

NOTICE
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2014 IL App (5th) 140245-U

NO. 5-14-0245

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> E.W., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Madison County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 11-JA-71
)	
Jonathan R.,)	Honorable
)	Janet Heflin,
Respondent-Appellant).)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court's determinations that the respondent was unfit and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence.
- ¶ 2 The respondent, Jonathan R., appeals the judgment of the circuit court of Madison County terminating his parental rights to E.W. On appeal, he argues that the circuit court's determinations that he was unfit and that termination of his parental rights was in E.W.'s best interests were contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On April 13, 2011, the State filed a petition for the adjudication of wardship alleging that E.W. was neglected in that his parents, Lynette W. and Jonathan R., failed to provide him with the necessary support, education, or medical or remedial care. The petition alleged that both parents had substance abuse problems, and that Jonathan R. had an extensive criminal history and that he had failed to provide E.W. with any care, support, or concern. The case was initially continued under court supervision, but in November 2011 supervision was revoked after both parents were arrested. E.W. was placed with his maternal grandparents, who were licensed foster parents. Following adjudicatory and dispositional hearings, E.W. was found to be a neglected minor, made a ward of the court, and placed in the custody of the guardianship administrator of the Illinois Department of Children and Family Services (DCFS).

¶ 5 On November 20, 2012, a permanency order was entered finding that the parents had not made reasonable efforts or reasonable and substantial progress toward returning E.W. home because they had failed to successfully complete all of their service plan tasks. The court set a permanency goal of returning E.W. home in five months and continued custody with DCFS.

¶ 6 On March 14, 2013, Lynette W. executed a final and irrevocable consent to adoption voluntarily terminating her parental rights and consenting to E.W.'s adoption by E.W.'s maternal grandparents.

¶ 7 On May 14, 2013, the court entered another permanency order. The court found that Jonathan R. had failed to make reasonable efforts or reasonable and substantial

progress toward returning E.W. home, and that he had not yet successfully completed all of his service plan tasks. The court again set a permanency goal of returning E.W. home in five months and continued custody with DCFS.

¶ 8 On May 30, 2013, the State filed a petition to terminate Jonathan R.'s parental rights, alleging that he was an unfit person as defined by section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2012)) in that he (1) failed to make reasonable efforts to correct the conditions which led to E.W.'s removal (750 ILCS 50/1(D)(m)(i) (West 2012)), (2) failed to make reasonable progress toward E.W.'s return within nine months following the adjudication of abuse and neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)), and (3) was depraved as defined by section 1(D)(i) of the Act (750 ILCS 50/1(D)(i) (West 2012)).

¶ 9 A hearing on parental fitness was held on December 4, 2013. Without objection, the State introduced certified copies of Jonathan R.'s November 7, 2011, and November 22, 2011, convictions for felony theft; his December 22, 2009, conviction for forgery; his February 26, 2008, conviction for disorderly conduct; and his November 11, 2004, conviction for felony theft.

¶ 10 Jennifer Kramer testified that she was employed by Christian Social Services (CSS) as a foster care case manager, and that she had been assigned to E.W.'s case. Kramer testified that Jonathan R. had been incarcerated from the beginning of the case until May 2013, and again from August to September 2013. Jonathan R. was provided with a service plan whose tasks included a substance abuse assessment, financial stability or gainful employment, a psychological evaluation, individual counseling, parenting

classes, housing requirements, and an anger management course. The financial and housing requirements were added to his service plan after his release from prison. The anger management classes, which were not available in prison, were not added prior to May 2013. Counseling, parenting classes, and substance abuse assessments were all available to Jonathan R. while he was incarcerated.

¶ 11 Kramer testified that Jonathan R. had not successfully completed any of his service plan tasks. He claimed to have received counseling while in prison, but CSS received no documentation to substantiate this. He took a parenting class, but CSS did not recognize this class as fulfilling the requirements of his service plan because CSS did not receive a discharge summary verifying the curriculum, Jonathan R.'s participation, or the parenting strategies gained. Although Jonathan R. provided CSS with a copy of a rental agreement, this did not satisfy his service plan because CSS required rent receipts, which Jonathan R. never supplied. Jonathan R. never provided proof of employment. Jonathan R. had a substance abuse assessment after he was released from prison, but no treatment was recommended because Jonathan R. insisted that he did not have a substance abuse problem.

¶ 12 Kramer also testified that Jonathan R. had weekly supervised visits with E.W. after his release from prison in May of 2013, and that while the visits went well, Jonathan R. cancelled or failed to confirm seven of those visits. He also missed a month's worth of visits when he was reincarcerated from August to September 2013. E.W. liked seeing Jonathan R., but was unaffected by the missed visitations.

¶ 13 Jonathan R. testified that he had completed a parenting class while in prison, but that CSS had refused to accept the certificate of completion because it did not meet their criteria. He attended counseling sessions while in prison, but anger management classes were not available. He completed a drug assessment, but no treatment was recommended. While in prison he had two-hour visits once a month with E.W. Upon being released from prison he contacted Kramer and was told he had to obtain housing and employment. He provided Kramer with a copy of his lease. Prior to his recent incarceration he was employed as a union painter and did some work for his landlord. Since his release from prison, visits with E.W. occurred once a week. He had to cancel one because of illness and missed two because he had no telephone with which to confirm the date.

