FOURTH DIVISION
June 22, 2017

No. 1-16-3315

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re RHIANNON C., a Minor	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14 JA 1288
	)	
MICHAEL L.,	)	Honorable
	)	Bernard J. Sarley,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County finding the father unfit and terminating his parental rights is affirmed; the State proved depravity by clear and convincing evidence because father has been convicted of more than three felonies and at least one conviction was within five years of the petition to terminate parental rights, father's completion of drug treatment and other programs while imprisoned did not rebut the presumption of depravity, the ADA does not apply to termination proceedings, and

the termination of father's parental rights is not against the manifest weight of the evidence.

¶ 2 Respondent, Michael L., is the father of Rhiannon C., a minor. Christus C. is Rhiannon's mother.[1] Michael L. (hereinafter "father") has been incarcerated for Rhiannon's entire life and only learned he was her father after the State filed a petition to terminate parental rights. Following a hearing the trial court found father unfit on two grounds: (1) he is depraved within the meaning of section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)), and (2) he failed to make reasonable progress toward the return of the child during any nine-month period following the adjudication of Rhiannon as neglected (750 ILCS 5/1(D)(m)(ii) (West 2014)). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On October 31, 2014, the State filed a petition to adjudicate Rhiannon C., born October 12, 2014, a ward of the court. The adjudication petition lists Christus C. as Rhiannon's mother and Ray N. as Rhiannon's father. The petition alleged that Rhiannon is neglected because her environment is injurious to her welfare and abused in that Christus or any other responsible person creates a substantial risk of physical injury to Rhiannon by other than accidental means which would be likely to cause death, disfigurement, impairment of emotional health, or loss or impairment of any bodily function. The facts supporting the allegations of neglect and abuse were that Rhiannon's mother has three prior indicated reports for substance misuse, inadequate supervision, and substantial risk of harm, and Christus has one other minor in the custody of the Illinois Department of Children and Family Services (DCFS) based on a finding of abuse and neglect. The petition alleged Christus C. has been noncompliant with reunification services, has

[1] The trial court also terminated the parental rights of Christus C. That judgment is not part of and Christus is not a party to this appeal.

been diagnosed with bipolar disorder and anxiety disorder, and admits to using illegal substances while pregnant with Rhiannon. According to the petition, on October 14, 2014, Christus fell asleep while holding Rhiannon and dropped her on the floor. As a result Rhiannon received a fractured skull and brain bleed. The petition alleged that attempts to contact the putative father have been unsuccessful and paternity has not been established.

¶ 5 The trial court granted temporary custody of Rhiannon to the DCFS Guardianship Administrator and appointed the Cook County Public Guardian as attorney of record and guardian *ad litem* (GAL) for Rhiannon. The court also ordered parentage testing of Ray N. On January 21, 2015 the trial court entered an order that based on genetic testing, Ray N. is not Rhiannon's father. On January 22, 2015 the State filed a notice by publication of the hearing on the adjudication petition to "Unknown (Father)" and "All Whom it May Concern." The notice was published in the Chicago Tribune on February 13, 2015. On April 1, 2015, the court entered an order defaulting the Unknown Father for want of appearance/answer.

¶ 6 On April 13, 2015 the trial court entered an adjudication order finding Rhiannon neglected due to an injurious environment because at the time of Rhiannon's birth Christus had one other minor in DCFS custody with findings of abuse or neglect and Christus was noncompliant with reunification services put in place for Rhiannon's sibling at the time of Rhiannon's birth. The court scheduled the matter for a dispositional hearing. Following the dispositional hearing the court entered a dispositional order adjudging Rhiannon a ward of the court on the grounds Christus is unable for some reason other than financial circumstances alone and unwilling to care for, protect, train, or discipline Rhiannon. The court entered the same order against the unknown father and all whom it may concern. The court terminated temporary custody and placed Rhiannon in the custody of the DCFS Guardianship Administrator with the

right to place the minor. The court also entered a permanency order setting a goal of return home within 12 months. The permanency order found the mother has made "some" progress toward the return home of Rhiannon, and the unknown father has not made substantial progress toward the return home of Rhiannon. The order stated the reason for selecting this goal was that the minor is almost one-year old, is in a nonrelative placement, and the family is in need of further services geared toward reunification.

