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**FILED**

November 21, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170518-U  
NOS. 4-17-0518, 4-17-0519 cons.

**IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT**

<i>In re</i> T.B., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Logan County
Petitioner-Appellee,	)	No. 15JA17
v. (No. 4-17-0518)	)	
Kevin Boyer,	)	
Respondent-Appellant).	)	
<hr/>		
<i>In re</i> I.B., a Minor	)	No. 15JA16
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0519)	)	
Kevin Boyer,	)	
Respondent-Appellant).	)	Honorable
	)	William G. Workman,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Knecht and DeArmond concurred in the judgment.

**ORDER**

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

¶ 2 In February 2017, the State filed a motion to terminate the parental rights of respondent, Kevin Boyer, as to his children: T.B. (born December 19, 2004) and I.B. (born March 5, 2010). Following a fitness hearing, the trial court found respondent unfit. In June 2017, the court found it was in the children's best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 As an initial matter, we note respondent mother, who has no parental rights as to either minor, is not a party to this appeal. Respondent is T.B.'s natural father and I.B.'s adoptive father. Below, we summarize only the information necessary to resolve respondent's appeal.

¶ 6 In October 2015, the State filed petitions for adjudication of wardship, asserting the children were neglected in that they were subjected to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2014)), as evidenced by (1) the home's unsafe and hazardous conditions, (2) respondent's drug use, and (3) T.B.'s prior adjudication of neglect and respondent mother's failure to make progress toward having the minor returned to her care. In January 2016, the State filed supplemental petitions for adjudication of wardship, asserting the children were dependent pursuant to section 2-4(1)(b) of the Act (705 ILCS 405/2-4(1)(b) (West 2014)), in that the children were without proper care because of respondent's physical or mental disability.

¶ 7 In January 2016, respondent stipulated the children were dependent because of his disability and the State dismissed the first three allegations of neglect. Accordingly, the trial court found the children were dependent. The following month, the court entered a dispositional order finding respondent unfit, making the children wards of the court, and granting custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 8 In February 2017, the State filed a motion for the termination of respondent's parental rights. The motion alleged respondent was unfit because he (1) was depraved, (2) failed to make reasonable efforts to correct the conditions which were the basis for the removal of the

minors from him, (3) failed to make reasonable progress toward the return home of the minors within nine months of the adjudication of neglect, and (4) was incarcerated and unable to discharge his parental responsibilities due to his repeated incarceration.

¶ 9 A. Fitness Hearing

¶ 10 The fitness hearing commenced in June 2017. At the fitness hearing, the State moved to strike the "reasonable efforts" and "reasonable progress" allegations and moved forward only on the allegations of depravity and respondent's inability to discharge his parental responsibilities due to his incarceration. The court admitted into evidence certified copies of respondent's convictions for (1) unlawful delivery of a controlled substance, a Class 2 felony (Logan County case No. 15-CF-176); (2) unlawful delivery of a controlled substance, a Class 2 felony (Logan County case No. 11-CF-157); (3) forgery, a Class 3 felony (Logan County case No. 98-CF-95); (4) deceptive practices, a Class 4 felony (Logan County case No. 86-CF-9); and (5) burglary, a Class 2 felony (Logan County case No. 82-CF-7).

¶ 11 Katrina Adye, a foster care family worker at the Center for Youth and Family Solutions (CYFS), testified that respondent informed her he was incarcerated in the Logan County jail on January 3, 2017. According to Adye, respondent had no in-person contact with either child since his incarceration. Adye testified respondent did not have a job while he was incarcerated and had not reported any ability to provide for his children.

¶ 12 Following Adye's testimony, the State rested and respondent did not present any evidence. The State argued it had met its burden to demonstrate a rebuttable presumption of depravity where it had introduced evidence that respondent had been convicted of at least three felonies, with at least one conviction within five years of filing the motion to terminate parental rights. The State argued it also met its burden of showing respondent's repeated incarceration

prevented him from discharging his parental responsibilities. In support of this argument, the State pointed to (1) the certified copies of respondent's convictions, which demonstrated his repeated incarceration; and (2) Adye's testimony that respondent had no job or ability to provide for his children.

