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2014 IL App (4th) 140169-U

NO. 4-14-0169

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

July 1, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: M.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 13JA8
BENJAMIN GILBERT,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In October 2013, the State filed a petition to terminate the parental rights of respondent father, Benjamin Gilbert, and mother, Melanie Keith (not a party on appeal), as to their daughter, M.C. (born September 18, 2012). In January 2014, the trial court found Gilbert unfit and determined it was in M.C.'s best interests to terminate Gilbert's parental rights.

¶ 3 Gilbert appeals, asserting the trial court erred in finding him unfit and determining it was in M.C.'s best interests to terminate his parental rights. For the following reasons, we affirm.

¶ 4

## I. BACKGROUND

¶ 5 In January 2013, the State filed a petition for adjudication of neglect, alleging M.C.'s environment was injurious to her welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)) due to (1) her parents' drug use (count I), (2) unsafe living conditions within the home (count II), and (3) her parents' unresolved mental-health issues (count III). The petition named Gilbert as a putative father. At the time, M.C. resided with Keith and Keith's paramour, another putative father of M.C. Later that month, the trial court found it was an immediate and urgent necessity to place M.C. in shelter care and into the temporary custody of the Department of Children and Family Services (DCFS).

¶ 6 In March 2013, paternity testing revealed Gilbert as M.C.'s father. In April 2013, the trial court conducted an adjudicatory hearing, at which Gilbert stipulated M.C. was exposed to unsafe living conditions in Keith's home (count II). In providing its factual basis, the State indicated the home in which M.C. resided with Keith and Keith's paramour had "carbon monoxide issues." Additionally, Keith's mental health history and drug use, along with her paramour's instability, contributed to DCFS' decision to remove M.C. from the home. At the time of the hearing, M.C. resided with her maternal grandfather and his wife. Following a May 2013 dispositional hearing, the trial court found it was in M.C.'s best interests to make her a ward of the court based on the parents being unfit, unwilling, and unable to care for, protect, or supervise M.C. The court then granted guardianship to DCFS.

¶ 7 During an August 2013 permanency hearing, Michael Tolles, Gilbert's caseworker at the Center for Youth and Family Solutions, testified as to Gilbert's progress. According to Tolles, shortly after the dispositional hearing, Gilbert received a sentence to the Department of Corrections (DOC) with a prospective release date in May 2014. Due to those

circumstances, Gilbert had neither visited with M.C. nor engaged in services. In the meantime, M.C. continued to reside with her maternal grandfather and his wife. Gilbert's only interaction with M.C. during the pendency of the case was a brief meeting during the March 2013 paternity testing. However, Tolles stated Gilbert requested visits with M.C. after learning he was her biological father. Tolles mailed Gilbert a client-service plan but did not know whether Gilbert received it after transferring to a new facility.

¶ 8 In October 2013, the State filed a petition to terminate the parental rights of Gilbert and Keith. As to Gilbert, the State alleged he was unfit as described in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) in that he (1) abandoned M.C.; (2) failed to demonstrate a reasonable degree of interest, concern, or responsibility; (3) deserted M.C. for more than three months preceding the filing of the petition to terminate his parental rights; (4) was deprived; and (5) had been repeatedly incarcerated, which prevented him from discharging his parental duties.

¶ 9 In January 2014, termination proceedings commenced with the fitness hearing. Gilbert was present for the proceedings; Keith did not appear for either stage of the termination proceedings. The trial court considered a January 7, 2014, permanency report, which stated Gilbert expressed concern about M.C.'s safety if the court returned her to Keith. He felt M.C. would be safe with him. Gilbert anticipated being released from prison in May 2014 and did not believe he presented any risks to M.C. The report indicated that prior to his May 2013 incarceration, Gilbert testified positive for cannabis.

¶ 10 The State then presented four certified felony convictions for Gilbert: (1) possession of a controlled substance (720 ILCS 570/402(c) (West 2002) in 2004; (2) possession of methamphetamine (720 ILCS 570/402(a)(6.5)(A) (West 2004)) in 2004; (3) aggravated

battery (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)) in 2012; and (4) driving while license revoked (625 ILCS 5/6-303(a) (West 2012)) in 2013, the case for which Gilbert was serving a DOC sentence at the time of the hearing.