¶ 7 On October 30, 2015 the trial court entered another permanency order setting a goal of return home pending status hearing. The October 2015 permanency order found neither the mother nor the father has made substantial progress toward the return home of Rhiannon. The reasons stated for selecting this goal were that the minor is one-year old, the mother is still using drugs, the mother has not successfully completed treatment and the unknown father is not engaged in services, and the minor is in a nonrelative placement. On January 19, 2016 the court entered a permanency order setting a goal of substitute care pending court determination on termination of parental rights. The reason for selecting this goal was that the minor is one-year old and residing in a nonrelative foster home, the mother is not engaged in recommended services, and the father is unknown.

¶ 8 On February 16, 2016 the State filed a supplemental petition for the appointment of a guardian with the right to consent to adoption asking the trial court to find the parents unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) and 2-29 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29 (West 2014)) and to appoint a guardian with the right to consent to adoption (hereinafter termination petition). The termination petition named the father as "Mike Unknown." On March 2, 2016 the State filed an affidavit for service of publication and notice of publication of the termination petition on "Mike

Unknown." On April 1, 2016 the Chicago Tribune published notice of the termination petition to " 'Mike' Unknown." On April 21, 2016 the court entered an order of default against "Mike Unknown" and all whom it may concern.

¶ 9 On May 11, 2016 the trial court entered an order for parentage testing on Michael L. On June 7, 2016 the court entered an order finding, based on genetic testing, Michael L. is the father of Rhiannon C. On September 6, 2016 the State filed a motion to amend the supplemental termination petition. The motion alleged that after filing the supplemental petition Christus identified Michael L. as Rhiannon's father. The motion sought to withdraw certain allegations from the supplemental petition and proceed on others. Specifically, the State sought to add allegations father has behaved in a depraved manner in violation of section 1(D)(i) of the Adoption Act, and father's repeated incarceration has prevented him from discharging his parental responsibilities, as grounds for unfitness. The court granted the motion. The matter proceeded on allegations in the petition that father was unfit pursuant to the following sections of the Adoption Act: 1(D)(b) for failing to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare; 1D(i) for depravity; 1D(m) for failure to make reasonable efforts to correct the conditions that were the basis for removal or to make reasonable progress toward the return of the child; and 1D(s) for repeated incarcerations preventing father from discharging his parental responsibilities.

¶ 10 On September 27, 2016 the trial court entered a permanency order setting a goal of substitute care pending court determination on termination of parental rights. The matter proceeded to a trial on the termination petition. The trial of the termination petition at issue in this appeal proceeded simultaneously with the trial of the termination petition concerning Malori F., another child of Christus.

¶ 11 Janita Burchett, then a Child Protection Investigator for DCFS and a former employee of Lutheran Child and Family Services (LCFS), testified at the termination trial. Burchett testified that while she was at LCFS she was the case manager for Rhiannon C. Burchett remained Rhiannon's case manager at LCFS until February 2016. When Burchett spoke to Christus in November 2014 Christus told Burchett she did not know the identity of Rhiannon's father. In summer 2015 Christus told Burchett only a first name for Rhiannon's father. Christus did not provide any further information about Rhiannon's father's identity. Burchett does not recall ever asking Christus again whether she could provide any information as to who the father may be during the period she was the caseworker. Burchett testified she does not recall asking Christus where "Mike" might live, where they met, if they were from the same neighborhood, if Christus knew any of his family members, or if they had any mutual friends. The information was incomplete such that she could not find Rhiannon's father. Burchett searched the Putative Father Registry with Christus's name and the first name of Mike but was unable to identify Rhiannon's father. Burchett could not search the Illinois Department of Corrections database with just a first name. Burchett stated she could not run a diligent search with only the name "Mike" because it is a too common name. While Burchett was Rhiannon's case manager neither LCFS nor Rhiannon's foster home received any cards, gifts, or letters for Rhiannon from father.