¶ 13 Respondent argued the State had not proved by clear and convincing evidence either depravity or repeated incarceration. Although the evidence showed respondent had some convictions, there was no evidence that he was repeatedly incarcerated as a result of those convictions. Counsel argued, "On the depravity, your Honor, the [c]ourt is aware from the introduction of 15[-]CF[-]176 that that conviction may very well have concerns with its validity in terms of the sentencing done thereunder because of the nature of the felony for which he was supposedly convicted."

¶ 14 The trial court found the State met its burden on both counts. First, the court found respondent was depraved. The court noted respondent had five felony convictions spanning from 1982 through respondent's recent conviction in 2015. Second, the court found the State met its burden of proof in showing respondent's repeated incarceration because the certified copies of the convictions showed he served a minimum of six months in jail on two of the convictions and was currently serving a term of 6 years' imprisonment on two of the other charges. Accordingly, the court found respondent unfit.

¶ 15 B. Best-Interest Hearing

¶ 16 In June 2017, the trial court held a best-interest hearing where it considered the following evidence.

¶ 17 1. *Best-Interest Report*

¶ 18 The State requested the trial court take judicial notice of the evidence presented at

the fitness hearing and the best-interest report. According to the report, DCFS became involved following a hotline report after I.B., then aged five, told a teacher respondent left him home alone. Another individual reported respondent used heroin in front of the children and I.B. had picked up respondent's needles in the past.

¶ 19 a. Respondent

¶ 20 In early 2016, respondent completed a substance-abuse assessment and began treatment at Tazwood three days a week. However, respondent's attendance was sporadic and he was moved into individual treatment. In July 2016, Tazwood requested respondent suspend treatment while tending to medical problems and resume once he was no longer taking pain medications in order to fully benefit from treatment.

¶ 21 Respondent had hip surgery in July 2016 and knee surgery in September 2016. Following his discharge from rehabilitation services, respondent failed to reengage in substance-abuse treatment. According to the report, respondent did not wish to reengage in treatment services if he was going to prison. In November 2016, respondent pleaded guilty to criminal charges and was sentenced to 6 years' imprisonment. His expected parole date was December 4, 2019.

¶ 22 Respondent completed some, but not all, of his random drug tests. Each screen was positive for opiates, but respondent reported this was due to prescription pain medications. Respondent provided prescriptions for Oxycodone and Hydrocodone.

¶ 23 In May 2016, respondent was referred to CYFS for counseling. In July 2016, after being placed on a waiting list, respondent attended his first counseling session. In October 2016, following several no-shows and cancellations, respondent again began counseling. He attended three sessions and completed his clinical assessment. However, respondent had several

more no-shows and cancellations and was unsuccessfully discharged from counseling in December 2016.

¶ 24 Respondent successfully completed a parenting class in May 2016, and demonstrated appropriate parenting skills during visits. However, since respondent's incarceration on January 4, 2017, no visitation with the minors had occurred. The social worker contacted Graham Correctional Center and learned the minors were not able to visit respondent because they are considered victims of the criminal offense that led to his incarceration.

¶ 25 b. T.B.

¶ 26 Since DCFS involvement began in October 2015, T.B. lived with her paternal aunt, Janice Herrin. T.B. had her own bedroom and a pet dog and was set to begin seventh grade. T.B. did well in school and participated in extracurricular activities, such as cheerleading and scholastic bowl. T.B. attended weekly counseling and was making substantial progress.

¶ 27 Herrin expressed a willingness to provide permanency, which CYFS supported. T.B. received routine medical care and Herrin was willing and able to meet her needs, whatever they may be. Herrin also expressed a willingness to maintain regular communication with T.B.'s brother, I.B. According to the report, T.B. wanted to live with her parents, but she was willing to live with Herrin if necessary. T.B. did not wish to be adopted by Herrin, but was open to guardianship as a permanency option.

¶ 28 c. I.B.

¶ 29 In October 2015, I.B. was placed with his maternal great-grandfather. In April 2016, I.B. went to live with T.B. and Herrin. I.B. adjusted well, but Herrin reported behavioral concerns. In December 2016, I.B. was diagnosed with attention deficit hyperactivity disorder (ADHD) and prescribed medication. Herrin reported some improvement in I.B.'s behavior, but

she recently reported a decline in his behavior and noted he struggled to follow directions. In June 2017, I.B.'s doctor stopped his ADHD medication for the summer.

