



counsel having sought and received two extensions of time in which to file an appellate brief, Randall S.W.'s brief on appeal was due on October 5, 2012. On October 1, 2012, appointed counsel filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). On October 3, 2012, this court entered an order giving Randall S.W. proper notice and granting him until November 13, 2012, to file briefs, objections, or any other documents supporting his appeal. He has not filed a response. We have considered appointed counsel's motion to withdraw as counsel on appeal and the attached memorandum. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant appointed counsel's motion to withdraw and affirm the judgment of the circuit court of Edwards County.

¶ 3 On January 26, 2010, Randall S.W. was charged with four counts of aggravated battery to a child. The information alleged that on or about December 20, 2009, Randall S.W. broke the arm of his two-month-old son, M.D.W. Randall S.W. subsequently pled guilty to one count of aggravated battery to a child and was sentenced to 18 years' imprisonment. His conviction and sentence were affirmed on appeal in 2012 IL App (5th) 100539-U (unpublished order pursuant to Supreme Court Rule 23).

¶ 4 On December 22, 2009, the State filed a petition for the adjudication of wardship, alleging that M.D.W. was an abused minor. Following an adjudicatory hearing, the circuit court found M.D.W. to be abused, and that the abuse had been inflicted by Randall S.W. and Bethany M., M.D.W.'s mother. On February 26, 2010, the circuit court entered a dispositional order making M.D.W. a ward of the court and placing him in the custody of the Department of Children and Family Services (DCFS).

¶ 5 On April 21, 2011, Catholic Social Services filed with the court a permanency report

indicating that Randall S.W.'s projected release date from the Illinois Department of Corrections was April 22, 2025, and recommending that Randall S.W.'s and Bethany M.'s parental rights be terminated.

¶ 6 On April 28, 2011, the State filed a petition to terminate the parental rights of Randall S.W. and Bethany M., alleging, *inter alia*, that Randall S.W. was an unfit person as defined by sections 1(D)(b), (g), (m)(i), and (m)(ii) of the Adoption Act (750 ILCS 50/1(D)(b), (g), (m)(i), (m)(ii) (West 2010)). On February 7, 2012, Bethany M. appeared with counsel and executed a final and irrevocable consent to the adoption of M.D.W. On March 8, 2012, the State filed a supplement to its motion to terminate parental rights, adding and alleging that Randall S.W. was unfit in that he was depraved (750 ILCS 50/1(D)(i)(7) (West 2010)).

¶ 7 A parental fitness hearing was held on March 9, 2012. Randall S.W. testified that he had pled guilty to aggravated battery of a child and was presently incarcerated for that offense. While incarcerated, he completed anger management and domestic violence classes. He wrote M.D.W. at least once or twice a month. At the conclusion of the hearing, the circuit court found that the State had proved by clear and convincing evidence that Randall S.W. was unfit on the basis of depravity.

¶ 8 A best-interest hearing was held on April 27, 2012. According to the evidence adduced at the hearing, M.D.W.'s foster father had been a conservation police officer with the Illinois Department of Natural Resources for 20 years, and his foster mother was a mental health counselor who owned her own business. M.D.W. had been in their care since March 2010. They had five other children and lived in a 2,300-square-foot home with seven bedrooms. They considered M.D.W. as much their child as their biological children. They wanted to adopt M.D.W. and their other children were very much in favor of the adoption.

¶ 9 The DCFS case manager assigned to M.D.W.'s case testified that she visited M.D.W. and the foster family on a monthly basis. M.D.W. was doing very well and was bonded with

his foster family. She also testified that none of Randall S.W.'s relatives except his mother ever expressed any interest in having M.D.W. placed with them. She stated that DCFS did not place M.D.W. with Randall S.W.'s mother because there was some suspicion that she could have caused some of the alleged bruising to M.D.W. and because as one of M.D.W.'s caretakers, she should have noticed his previous injuries. She also stated that Randall S.W.'s mother had been verbally hostile and verbally aggressive towards caseworkers.

¶ 10 Randall S.W. testified that he did not want to have his parental rights terminated and that he preferred that M.D.W. be placed in the care of one of his relatives so that he could have more contact with M.D.W. He acknowledged his scheduled release date from prison was 2025 and that he would not be able to provide M.D.W. a safe and loving home until then. Several of Randall S.W.'s relatives, including his mother and sister, testified that they desired to raise M.D.W. They had not made their wishes known to DCFS, however, and none of them were licensed foster parents.

¶ 11 At the conclusion of that hearing, the circuit court found that, after considering the factors set forth in section 1-3(4.05) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-3(4.05) (West 2010)), it was in M.D.W.'s best interest that Randall S.W.'s parental rights be terminated. Randall S.W. appeals.

¶ 12 Initially, we note that although motions to withdraw as counsel on appeal pursuant to *Anders* are typically made in criminal appeals, the *Anders* procedure has been held to be applicable in cases where counsel has been appointed for indigent parents appealing the termination of their parental rights. *In re Keller*, 138 Ill. App. 3d 746, 486 N.E.2d 291 (1985).

¶ 13 The Juvenile Court Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2008). 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 2008)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889, 819 N.E.2d 813, 819 (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.

¶ 14 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 2008). 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, 899 N.E.2d 469, 479 (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, 818 N.E.2d 1214, 1228 (2004). 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, 817 N.E.2d 954, 968 (2004).

¶ 15 In the present case, the circuit court found Randall S.W. 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, 735 N.E.2d 706, 709 (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, 831 N.E.2d 648, 654 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 850 (2003). Section 1(D)(i)(7) of the Adoption Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of aggravated battery of any child. 750 ILCS 50/1(D)(i)(7) (West 2010). The presumption

can be overcome only by clear and convincing evidence. 750 ILCS 50/1(D)(i) (West 2010).

¶ 16 The State introduced evidence at the parental fitness hearing that Randall S.W. had pled guilty to and been convicted of aggravated battery of a child, M.D.W., and this evidence created a presumption that Randall S.W. was depraved. Randall S.W. testified that he wrote M.D.W. once or twice a month and that he had completed anger management and domestic violence classes while incarcerated. The circuit court did not find this evidence sufficient to overcome the presumption of depravity. Reviewing the record, we cannot say that the circuit court's determination that Randall S.W. was unfit based on depravity was contrary to the manifest weight of the evidence.

¶ 17 We next consider whether the circuit court's determination that termination of Randall S.W.'s parental rights was in M.D.W.'s best interests. The evidence adduced at the best-interest hearing demonstrates that M.D.W.'s foster parents are financially stable and able to provide for his physical safety and welfare. He has been with the foster parents for most of his life and his identity has been forged in that environment. He is familiar with that environment, and it provides him with permanence and stability. The foster parents show love and affection for M.D.W., and their other children think of him as the foster parents' natural child. Viewing the evidence in light of section 1-3(4.05), we cannot say that the circuit court's decision to terminate Randall S.W.'s parental rights was contrary to the manifest weight of the evidence.

¶ 18 For the foregoing reasons, the motion of appointed counsel to withdraw as counsel is granted, and the judgment of the circuit court of Edwards County is affirmed.

¶ 19 Motion granted; judgment affirmed.