¶ 12 Kristen Facen testified she was a child welfare specialist at LCFS and since March 2016 she was Rhiannon's case manager. Facen had spoken to father on November 2, 2016, the day before she testified, by telephone to interview him as part of an integrated assessment. Father was then imprisoned in Sheridan Correctional Center. Facen first met father on the previous court date (September 27, 2016). At that time, she was aware father wanted pictures of Rhiannon. Facen testified she mailed pictures but at the time she testified father had not received

them. Facen testified that when they spoke on November 2 father told her he expects to be released in May 2017. She also testified father told her he has a history of drug use and indulged in alcohol. Father also told Facen he completed some services while in prison but Facen had not yet independently verified that information through the Illinois Department of Corrections. Before she spoke to him Facen had made no attempt to obtain documentation regarding father's services while in prison. At the conclusion of the interview Facen determined that father required the following services: a substance abuse assessment, parenting classes, individual therapy, and a psychological evaluation. Facen could not refer father for services because of his incarceration. When asked why the interview had only taken place the day before court Facen stated she first learned of the finding of paternity on the previous court date and then had "some issues getting *** clearance to speak to him ***." Facen prepared two service plans since she was the case manager.

¶ 13 The parties stipulated to the admission of a service plan approved April 14, 2016 and a service plan approved September 13, 2016. The trial court also admitted certified copies of father's convictions. The records indicated convictions for felony retail theft in 2014, and felony convictions for burglary, residential burglary, attempt residential burglary, possession of a stolen motor vehicle, and unlawful use of a weapon by a felon.

¶ 14 Father testified that prior to May 2016, when he learned he may be Rhiannon's father, Christus never notified him in any way that he was Rhiannon's father. Father's last contact with Christus was the night he was last arrested in 2014. Father never received any letters from Christus while in prison and he was unable to contact her by telephone after he was arrested. When he learned he had a child, father was happy but also disappointed he was not in a situation to be able to do something positive about it. Father did not contest the fact he has various

criminal convictions. He testified the leading factor in those convictions was his use of drugs and alcohol. He has used cocaine and heroin. After his first release from prison, from 2002 until 2010, father was employed as a carpenter and briefly attended school two separate times. He went back to prison in 2010, was released in 2013, and was back in prison in 2014. Father testified he relapsed in winter 2013 and within three months he was back in jail. While he was out of prison from 2013 to 2014 father was working and taking care of his sister's children ages two and four. Father testified he maintains close contact with family while he is imprisoned including Rhiannon's grandparents, aunts, uncles, and numerous cousins. The first two times father was imprisoned his sentence included mandatory drug treatment but he never received it. His last incarceration was the first time he received drug treatment. He has taken college courses during previous periods of incarceration.

¶ 15 Father testified he has been in drug treatment since July 2014. He testified he completed the first part of the program but treatment is ongoing until release. The parties stipulated father completed the West Care drug treatment program and was discharged with treatment successful. Father also completed a program called "Inside Out Dad." In that program father learned how to discipline children of different age groups, what is expected of a father, and what to expect from a child and how to deal with certain situations at different ages. The parties also stipulated father participated in Inside Out Dad, cognitive behavioral therapy, and anger management. Father has been involved with a welding certification program and has spoken with a union representative about an apprenticeship program father hopes to join upon his release. Father was assisting his welding instructor to teach other students. The parties stipulated father has a certificate for flood and fire restoration and mold removal and that his goals upon release are to obtain a career in construction or tattooing, to own a home and car, and to obtain a committed relationship.

¶ 16 Father saw Rhiannon for the first time the day he testified. He did not receive the pictures he requested. Prior to the phone call when Facen interviewed him father had not received any communication from LCFS.

¶ 17 Father told the trial court no one could love the child like he could. He raised his siblings and knows how to handle any situation with a child. Father said the only drawback in his life which has kept him from being a productive citizen has been his prior use of drugs and alcohol. He stated he is looking forward to what the program has done for him and the tools he has learned to now be able to make his life better and hopefully to be able to give Rhiannon what she deserves.