¶ 30 I.B. was set to begin second grade in the behavioral disorder classroom. I.B.'s individualized education plan called for a slow transition back into a regular classroom setting when his behavior begins to improve. During the spring semester of first grade, I.B. participated in math in a regular classroom setting and did well. I.B. also attended weekly counseling at CYFS to address his behavior and past trauma.

¶ 31 CYFS recommended a permanency goal of adoption for I.B. Herrin had behavioral concerns and "acknowledged she would be unable to maintain [I.B.] in her home as he grows older." Should the trial court change I.B.'s permanency goal to adoption, he would be moved to Theresa Baker's home. Baker was an aide at I.B.'s school and regularly provided respite for I.B. On multiple occasions, I.B. reported he would like to live with Baker. Baker was willing to adopt him and had already begun the process to become a licensed foster parent.

¶ 32 *2. T.B.*

¶ 33 At the best-interest hearing, T.B. testified she was 12 years old. According to T.B., she had lived with her father her entire life up until DCFS became involved. T.B. testified respondent ensured she had food, shelter, and clothing when she lived with him. Respondent also helped her with her homework and took her to the doctor for checkups or when she was ill. In T.B.'s opinion, respondent was a good father who always provided for her welfare and physical safety.

¶ 34 Since T.B. was removed from respondent's care, she had been living with her aunt, uncle, and cousin. When T.B. first went to live with Herrin, she was suicidal because she missed her parents and was having troubles at school. T.B. told the caseworker about her

feelings and began attending counseling.

¶ 35 T.B. testified she missed respondent and wanted to be reunited with him at some point. T.B. said, "I love my father. He's been with me since I was born. My mom would, like, run around with other people, and my dad would always take care of me, feed me, make sure I was well, like, taken care of, bathed, and it was fantastic." T.B. felt loved, valued, and secure when she lived with respondent. When asked about her ideal long-term living situation, T.B. testified she loved both her parents and would like contact with her mother, but she said, "I want to live with my dad. No matter if it takes four, six, eight years, I want to be with my dad." T.B. also testified she would prefer to live with her father above anyone else, including her aunt. According to T.B., she asked to visit respondent in prison and was told she could not, but he wrote her many letters and called her regularly.

¶ 36 T.B. testified she did well in school, earning mostly As and Bs. According to T.B., she used to attend church regularly when she lived with her father, but she had not attended church since she moved in with Herrin. T.B. had subsequently learned of respondent's drug use, but she had never seen him using drugs nor had she seen any drugs in the home.

¶ 37 According to T.B., her brother, I.B., had behavioral problems, which increased following their removal from respondent's home. I.B. was better behaved and happier when they lived with respondent. T.B. testified I.B. had been staying with a teacher because Herrin could no longer handle his behavioral problems. According to T.B., she saw I.B. two or three times a month and made sure to use the time she had with him wisely. T.B. testified she did not think Herrin would agree to let I.B. live with her permanently. T.B. also testified Herrin was "thinking of getting rid of [T.B.] \*\*\* because her health [was] getting worse and worse."

¶ 38 *3. Lori McDonald*



¶ 39 Lori McDonald testified she was respondent's daughter and was currently 33 years old. McDonald testified she lived with her father her whole life until she turned 18 and, since then, she lived with respondent on occasion when she needed somewhere to stay. According to McDonald, respondent spoiled her when she was growing up and continued helping her financially, even though he was incarcerated. McDonald and her three children lived with respondent, I.B., and T.B. for approximately a year and moved out shortly before respondent was incarcerated. McDonald testified respondent was really good with T.B. and I.B. and regularly took them on outings.

¶ 40 According to McDonald, respondent's approach to discipline was to reward good behavior, and I.B. was obedient and well-behaved with respondent. Since I.B. was removed from respondent's care, his behavior had declined and he often got into trouble. In McDonald's opinion, I.B. and T.B. had a sense of attachment, security, and love in respondent's care and respondent always provided for their physical safety, welfare, food, and shelter. McDonald testified it would not be in the children's best interest to terminate respondent's parental rights because it would negatively impact them emotionally and would affect their schoolwork.