¶ 14 Following the parental fitness hearing, the circuit court found that the State had proved by clear and convincing evidence that Jonathan R. was an unfit person based upon depravity. The court found that Jonathan R. had not overcome the statutory presumption of depravity raised by his felony convictions.

¶ 15 The cause then proceeded to a best interests hearing. Kramer testified that E.W. was currently placed with his maternal grandparents and had been there for the life of the case. He was placed with them when he was two years old. His grandparents were licensed foster parents and had signed a commitment to adopt E.W. Both grandparents worked and they were able to provide for E.W. financially. Their home has a large yard and E.W. has lots of toys. E.W.'s grandparents do homework with him as soon as he gets home from school. He is bonded with them and refers to them as "mama" and "papa."

Kramer believed that it would be detrimental to E.W. to remove him from their home. Termination of Jonathan R.'s parental rights would not be detrimental to E.W. He never asks about Jonathan R., even when he has not seen him for an extended period of time.

¶ 16 On January 14, 2014, the circuit court entered a written order terminating Jonathan R.'s parental rights. The circuit court found that Jonathan R. was unfit because he had failed to make reasonable efforts to correct the conditions which led to E.W.'s removal, failed to make reasonable progress toward E.W.'s return within nine months following the adjudication of abuse and neglect, failed to make reasonable progress toward E.W.'s return during any nine-month period following the adjudication of abuse and neglect, and because he was depraved. The circuit court further found that termination of Jonathan R.'s parental rights was in E.W.'s best interests. The court found that E.W. was happy and well-adjusted in his current placement, that he had bonded with his maternal grandparents, that they were willing and financially able to provide for E.W.'s needs, and that they had expressed a willingness and desire to adopt E.W.

¶ 17 Jonathan R. appeals.

¶ 18 ANALYSIS

¶ 19 On appeal, Jonathan R. argues that the circuit court erred in finding that he was unfit and that termination of his parental rights was in E.W.'s best interests.

¶ 20 The Juvenile Court Act of 1987 establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). 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 2012)). *In re Tiffany*

M., 353 Ill. App. 3d 883, 889 (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. *Id.* at 891.

¶ 21 In the present case, one of the bases upon which the circuit court found Jonathan R. to be unfit was 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 (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 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). Section 1(D)(i) of the Adoption Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2012). Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not depraved. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24.

¶ 22 At the hearing on parental fitness, the State introduced certified copies of five felony convictions, three of which took place within five years of the filing of the petition to terminate Jonathan R.'s parental rights. This evidence raised the statutory presumption of depravity. As the State notes, Jonathan R. does not argue that the circuit court erred in finding that he had failed to rebut the presumption of depravity and has therefore waived

this argument (see Ill S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)). Waiver aside, the only evidence Jonathan R. offered which could rebut this presumption is that he completed several programs while in prison. While the completion of classes while in prison is commendable, it does not show rehabilitation. *In re A.M.*, 358 Ill. App. 3d 247, 254 (2005); *In re Shanna W.*, 343 Ill. App. 3d at 1167. We cannot say that the circuit court's determination that Jonathan R. was an unfit person based upon depravity was contrary to the manifest weight of the evidence.

¶ 23 Having determined that the circuit court did not err in finding Jonathan R. unfit based upon depravity, we need not consider whether the court's findings that he was unfit based on his failure to make reasonable efforts to correct the conditions which led to E.W.'s removal and his failure to make reasonable progress toward E.W.'s return are contrary to the manifest weight of the evidence. *In re B.R.*, 282 Ill. App. 3d 665, 671 (1996) (holding that a finding of parental unfitness on any one ground obviates the need to review the other grounds alleged by the State). However, we note that from our review of the record, there appears to have been sufficient evidence to support the circuit court's findings on these grounds as well. We further note that the circuit court erred in finding Jonathan R. unfit on the basis that he failed to make reasonable progress toward E.W.'s return during any nine-month period because this ground was not alleged in the petition to terminate his parental rights. See *In re Michael M.*, 364 Ill. App. 3d 598, 609 (2006).

¶ 24 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 2012). 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 (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 (2004). 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). 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 (2004).

¶ 25 Kramer testified that E.W. had been with his maternal grandparents, who were licensed foster parents, since he was two years old. E.W.'s grandparents wanted to adopt him and were able to provide for him. E.W. was happy and well-adjusted, and had bonded with his grandparents. Kramer testified that it would be detrimental to E.W. to remove him from their home. By contrast, Kramer opined that termination of Jonathan R.'s parental rights would not be detrimental to E.W., and that he never asks about

Jonathan R., even when he has not seen him for an extended period of time. We cannot say that the circuit court's determination that termination of Jonathan R.'s parental rights was in E.W.'s best interests is contrary to the manifest weight of the evidence.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 28 Affirmed.