¶ 18 The trial court continued the matter for ruling. In announcing its ruling, the court stated Michael L.'s 2014 convictions create a rebuttable presumption of depravity. The court stated that it considered what he accomplished in prison, his recognition that his legal troubles are the result of his drug use, and that he expects to be employed upon his release. The court also stated that it had considered the decision in *In re J.A.*, 316 Ill. App. 3d 553 (2000). The court summarized the findings in *J.A.*, which affirmed the trial court's finding that the State in that case had not proved depravity by clear and convincing evidence. The court stated similar facts were not present in this case. However, the court stated,

> "had [Michael L.] after getting out of jail for his first six felony convictions done what he testified that he intends to do upon his release at this point, that is get a job, remain drug free, take steps towards being a good father by being in constant contact with his child, and being in constant support and visiting often, that could very well be evidence that rebuts the presumption of depravity, but in this case [father] continues to be in custody and as a result he has had no contact with

> Rhiannon and has provided no support for Rhiannon. He has been unable to do so because he is still in jail for the conduct which has given rise to the presumption of depravity in this case."

The court stated father may very well become a productive member of society if he stays drug free upon his release, but for the reasons stated in *In re J.A.*, in this case the statutory presumption of depravity has not been rebutted. Thus the court found the State proved depravity pursuant to ground (i) of the termination petition.

¶ 19 The trial court moved on to ground (b) alleging father has failed to maintain a reasonable degree of interest, concern, or responsibility for Rhiannon's welfare. The court noted that father's paternity was not confirmed until June 7, 2016. The court rejected the GAL's argument father's failure to check the Putative Father Registry after having sex with Christus shows the requisite lack of responsibility and held the State failed to prove father unfit pursuant to ground (b) by clear and convincing evidence. The court stated the same facts that apply to ground (b) apply to ground (m), but ground (m) is an objective standard. The court found that despite his lack of knowledge, using the objective standard father has not made reasonable progress. The court noted father has never seen Rhiannon because he is imprisoned. Thus, the court held the State proved father unfit pursuant to ground (m) by clear and convincing evidence "because it is an objective standard." The court only found a lack of substantial progress for the period April 13, 2015 through January 13, 2016.

¶ 20 Finally, the trial court found the State did not prove father unfit pursuant to ground (s) by clear and convincing evidence. The court found that father has only been in custody once while Rhiannon was alive, so, for that reason, the State failed to prove that repeated incarcerations

prevented father from discharging his parental duties. The court proceeded with the best interest hearing. At the conclusion of the best interest hearing, the court stated as follows:

> "And then with regard to the father the minor has been in the home for about two years and the minor is two years old. [Father] is currently in custody, has never had any contact with his child. It's possible I suppose if he was present, even knew about the birth of the child and from that point on was in contact with the minor and acting as a father then it wouldn't be appropriate to terminate parental rights but what has happened has happened and the minor is well cared for in the home of the foster parent, has been there virtually all of her life, this is Rhiannon now, and the father hasn't had any contact and certainly when you take in the best interest of Rhiannon clearly in my view it's in the best interest of Rhiannon to terminate the parental rights of the mother and the father."

¶ 21 The trial court terminated father's parental rights and found that the best interest of Rhiannon required appointment of a guardian with the right to consent to adoption. The court appointed the DCFS Guardianship Administrator Rhiannon's guardian. Following a permanency hearing the court entered a permanency order setting a goal of adoption. Father filed a notice of appeal from the order terminating his parental rights.

¶ 22 This appeal followed.

¶ 23 ANALYSIS

¶ 24 Father argues (a) he rebutted the presumption of depravity and the trial court's finding of unfitness due to depravity is against the manifest weight of the evidence; (b) the finding of unfitness pursuant to ground (m) for failing to make reasonable progress is against the manifest weight of the evidence; and (c) having improperly found father unfit the cause should not have