¶ 41 According to McDonald, she never saw respondent using or selling drugs when the children were in the home. McDonald testified she used drugs in the home and observed respondent using drugs in the home, but she stated the children were not present. McDonald observed respondent using pills and sometimes crack. Although respondent did not use drugs in front of the children, he would use drugs on days they were staying the night. McDonald acknowledged her children were taken into DCFS custody and in December 2016 custody and guardianship of her children was given to their father.

¶ 42 *4. Mark Boyer*

¶ 43 Mark Boyer testified respondent was his uncle and he spent a great deal of time with respondent, I.B., and T.B. According to Mark, the children were always appropriately clothed, fed, and appeared happy. Mark testified I.B. was particularly upset by being removed from respondent's care and had been acting up. In Mark's opinion, respondent was the only person that could calm I.B. down and I.B. was always well-behaved and calm when respondent was around. Mark recently spent time with T.B. and she constantly talked about missing her father.

¶ 44 According to Mark, respondent had always provided for the children and Mark never had concerns about their well-being. Mark testified it would not be in the children's best interest to terminate respondent's parental rights. Although respondent was in prison, Mark opined he ought to be given a chance to recover and be reunited with his children.

¶ 45 *5. Respondent*

¶ 46 Respondent testified he was currently incarcerated at the Graham Correctional Center, but his request for a transfer to the Lincoln Correctional Center had been approved and he expected to be moved within a couple weeks. Although respondent was not I.B.'s biological father, he was present for I.B.'s birth and was the only father I.B. had ever known. According to respondent, I.B.'s mother had legal problems and respondent took care of I.B. when she went to prison. Respondent testified he adopted I.B. as his legal son in February 2015. At the time he adopted I.B., the trial court was aware of his criminal record and knew he was on probation for unlawful delivery of a controlled substance (Logan County case No. 11-CF-157). Despite this knowledge, the court found respondent to be a reputable person with the character, ability, and means to suitably raise I.B.

¶ 47 Respondent's projected date of release from imprisonment was December 2019,

but respondent was confident he would be released sooner due to credit for good conduct and for attending school. Respondent testified he filed a postconviction motion alleging he was sentenced for an incorrect class of felony and did not receive credit for 437 days spent on house arrest. Even if respondent did not prevail on his postconviction motion, he opined he would be released sometime in 2018.

¶ 48 Respondent testified he called I.B. and T.B. twice a week, on Wednesday and Saturdays or Sundays. I.B. was having a difficult time being separated from respondent and reported he dreamed of living with respondent again. When he spoke with T.B., she would ask when respondent was coming home and describe activities she looked forward to sharing with him. Prior to being incarcerated, respondent provided the children with food, clothing, and shelter. While incarcerated, respondent provided I.B. and T.B. with \$50 each every month as allowance and sent Herrin \$200 or \$300 per month to help provide for the children.

¶ 49 Respondent testified he had serious health problems and experienced a lot of pain. As a result of his health issues, respondent became addicted to pain medication. When he could not obtain pain medication, he would buy other illegal drugs and trade them for Vicodin and other narcotic pain medications. Respondent testified he was no longer using prescribed medications and reported using only Tylenol and Ibuprofen following a recent throat surgery. According to respondent, he used to need to administer shots of insulin but had lost weight and no longer required insulin. Respondent acknowledged there was a report that I.B. had found one of his insulin needles, but respondent insisted he was always very careful to keep the needles out of reach.

¶ 50 According to respondent, Debbie Gray was his sister-in-law and a potential alternative caregiver for the children. Respondent testified Herrin would not adopt the children,

but would keep them until he got out of prison. Respondent further testified he had never met the teacher's aide who talked about adopting I.B. Respondent opined the children would be torn up if they were adopted by separate families and would lose their close sibling relationship.