¶ 11 Tolles, who remained the caseworker throughout the case, testified that Gilbert requested visits with M.C. during his incarceration, but the trial court denied the request due to M.C.'s young age. The day of the May 2013 dispositional hearing, Tolles interviewed Gilbert and learned Gilbert expected to receive a prison or jail sentence at the end of the month.

¶ 12 Once Gilbert received a DOC sentence, Tolles communicated with Gilbert by mail. In July 2013, Tolles sent Gilbert a service plan and a letter identifying the services that were available to Gilbert in prison. Specifically, Tolles told Gilbert to (1) complete individual counseling to address anger management, (2) attend domestic-violence counseling, (3) participate in parenting education, (4) complete a substance-abuse evaluation and comply with any recommended treatment, and (5) attend the "lifestyles redirection" program offered by the prison. To Tolles' knowledge, Gilbert did not complete any of those services. However, Tolles did not attempt to contact DOC to determine whether Gilbert had completed any of the recommended services. According to Tolles, Gilbert never sent gifts, cards, or letters to M.C.

¶ 13 Gilbert testified he attempted to enroll in the services recommended by Tolles. He provided a letter indicating he participated in a domestic-violence class. Additionally, Gilbert stated he signed up to enter (1) DOC's "lifestyle redirections" program, (2) a class for "inside-out-dads," and (3) substance-abuse treatment. Gilbert stated he wrote to Tolles twice, both times requesting visits with M.C. He anticipated being released in May 2014.

¶ 14 After considering the evidence, the trial court first determined Gilbert did not maintain a reasonable degree of interest in M.C., stating that his imprisonment did not prevent

him from calling her or sending cards, gifts, or letters. In so finding, the court noted, "the fact that you're in prison in and of itself suggests that you have no responsibility as to the child's welfare." Additionally, the court found the State demonstrated Gilbert was depraved and that his repeated incarcerations prevented him from discharging his parental duties. Finally, the court found the State proved Gilbert abandoned M.C. but failed to prove Gilbert deserted M.C. for more than three months prior to the commencement of the termination proceedings.

¶ 15 After a brief recess, the best-interest stage of the termination proceedings commenced. Tolles testified M.C. resided with her maternal grandfather and his wife, where she had been placed throughout the pendency of the case. He stated M.C. and her grandfather interacted "very, very well" and that they were bonded. Two other children, M.C.'s cousins, lived in the home as well and Tolles characterized the relationship as healthy, with the two cousins being protective of M.C. Tolles represented M.C. was not in need of any services, nor did she have any developmental problems. Her grandfather, age 56, indicated he was willing to adopt her, as he and his wife had already adopted the other two children in the home. Tolles indicated he had no reservations about M.C. remaining with her grandfather.

¶ 16 Gilbert testified, upon his release from prison, he intended to continue his employment with the construction company where he was employed prior to his incarceration. He stated he intended to live at his father's house in Danville, Illinois. Gilbert said he would provide support for M.C. and attend any classes necessary to create a relationship with her.

¶ 17 On this evidence, the trial court found it was in M.C.'s best interests to terminate the parental rights of Gilbert.

¶ 18 This appeal followed.

¶ 19

## II. ANALYSIS

¶ 20 On appeal, Gilbert argues the trial court erred in finding him unfit and determining it was in M.C.'s best interests to terminate his parental rights. We address these arguments in turn.

¶ 21

### A. Fitness Finding

¶ 22 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The trial court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.* "[A] finding of unfitness on any one ground obviates the need to review other statutory grounds." *In re J.J.*, 307 Ill. App. 3d 71, 76, 716 N.E.2d 846, 850 (1999).

