

NOTICE
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2014 IL App (5th) 140048-U

NO. 5-14-0048

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> K.G., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Saline County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 10-JA-30
)	
Jimmy L.,)	Honorable
)	Todd D. Lambert,
Respondent-Appellant).)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in determining that the respondent was an unfit parent or that termination of his parental rights was in the minor's best interest, and therefore the judgment terminating the respondent's parental rights is affirmed.

¶ 2 The respondent, Jimmy L., appeals from the circuit court's judgment terminating his parental rights as to his daughter, K.G. He contends that the circuit court's finding that he was an unfit parent, and its finding that termination of his parental rights was in the best interest of K.G., were against the manifest weight of the evidence. This court disagrees with those contentions, and affirms the judgment.

¶ 3

BACKGROUND

¶ 4 The minor herein, K.G., was born on September 3, 2004. Her biological mother was E.G., and her biological father was Jimmy L. The parents were never married to each other. On September 14, 2010, the circuit court adjudged K.G. a neglected minor (see 705 ILCS 405/2-21(1) (West 2010)) in that her environment was injurious to her welfare (see 705 ILCS 405/2-3(1)(b) (West 2010)) due to ongoing domestic violence between E.G. and a paramour (not Jimmy L.). Subsequently, the court declared K.G. a ward of the court and awarded guardianship to the Guardianship Administrator of the Department of Children and Family Services (DCFS). See 705 ILCS 405/2-22(1), (6) (West 2010). The longstanding permanency goal was the return of K.G. to E.G.'s household. However, on June 12, 2012, E.G. executed a "Final and Irrevocable Consent to Adoption by a Specified Person or Persons: DCFS Case," wherein she consented to the adoption of K.G. by D.A. and R.A., who were K.G.'s foster parents. In that same document, E.G. expressed her understanding that she was irrevocably and permanently giving up all parental rights to K.G. in the event the adoption occurred. See 705 ILCS 405/2-29(1.1) (West 2012); 750 ILCS 50/10 (West 2012). E.G. is not a party to this appeal.

¶ 5 On July 10, 2012, the State filed a motion to terminate Jimmy L.'s parental rights pursuant to the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). The motion named Jimmy L. the "putative father" of K.G. (see 750 ILCS 50/1(R) (West 2012)), and stated that his whereabouts were unknown. The State alleged that Jimmy L. was an unfit parent due to a failure to maintain a reasonable degree of interest, concern, or

responsibility as to K.G.'s welfare. See 750 ILCS 50/1(D)(b) (West 2012). On September 4, 2012, Jimmy L., an Illinois Department of Corrections inmate, appeared in court and requested a paternity test and the appointment of counsel. The court granted both of those motions. In January 2013, a DNA test established that Jimmy L. was in fact the biological father of K.G.

¶ 6 On June 11, 2013, the court conducted a hearing on the question of whether Jimmy L. was an unfit parent. Rebecca Bennett, a caseworker with Christian Social Services, testified that her agency located Jimmy L. at the Taylorville Correctional Center. Sometime afterward, at the request of the agency, Jimmy L. completed an "integrated assessment" form, the purpose of which was to allow the agency to "establish services" for Jimmy L. At some point, Jimmy L. informed Bennett that he was "doing services in prison." Jimmy L. signed a consent allowing the agency to obtain from the prison information about those services, but he later revoked his consent, thus precluding the agency from obtaining the information it needed in order to determine whether he was receiving the necessary services.

¶ 7 Jimmy L. testified that he resided at the Taylorville Correctional Center, where he was serving a sentence for "[d]eliveries of cocaine." On those charges, he had been continuously incarcerated since June 2011. Since the birth of K.G. on September 3, 2004, his only other period of imprisonment was a six-month stint, with a custody date of February 10, 2009, for the offense of theft between \$300 and \$10,000. His other felony convictions were for aggravated battery, tampering with a security system, and obstruction of justice. Until going to prison for cocaine deliveries, Jimmy L. worked "off

and on" for eight years at a coal mine, at a metal plant, and laying concrete. He had a GED and attended college for one year.