proceeded to a best interests hearing and, regardless, the trial court failed to consider the statutory factors in determining best interests or its decision was against the manifest weight of the evidence. "Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be deemed 'unfit,' any one ground, properly proven, is sufficient to enter a finding of unfitness." *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). Thus, "a finding adverse to the parent on any one ground is sufficient to support a subsequent termination of parental rights." *In re C.W.*, 199 Ill. 2d 198, 217 (2002). Accordingly, if we find the trial court properly found father unfit pursuant to section 1D(i) (depravity), "we need not consider here whether [father] also was unfit because he failed to make reasonable progress pursuant to section 1(D)(m)." *In re D.D.*, 196 Ill. 2d 405, 422 (2001). "[I]n cases involving the termination of parental rights, each case is *sui generis* and must be decided based on the particular facts and circumstances presented. [Citation.]" *Id.* "We will reverse the trial court's finding of unfitness only if it was against the manifest weight of the evidence. [Citation.] A determination of unfitness is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. [Citation.]" *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 25 "Illinois courts have required that, in order to establish unfitness, clear and convincing evidence of depravity must be shown to exist at the time of the petition, and the 'acts constituting depravity *** must be of sufficient duration and of sufficient repetition to establish a "deficiency" in moral sense and either an inability or an unwillingness to conform to accepted morality.' [Citation.]" *In re J.A.*, 316 Ill. App. 3d at 561. "Although the legislature did not include a definition of depravity, our supreme court has defined depravity as an inherent deficiency of moral sense and rectitude. [Citations.]" (Internal quotation marks omitted.) *In re*

Addison R., 2013 IL App (2d) 121318, ¶ 23. "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 50/1D(i) (West 2014). "Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite her convictions, she is not depraved. [Citation.] Once the parent produces evidence opposing the presumption, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed. [Citation.]" (Internal quotation marks omitted.) *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24.

> "The amount of evidence that is required from an adversary to meet the presumption is not determined by any fixed rule. [Citation.] A party may simply have to respond with some evidence or may have to respond with substantial evidence. [Citation.] If a strong presumption arises, the weight of the evidence brought in to rebut it must be great. [Citation.] The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent and the reviewing court will give such a determination deferential treatment. [Citation.] *In re J.A.*, 316 Ill. App. 3d at 563.

Father does not dispute that the statutory presumption arose against him. Father argues his successful completion of drug treatment, vocational training, and the Inside Out Dad program, as well as his expression of interest in Rhiannon and experience with children is evidence rebutting the presumption of depravity. The trial court held father's evidence was insufficient to rebut the presumption of depravity. We cannot say the opposite conclusion is clearly evident, therefore

the trial court's finding is not against the manifest weight of the evidence. See *In re A.H.*, 359 Ill. App. 3d 173, 181 (2005).

¶ 26 In *In re Shanna W.*, 343 Ill. App. 3d 1155 (2003), the question was whether the respondent-mother had rebutted the presumption of depravity established by the State. *In re Shanna W.*, 343 Ill. App. 3d at 1166. In that case, this court held that the respondent-mother had shown no evidence she is rehabilitated, "that can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely." *Id.* at 1167. In *In re J.A.*, 316 Ill. App. 3d at 563, the State presented evidence sufficient to give rise to the rebuttable presumption the respondent-father was depraved. *In re J.A.*, 316 Ill. App. 3d at 563. There, the respondent-father and his wife had prepared a room in their home for the minor, his daughter, should the respondent father be awarded custody; respondent-father's son testified he had been a good father to him; respondent-father visited J.A. regularly and more frequently than the service plan suggested; and respondent-father had been a constant support to his children both financially and emotionally. *Id.* The trial court in that case found the respondent-father rebutted the statutory presumption of depravity by clear and convincing evidence. *Id.* This court affirmed the trial court's decision, holding the State did not prove by clear and convincing evidence that the respondent-father was depraved under section 1D(i) of the Adoption Act.

¶ 27 "[T]his court must give great deference to the trial court's determinations of the character and credibility of the witnesses." *Id.* We hold the trial court's judgment father failed to rebut the presumption of depravity is not against the manifest weight of the evidence. We agree with the trial court that father is not in the same position as the respondent-father in *J.A.* In *J.A.*, the respondent-father independently (that is, outside the strictures of prison) did more than was required of him to establish a relationship with his daughter. See *id.* In this case, father's