¶ 51 *6. The Trial Court's Best-Interest Finding*

¶ 52 Following the presentation of evidence, the trial court determined it was in the best interest of the children to terminate respondent's parental rights. The court noted respondent was currently incarcerated and his release date could be as late as December 2019, at which time a service plan would still need to be completed. The court acknowledged respondent provided some financial assistance for the children despite his incarceration, but he was not able to furnish the children with housing, food, or clothing. Finally, the court found that respondent would be unable to provide for the children in the near future and determined a placement that provided permanency was in the best interest of the children. Accordingly, the court terminated respondent's parental rights.

¶ 53 This appeal followed.

¶ 54 **II. ANALYSIS**

¶ 55 On appeal, respondent asserts the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We address these arguments in turn.

¶ 56 **A. Fitness Finding**

¶ 57 Respondent first asserts the trial court's fitness finding was against the manifest weight of the evidence. 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.* "A decision is against the manifest weight of the evidence

only if the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 291 (2009). The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. "When multiple grounds of unfitness have been alleged, a finding that any one allegation has been proved is sufficient to sustain a parental unfitness finding." *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001).

¶ 58 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 JAmerica 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:

"There 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 2016).

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

¶ 59 We note respondent's brief does not address the trial court's finding of depravity. The failure to challenge all the grounds for an unfitness finding makes the issue moot. *In re T.Y.*, 334 Ill. App. 3d 894, 905, 778 N.E.2d 1212, 1220 (2002) (citing *In re D.L.*, 191 Ill. 2d 1, 8, 727 N.E.2d 990, 993 (2000)). However, even if the issue were not moot, we conclude the evidence supports the court's finding of depravity. In this case, the State presented certified copies of respondent's five criminal convictions: (1) unlawful delivery of a controlled substance, (2) unlawful delivery of a controlled substance, (3) forgery, (4) deceptive practices, and (5) burglary. The most recent of these convictions came in 2016—within five years of the filing of the motion seeking to terminate respondent's parental rights. Thus, the State met the statutory requirements to establish a rebuttable presumption of depravity.

¶ 60 It was then incumbent upon respondent to rebut the presumption of depravity. See *Shanna W.*, 343 Ill. App. 3d at 1166, 799 N.E.2d at 851. However, respondent presented no evidence at the fitness hearing. Therefore, he has failed to rebut the presumption of depravity. Because respondent's repeated criminal behavior—including violating his probation in case No. 11-CF-157 and accruing his most recent conviction in case No. 15-CF-176 during the pendency of this case—demonstrates his inability to conform to accepted standards of morality, we conclude the trial court's fitness finding was not against the manifest weight of the evidence.

¶ 61 **B. Best-Interest Finding**

¶ 62 Respondent next asserts the trial court's best-interest finding was against the manifest weight of the evidence.

¶ 63 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest 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 petitioner must prove by a preponderance of

the evidence that termination is in the best interest 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.

¶ 64 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2016). 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." *Id.*

¶ 65 In this case, the children were removed from respondent's care in 2015. T.B. remained in Herrin's care since that time and the best-interest report indicated Herrin was willing to provide T.B. with permanency. The best-interest report also indicated I.B. was placed with Herrin but often spent time with Baker, the teacher's aide. According to the report, I.B. stated, on multiple occasions, he would like to live with Baker. Additionally, Baker was willing to adopt him and had already begun the process to become a licensed foster parent. These placements provided the children with permanency and security.

¶ 66 Conversely, there is no indication respondent will be in a position to provide permanency for the children in the near future. Respondent had not completed all of his recommended services and, upon his release from incarceration, he would need to complete a new service plan. Although respondent testified he might be released earlier than expected, his projected release date at the time of the hearing was December 2019. Respondent testified he calls the children regularly and sends cards in the mail. However, they are not allowed to visit him in prison. Upon his release from incarceration, he would need to reestablish his relationship and visitation with the children, as he had not seen them since January 2017 as a result of his decision to engage in illegal conduct. This approach would not provide permanency or stability for the children, particularly where respondent has demonstrated a proclivity for committing illegal acts.

¶ 67 No one disputes respondent loves his children and has a strong bond with the children. We also note respondent does provide some financial assistance for the children. However, he is unable to be present and provide for the children's daily needs due to his



incarceration. We therefore conclude the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 68

### III. CONCLUSION

¶ 69

Based on the foregoing, we affirm the trial court's judgment.

¶ 70

Affirmed.