¶ 8 In regard to K.G., Jimmy L. acknowledged that she was eight years old at the time of the fitness hearing and did not know him at all. However, he thought that K.G. probably would recognize him if she saw him because "kids—they automatically know who their parents are." At a minimum, K.G. would be able to sense that he "meant no harm to her." While E.G. was pregnant with K.G., Jimmy L. did not spend much time with her, due to his "moving around and stuff" and to his conflicts with E.G.'s other acquaintances. However, he did live with E.G. for part of the pregnancy. At some point during the pregnancy, E.G. told Jimmy L. that he was not the father of her unborn child. Jimmy L. did not know who the father was, and he never asked E.G. who the father was, since he was "not a jealous-type guy." He never thought that he could possibly be the father. He knew all along that he had sex with E.G. at approximately the time K.G. was conceived. Nine months after he and E.G. had sex, E.G. gave birth to K.G., and Jimmy L. was aware of that birth at the time. Jimmy L. acknowledged knowing the basics of how women become pregnant. Nevertheless, it was not until September 2012, when the issue of paternity was raised in court, that Jimmy L. had any idea that he could possibly be the father of K.G. He did not request DNA testing years before September 2012 because he did not know K.G.'s whereabouts; he knew only that she was somewhere in Saline County. Over the years, he never thought that he would be able to locate K.G. or E.G. He did not know for a fact that he was K.G.'s father until January 2013, when he learned the result of the DNA test.

¶ 9 Jimmy L. disputed part of Rebecca Bennett's testimony, insisting that he never revoked the consent that allowed her agency to obtain information about him from the prison. He maintained that he cooperated with the agency as much as possible, and he took parenting classes in prison. Jimmy L. did not consider himself an unfit parent, did not think that terminating his parental rights would be in K.G.'s best interest, and did not want his parental rights terminated. Instead, he wanted to "step up and be a man."

¶ 10 E.G. testified that Jimmy L. lived with her during the first two months that she was pregnant with K.G. She did not tell Jimmy L. that he was the father, and Jimmy L. never asked whether he was. E.G. started "showing" six months into the pregnancy, after she had stopped living with Jimmy L. Seven months into the pregnancy, Jimmy L. told her that she looked fat, and she told him that she was pregnant. He asked her who the father was, and she answered that it was not he. On the day she gave birth to K.G., E.G. telephoned Jimmy L. and spoke with him. During that conversation, Jimmy L. asked E.G. whether he was K.G.'s father, and she told him that he was not. Jimmy L. replied that he would arrange for DNA testing, and she told him, "don't worry about it. You're not going to go on the birth certificate anyways." She told Jimmy L. that he could not sign K.G.'s birth certificate. E.G. further testified that she did not want to see Jimmy L.'s parental rights terminated, and that she was trying to help him to avoid such termination. E.G. thought that she had been deceived into surrendering her own parental rights as to K.G., and she wanted to "fight for [her] daughter back." E.G. acknowledged that Jimmy L. wrote her a letter, dated October 22, 2012, wherein he asked E.G. to mail him " 'more

pictures of you and our child.' " She also acknowledged that Jimmy L. wrote a letter to K.G., dated October 23, 2012, which he signed, "your dad."

¶ 11 After all the evidence was presented, the State moved to amend its motion to terminate Jimmy L.'s parental rights. Without objection, the State was allowed to add a second ground of unfitness, "depravity," in that Jimmy L. had been criminally convicted of at least three felonies under Illinois law and at least one of these convictions took place within five years of the filing of the petition seeking termination of parental rights, pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)).

¶ 12 At the conclusion of the fitness hearing, the judge concluded that the State had proved each of the two grounds of unfitness. The judge commented at some length on the original ground of unfitness—a failure to maintain a reasonable degree of interest, concern, or responsibility as to K.G. According to the judge, Jimmy L. began to suspect that he was K.G.'s biological father long before the DNA test positively established his paternity. The judge credited E.G.'s testimony that on the day K.G. was born, Jimmy L. told E.G. that he was going to arrange for a DNA test. Despite Jimmy L.'s "substantial reason to believe" that he was K.G.'s father, the judge remarked, "there's been no evidence that he's done anything over the last eight years absent—other than this letter to her in October of 2012 to show interest, concern, support or responsibility for [K.G.]."