evidence that he has learned a trade and contacted a union in hopes of joining an apprenticeship program is of little weight to rebut the presumption of depravity. Father testified that during the eight years he was out of custody he worked in carpentry with a union building hotels in Montana and Colorado. Father used drugs and continued to commit increasingly serious crimes while employed in a skilled trade, so his acquiring a new trade, although commendable, does not rebut the presumption that arises from his prior convictions. See *In re A.M.*, 358 Ill. App. 3d 247, 254 (2005) ("completion of classes in prison, while also commendable, does not show rehabilitation"). Father suggests his pattern of incarceration is not likely to continue because he did not receive mandated substance abuse counseling during his first or second period of imprisonment but now he has successfully completed a program. However, father was out of prison for several years during which, despite his apparent recognition that drugs and alcohol are "the only drawback in his life," he did not seek treatment. See *Shanna W.*, 343 Ill. App. 3d at 1167 (rehabilitation can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely). Father completed substance abuse counseling during his current imprisonment but he did so in a controlled environment. It is not clearly apparent from the evidence that father has demonstrated his ability to refrain from abusing drugs and alcohol outside of a highly controlled environment. *Cf. In re Gwynne P.*, 346 Ill. App. 3d 584, 599 (2004) (mother presented evidence that rebutted presumption of depravity where she completed drug program and remained drug free for number of years, was employed, and was meeting requirements of her parole to remain a drug-free and law-abiding citizen). See also *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 30 (citing *Shanna W.*, 343 Ill. App. 3d at 1167) (court could not conclude that the respondent-mother's good behavior while imprisoned was particularly probative, given that she was in a controlled environment).

¶ 28 The trial court's judgment father failed to rebut the presumption of depravity is not against the manifest weight of the evidence. Having failed to rebut the presumption, the trial court's finding the State proved by clear and convincing evidence father is depraved pursuant to section 1D(i) of the Adoption Act is not against the manifest weight of the evidence. See *In re J.A.*, 316 Ill. App. 3d at 563.

¶ 29 Father also asserts the evidence establishes that his history of criminal convictions is due to his untreated drug addiction, not an "inherent deficiency of moral sense and rectitude." He argues drug addiction is a recognized disability under the Americans with Disabilities Act (ADA) and the court was "required to consider Michael L.'s convictions [as] caused by his disability and not as evidence of depravity." "Drug addiction that substantially limits one or more major life activities is a recognized disability under the ADA." *Thompson v. Davis*, 295 F.3d 890, 896 (9th Cir. 2002).

> "Title II of the ADA prohibits a public entity from discriminating against a qualified individual with a disability on the basis of disability. [Citations.] To state a claim of disability discrimination under Title II, the plaintiff must allege four elements: (1) the plaintiff is an individual with a disability; (2) the plaintiff is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or activities; (3) the plaintiff was either excluded from participation in or denied the benefits of the public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits, or discrimination was by reason of the plaintiff's disability. [Citation.]" *Thompson*, 295 F.3d at 895.

¶ 30 In *Thompson*, the court stated it had interpreted Title II's "programs" and "activities" to include all of the operations of a qualifying local government. *Id.* at 899. However, the courts have held that the ADA does not apply to proceedings to terminate parental rights. *In re S.R.*, 2014 IL App (3d) 140565, ¶ 28 (citing *In re B.S.*, 166 Vt. 345 (1997)). The *S.R.* court agreed with the Vermont court's rationale for this holding: "Termination proceedings are not 'services, programs or activities' within the meaning of Title II of the ADA [citation.] [Citation.] Thus, the anti-discrimination requirement does not directly apply to termination proceedings. [Citation.]" (Internal quotation marks omitted.) *Id.* This court followed the decision in *S.R.* in *In re Jeanette L.*, 2017 IL App (1st) 161944, ¶ 17. *Thompson* merely held that "a state's substantive decision-making processes in the criminal law context are not immune from the anti-discrimination guarantees of federal statutory law." *Thompson*, 295 F.3d at 897. *Thompson* does not provide persuasive reasoning to lead this court to expand the scope of the ADA to termination proceedings. In light of clear authority to the contrary, we decline to do so.