¶ 23

When the State alleges depravity as grounds for terminating parental rights, it is incumbent upon the trier of fact to closely scrutinize the parent's character and credibility. *In re J'America B.*, 346 Ill. App. 3d 1034, 1046, 806 N.E.2d 292, 303-04 (2004). "Depravity of a parent may be shown by a course of conduct that indicates a moral deficiency and an inability to conform to accepted moral standards." *Id.* at 1047, 806 N.E.2d at 304. With regard to depravity, section 1(D)(i) of the Adoption Act provides:

"[t]here 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, or under federal law, or the criminal laws of any United States territory; 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).

A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003).

¶ 24 Here, the State presented evidence Gilbert accrued four felony convictions over the course of 10 years: (1) possession of a controlled substance (720 ILCS 570/402(c) (West 2002)) in 2004, (2) possession of methamphetamine (720 ILCS 570/402(a)(6.5)(A) (West 2004)) in 2004, (3) aggravated battery (720 ILCS 5/12-4(b)(18), (e)(2) (West 2008)) in 2012, and (4) driving while license revoked (625 ILCS 5/6-303(a) (West 2012)) in 2013. Both the aggravated battery conviction and the driving-while-license-revoked conviction occurred within five years of the State filing its petition to terminate Gilbert's parental rights. Thus, the State met the statutory requirements to establish a rebuttable presumption of depravity.

¶ 25 It was then incumbent upon Gilbert to rebut the presumption of depravity. See *Shanna W.*, 343 Ill. App. 3d at 1166, 799 N.E.2d at 851. Gilbert testified that he was attempting to fulfill the terms of the service plan by participating or enrolling in the required classes. However, he failed to offer an explanation for his numerous convictions or demonstrate he has the ability to conform his behavior to accepted moral standards. Over the course of 10 years, Gilbert accrued drug offenses, an aggravated battery, and a driving offense. This demonstrates Gilbert's ongoing unwillingness or inability to follow the law, which supports the trial court's finding of unfitness. Therefore, we conclude the trial court's finding of unfitness due to Gilbert's depravity was not against the manifest weight of the evidence. Because we conclude the court did not err in finding Gilbert unfit due to his depravity, we need not review the remaining

grounds upon which the court found Gilbert unfit. See *J.J.*, 307 Ill. App. 3d at 76, 716 N.E.2d at 850.

¶ 26 B. Best-Interest Finding

¶ 27 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interests of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interests of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 28 The focus of the best-interest hearing is determining the best interests of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

- "(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 \*\*\*;
- (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 2012).

¶ 29 Here, the record demonstrates M.C. has resided with her maternal grandfather and his wife for most of her young life, and that her grandfather expressed his intent to adopt her. According to her caseworker, M.C. has developed a close bond with her grandparents and her two cousins that live within the home. Her caseworker had no reservations about M.C. remaining with her grandfather. Thus, the State demonstrated M.C.'s grandfather protects her physical safety and welfare, and provides her permanency with a family to whom she is attached.

¶ 30 Conversely, the evidence demonstrates Gilbert is unable to provide for M.C.'s needs. Gilbert remained incarcerated throughout the majority of this case and developed no relationship with his daughter. While we understand Gilbert was unaware he was the father of M.C. until March 2013, he did not subsequently take steps to establish a relationship with her. Though the trial court denied him prison visits with M.C. due to her age, Gilbert expressed no other signs of interest in M.C., such as phone calls, letters, gifts, or inquiries into her welfare. Even assuming Gilbert was released from prison in May 2014, he would not be in a position to provide immediate permanency for M.C. because he would still need to complete the service plan, thus denying M.C. permanency for several more months. Though Gilbert believed he

could provide safety and provide for M.C.'s needs, his belief was conditioned upon his ability to find a job, maintain stable housing, and establish a bond with his daughter. The evidence suggests M.C. has already found this permanency in a safe, loving environment, which supports the trial court's best-interest finding. Thus, we conclude the court's best-interest finding was not against the manifest weight of the evidence.

¶ 31

### III. CONCLUSION

¶ 32

For the foregoing reasons, we affirm the trial court's judgment.

¶ 33

Affirmed.