¶ 13 On August 14, 2013, the court held another hearing, this one on whether termination of Jimmy L.'s parental rights would be in the best interest of K.G. Caseworker Rebecca Bennett testified at this hearing, as well. Bennett testified that K.G. had been living with D.A. and R.A., who were K.G.'s foster parents and godparents, since

2010. K.G.'s younger half-sister, M.H., also lived there. (M.H. was the child of E.G. and a man unrelated to K.G.'s case.) In Bennett's estimation, D.A. and R.A. provided K.G. with a safe and loving home and with all necessities such as medical care. They transported K.G. to school, where K.G. performed well and had friends, and to extracurricular activities. K.G. was very attached to D.A. and R.A., referred to them as dad and mom, and wanted to change her last name to theirs. K.G. was happy in D.A. and R.A.'s household and wanted to remain there. K.G. did not know Jimmy L. and therefore was frightened of him; she did not want to meet him. Bennett further testified that her agency and she personally were of the opinion that K.G.'s best interest would be served by allowing K.G. to remain with, and to be adopted by, D.A. and R.A.

¶ 14 Without objection, the State placed into evidence certified copies of Jimmy L.'s convictions. Altogether they showed six felony convictions, including three convictions that were entered within five years of the date the motion to terminate Jimmy L.'s parental rights was filed. On June 22, 2012, Jimmy L. was convicted of two Class 1 felonies, namely: unlawful possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(2) (West 2010)) and unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2010)). On October 20, 2009, he was convicted of theft (720 ILCS 5/16-1(a)(1)(A) (West 2008)), a Class 3 felony. In 2007, he was convicted of aggravated battery (720 ILCS 5/12-4(b)(1) (West 2004)), a Class 3 felony, and tampering with a fire safety system (720 ILCS 5/16-22 (West 2006)), a Class 4 felony. In 2004, he was convicted of obstructing justice (720 ILCS 5/31-4(a) (West 2004)), a Class 4 felony.

¶ 15 Jimmy L. testified that the termination of his parental rights would not be in K.G.'s best interest. He thought that he should be involved in his daughter's life so that she would "know that somebody loves her." He confirmed that he would be released from prison in December 2014. He also expressed his firm belief that he had been reformed during his latest stint in prison, explaining that "after you've been in [prison] so long you start to realize that the stuff and everything ain't even worth it." According to Jimmy L., he had made "kind of a step forward in getting a job," and he had found a place to live in West Frankfort.

¶ 16 The court-appointed guardian *ad litem* opined that terminating Jimmy L.'s parental rights would be in the best interest of K.G.

¶ 17 At the conclusion of the best-interest hearing, the court found that K.G. was "thriving" and "living a dream life" with her loving and supportive foster parents. The court noted that Jimmy L. was not due to be released from prison until December 2014, and predicted that "quite a bit of time" would be needed in order to see whether Jimmy L. could develop a relationship with K.G. This lengthy process, according to the court, would deprive K.G. of the "permanency" she deserved. Accordingly, the court granted the State's motion to terminate Jimmy L.'s parental rights. Jimmy L. filed a timely notice of appeal from the judgment.

¶ 18 ANALYSIS

¶ 19 In the appellant's brief that he filed in this court, Jimmy L. framed the issue on appeal as follows: "Whether the trial judge erred in finding that [Jimmy L.] was an unfit parent and the best interest of the minor would be served by a complete and permanent

severance of the parent-child relationship." The heading for his argument reads as follows: "The circuit court's decision to terminate [Jimmy L.'s] parental rights over [K.G.] was against the manifest weight of the evidence and should be reversed." However, Jimmy L.'s argument focuses solely on the circuit court's determination of unfitness. Jimmy L. does not present any cohesive argument, or citations to authority, concerning the court's determination that terminating his parental rights was in the best interest of K.G. Any contention in an appellant's brief must be supported by cohesive arguments and citations to authority; otherwise, the contention is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993) ("Bare contentions in the absence of argument or citation of authority do not merit consideration on appeal and are deemed waived."). Because Jimmy L.'s contention regarding the best-interest determination is not supported by cohesive argument or citation to authority, it is forfeited. Nevertheless, this court chooses to consider the best-interest determination, along with the unfitness determination. See, e.g., *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 438 (2008) (forfeiture presents limitations on the parties, not on reviewing courts).