¶ 31 Father replies his reliance on the ADA is not to assert that the trial court was required to make accommodations for his past. Father states his reliance on the ADA is only to demonstrate that his convictions are not evidence of an inherent deficiency of moral sense and rectitude because his convictions resulted from his addiction which is a recognized disability. The State notes father has only one conviction for possession of a controlled substance and thus only one conviction that is arguably connected to his drug addiction. Regardless, father's argument is not persuasive. Father's argument is that he rebutted the statutory presumption of depravity with evidence that the convictions that gave rise to the presumption were not his fault but were due to his drug addiction. Father's testimony that his criminal activity stemmed from his abuse of drugs and alcohol was before the trial court and it found father failed to rebut the presumption. The

father did not raise the ADA and the argument father has a disability is forfeited. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) ("A reviewing court will not consider arguments not presented to the trial court."). Forfeiture aside, the fact father may have a *treatable* disability that leads, directly or indirectly, to his commission of crimes does not absolve him of responsibility or rebut the presumption. Father was aware he needed substance abuse counseling at least following his first period of incarceration. He did not receive it in prison and upon his release, it seems he did not seek it on his own. That father went back to abusing drugs and alcohol and eventually committed other crimes is, therefore, attributable to father.

¶ 32 We affirm the trial court's holding that the State proved by clear and convincing evidence that father is depraved within the meaning of section 1D(i) of the Adoption Act. Having so held, we have no need to address father's argument the trial court's holding the father is unfit pursuant to section 1D(m) is erroneous. Because the trial court properly found father unfit, the cause properly proceeded to a best interests hearing. We therefore turn to father's argument the trial court failed to consider the statutory factors in determining Rhiannon's best interests.

¶ 33 Father asserts the only factor the court considered was "the fact that the minor has been in the foster home most of her life and well cared for therein."

> "Section 1-3(4.05) of the Juvenile Court Act requires a trial court to consider a number of factors for termination within 'the context of the child's age and developmental needs.' 705 ILCS 405/1-3(4.05) (West 2006). These include:
>
> '(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, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel love, attachment and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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 2006).

> Additionally, a court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being. [Citation.] The trial court is not required to explicitly mention each factor listed in section 1-3(4.05) while rendering its decision. [Citation.] In fact, the court need not articulate any specific rationale for its decision, and a reviewing court need not rely on any basis used by a trial court below in affirming its decision. [Citation.]" *In re Joshua K.*, 405 Ill. App. 3d 569 (2010) (quoting *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004)).

¶ 34 In *Jaron Z.*, this court rejected the respondent's argument the trial court erred because "it did not 'discuss' *any* of the statutory factors in finding that termination of her rights was in the best interest of [the children.]" (Emphasis added.) *In re Jaron Z.*, 348 Ill. App. 3d at 262. There, the respondent claimed the trial court "used merely one 'buzzword' (the term 'permanence') in its colloquy, and accordingly, it did not consider any of the other factors." *Id.* The court found no error occurred because "our law is clear that a trial court need not articulate any specific rationale for its decision. [Citations.]" *Id.* at 263. Accordingly, we reject father's argument the trial court's judgment in this case should be reversed because it failed to "explicitly mention, word-for-word, the factors listed in section 1-3(4.05) while rendering its decision." See *id.* at 262-63.

¶ 35 Additionally, we find the trial court's judgment that it was in Rhiannon's best interest to terminate father's parental rights is not against the manifest weight of the evidence. Rhiannon has been in the care of her foster parent continuously since Rhiannon was five weeks old. Rhiannon's foster parent testified to the care she is providing Rhiannon including occupational

and speech therapy. The foster parent also testified to Rhiannon's integration into the foster parent's extended family. The foster parent wants to adopt Rhiannon and would consider contact between father and Rhiannon if father maintains his sobriety. Rhiannon's case manager testified Rhiannon is bonded with the foster parent and recommended that father's parental rights be terminated and the foster parent allowed to adopt Rhiannon.

¶ 36 Rhiannon is in a safe home. She has no ties to father and there is evidence she has an attachment to the foster parent. The foster parent is Rhiannon's only parent figure, thus her need for continuity weighs in favor of terminating father's parental rights. See 705 ILCS 405/1-3(4.05) (West 2014). Based on the evidence we hold the trial court's judgment terminating father's parental rights is not against the manifest weight of the evidence.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 39 Affirmed.