 Ill. App. 3d 1110, 1114 (2002). A finding is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, and not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890. The State need only prove one statutory ground to show that a parent is unfit. *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003).

¶ 20 If the court determines that the parent is unfit, the court next determines whether it is in the child's best interests that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010). As noted above, the respondent does not challenge the circuit court's determination that termination of his parental rights was in the children's best interests. Consequently, we review only the circuit court's determination that the respondent was unfit.

¶ 21 One of the grounds upon which the respondent was determined to be unfit was depravity. Depravity has been defined as an inherent deficiency of moral sense and rectitude. *In re A.L.*, 301 Ill. App. 3d 198, 202 (1998). Section 1(D)(i) of the Adoption Act creates a rebuttable presumption that a parent is deprived if the parent has been convicted of at least

three felonies and one of those convictions occurred within five years of the filing of the petition for the termination of parental rights. 750 ILCS 50/1(D)(i) (West 2010); see *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166-67 (2003). The presumption can be overcome only by clear and convincing evidence. 750 ILCS 50/1(D)(i) (West 2010).

¶ 22 In this case, the State introduced evidence of five felony convictions. The most recent conviction, for burglary, had occurred within five years of the filing of the termination petitions. The respondent argues that the presumption of depravity was rebutted where the burglary conviction was the only conviction which had occurred after the birth of N.M. and M.M., and where he had testified that he had not actually committed that offense. We disagree. Section 1(D)(i) contains no requirement that the convictions giving rise to the presumption of depravity occur after the birth of the child, and, with respect to his claim that he had not committed the burglary, the respondent was tried and convicted of that offense, and his conviction was affirmed on direct appeal (2013 IL App (5th) 110500-U).¹ We will not extend our analysis to his claim of innocence. See *In re Donald A.G.*, 221 Ill. 2d 234, 252 (2006).

¶ 23 Because the respondent failed to rebut by clear and convincing evidence the presumption of depravity raised by his prior felony convictions, the circuit court's determination that he was an unfit parent based on depravity is not contrary to the manifest weight of the evidence.

¶ 24 Having found that the circuit court's determination that the respondent was unfit based on depravity is not contrary to the manifest weight of the evidence, we need not address the respondent's arguments with respect to the other grounds upon which he was found unfit.

¹We omit the case name from the citation in the interest of preserving the minors' anonymity.

¶ 25

CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 27 Affirmed.