¶ 20 As previously mentioned, Jimmy L. argues that the circuit court erred in finding him an unfit parent. At a fitness hearing, the State has the burden of proving parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2012); 750 ILCS 50/1(D) (West 2012); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The circuit court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067

(2004). Where a circuit court determines that a parent is unfit, this court will not disturb that determination unless it was contrary to the manifest weight of the evidence, *i.e.*, unless "the opposite conclusion is clearly apparent." *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). Only one statutory ground is necessary to prove that a parent is unfit. 750 ILCS 50/1(D) (West 2012); *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). One such ground is a parent's "depravity." 750 ILCS 50/1(D)(i) (West 2012). Depravity is not defined in the statute, but Illinois case law defines it as "an inherent deficiency of moral sense and rectitude." *Stalder v. Stone*, 412 Ill. 488, 498 (1952). "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this 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 2012). The statutory presumption of depravity is rebutted once a respondent brings forth opposing evidence, and the issue of depravity is then decided based on the evidence presented at the fitness hearing. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005).

¶ 21 In the instant case, the State established that Jimmy L. has been convicted of six felony counts, and three of these convictions—for unlawful possession of a controlled substance with intent to deliver, unlawful delivery of a controlled substance, and theft—were entered within five years before the July 10, 2012, filing of the motion to terminate his parental rights. With this evidence, the rebuttable presumption of depravity arose.

¶ 22 At the fitness hearing, Jimmy L. did not present any evidence to rebut this presumption. At the subsequent best-interest hearing, he testified that he had completed a

parenting class in prison, and he expressed his firm belief that he had been rehabilitated. However, case law is clear that a parent's completion of some classes while in prison does not show rehabilitation. See, e.g., *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003) (also commenting that rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely"); *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 30.

¶ 23 Under these circumstances, the circuit court's determination that Jimmy L. was depraved was certainly not contrary to the manifest weight of the evidence. There was no error in the determination that Jimmy L. was an unfit parent.

¶ 24 Although, as previously mentioned, only one statutory ground is necessary to prove that a parent is unfit, this court also notes that the State proved by clear and convincing evidence that Jimmy L. was unfit to have K.G. due to his failure to maintain a reasonable degree of interest, concern, or responsibility for K.G.'s welfare (see 750 ILCS 50/1(D)(b) (West 2012)), which was the original ground for termination of parental rights. Jimmy L. knew all along that he had sex with E.G. at approximately the time she became pregnant with K.G., and that E.G. gave birth to K.G. nine months afterward. At least from the time of K.G.'s birth, Jimmy L. suspected that he was the father. Indeed, any man with a basic knowledge of "the birds and the bees" would have had such suspicions. Yet, Jimmy L. did nothing to establish or acknowledge his paternity. Apparently, he did not even register with the Putative Father Registry. See 750 ILCS 50/12.1 (West 2012). Nothing in the record suggests that he offered to help with the expenses associated with K.G.'s birth. Several years passed, and Jimmy L. apparently

had no contact or communication with K.G. or with E.G., and did not provide any support, financial or otherwise, to K.G. He was, in short, the epitome of a person who failed to maintain a reasonable degree of interest, concern, or responsibility as to his child's welfare.

¶ 25 Jimmy L. also asserts on appeal that the circuit court erred in determining that termination of his parental rights was in the best interest of K.G.

¶ 26 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). 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). At the best-interest stage of termination proceedings, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re T.A.*, 359 Ill. App. 3d 953, 959 (2005). This court will not reverse the trial court's best-interest

determination unless it was against the manifest weight of the evidence. *Jay. H.*, 395 Ill. App. 3d at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 27 Here, the circuit court's best-interest determination was clearly not contrary to the manifest weight of the evidence. As the circuit court found, K.G. was "thriving" in the loving, supportive home of her foster parents, who had been caring for her continuously for close to half her life. K.G. loved her foster parents and felt safe and secure with them. The household included K.G.'s half-sister. K.G. had all the necessities. She had friends. She was performing well in school, and participated in extracurricular activities. Unsurprisingly, K.G. wished to remain with her foster parents. Meanwhile, K.G. had no relationship with Jimmy L., a six-time felon who was in prison during the proceedings below and who will not be released until December 2014. These facts warranted the termination of Jimmy L.'s parental rights.

¶ 28 CONCLUSION

¶ 29 The circuit court did not err in determining that Jimmy L. was an unfit parent or that terminating his parental rights was in K.G.'s best interest. Accordingly, the circuit court's judgment is affirmed.

¶ 30 Affirmed.