

**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).

2017 IL App (4th) 170584-U

NO. 4-17-0584

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 14, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

<i>In re</i> P.R., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 15JA74
v.	)	
Taurian Brandon,	)	Honorable
Respondent-Appellant).	)	Craig H. DeArmond,
	)	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 fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In April 2017, the State filed a motion to terminate the parental rights of respondent, Taurian Brandon, as to his child, P.R. (born March 3, 2015). Following a bifurcated hearing in June 2017, the trial court found respondent unfit and determined it was in P.R.'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 Throughout the pendency of these proceedings, respondent has remained incarcerated, first in the Vermilion County jail, and then in the Department of Corrections.

¶ 6 In July 2015, the State filed a petition for adjudication of wardship, asserting P.R. was neglected in that she was (1) not receiving the proper support or education as required by law, or medical or other remedial care necessary to her well-being (705 ILCS 405/2-3(1)(a) (West 2014)) (count I); (2) subjected to an injurious environment due to respondent mother's substance abuse (705 ILCS 405/2-3(1)(b) (West 2014)) (count II); and (3) subjected to an injurious environment due to respondent mother leaving her in another's care without a care plan in place and without maintaining contact regarding P.R.'s welfare (705 ILCS 405/2-3(1)(b) (West 2014)) (count III). In November 2015, the trial court adjudicated the minor neglected as to count III. Following a dispositional hearing the next month, the court (1) found respondent parents unfit, unwilling, and unable to care for P.R.; (2) made P.R. a ward of the court; and (3) granted custody and guardianship to the Department of Children and Family Services. The court further ordered that respondent would not receive visits from P.R. while he was incarcerated.

¶ 7 In April 2017, the State filed an amended petition to terminate respondent's parental rights. The petition alleged respondent was unfit because he (1) abandoned P.R. (750 ILCS 50/1(D)(a) (West 2016)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility for P.R. (750 ILCS 50/1(D)(b) (West 2016)); (3) deserted P.R. for more than three months preceding the commencement of this action (750 ILCS 50/1(D)(c) (West 2016)); (4) is depraved (750 ILCS 50/1(D)(i) (West 2016)); (5) failed to make reasonable progress toward P.R.'s return home within nine months of the adjudication of neglect—February 15, 2016, to November 15, 2016 (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)); (6) failed to make reasonable progress toward P.R.'s return home during any nine-month period following the initial nine-month period—which ended November 15, 2016—following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West Supp. 2015)); and (7) could not discharge his parental

responsibilities due to his current and recurring incarcerations (750 ILCS 50/1(D)(s) (West 2016)).

¶ 8 A. Fitness Hearing

¶ 9 The fitness hearing commenced in June 2017. Respondent waived his right to be present at the hearing.

¶ 10 1. *Lauren Zitkus*

¶ 11 Lauren Zitkus, a case manager at Children's Home and Aid, testified she was the family's caseworker from February 2016 to December 2016. Zitkus maintained contact with respondent through mail, and she met with him once in person. According to Zitkus, respondent had a projected parole date in 2018.

¶ 12 When Zitkus met with respondent, she outlined the services respondent was required to complete. The services included acquiring appropriate housing and legal employment. Due to his incarceration, respondent could not accomplish those goals. To Zitkus's knowledge, respondent had no contact with P.R., nor did he attempt to send letters, gifts, or other items. However, he did tell Zitkus that he loved and missed P.R.

¶ 13 2. *Certified Copies of Conviction*

¶ 14 The trial court admitted certified copies of respondent's prior convictions. Respondent did not attach these exhibits to the appeal. However, during closing argument, the State highlighted respondent's convictions as including (1) home invasion, (2) felony possession of a firearm, and (3) aggravated battery with great bodily harm. The State noted respondent was convicted of home invasion in 2015.

¶ 15 3. *The Trial Court's Fitness Finding*

¶ 16 Following the presentation of evidence, the trial court found the State met its

burden of showing respondent (1) was depraved; (2) failed to make reasonable progress during the nine-month period ranging from February 15, 2016, to November 15, 2016; and (3) had repeated incarcerations that prevented him from discharging his parental duties.

¶ 17 B. Best-Interest Hearing

¶ 18 Immediately following the fitness hearing, the trial court held a best-interest hearing.

¶ 19 Atiyya Thompson testified she was the foster-care supervisor for Children's Home and Aid, where she managed P.R.'s placement. P.R. and her four half-siblings (related through respondent mother) had been residing with their maternal grandmother since the case opened in 2015. The foster family had bonded and the home was well-structured for P.R., and all her needs were met. The maternal grandparents expressed their intention of adopting P.R. and her half-siblings. Due to respondent's continued incarceration, Thompson testified respondent would not be in a position to offer permanency in the near future.

¶ 20 Following the presentation of evidence, the trial court found it was in P.R.'s best interest to terminate respondent's parental rights.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 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.

¶ 24 A. Fitness Finding

¶ 25 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). We turn to the allegation of depravity.

¶ 26 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:

"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 depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003).

¶ 27 We note the appellant's brief does not address the trial court's finding of depravity. The failure to challenge all of the grounds for a finding of unfitness renders 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)). Regardless, the evidence supports the trial court's finding of depravity. Respondent failed to provide copies of the exhibits as required by Illinois Supreme Court Rule 323(a) (eff. July 1, 2017), and we will therefore presume the court followed the law and had a sufficient factual basis for its ruling. See *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241, 872 N.E.2d 1, 6 (2007). Despite respondent's failure to provide us with a complete record, the transcript of the fitness hearing demonstrates the State presented evidence of respondent's three criminal convictions: (1) a 2015 home invasion, (2) felony possession of a firearm, and (3) aggravated battery causing great bodily harm. The most recent of these convictions came in 2015—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.

¶ 28 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. Respondent waived his appearance at the hearing and presented no evidence. He therefore failed to rebut the presumption of depravity. Because respondent's repeated criminal behavior 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.

¶ 29

## B. Best-Interest Finding

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

¶ 31 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.

¶ 32 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.*

¶ 33 In this case, P.R. had been living with her maternal grandparents throughout the proceedings and the family had developed a bond. P.R.'s maternal grandparents also had custody over P.R.'s half-siblings and expressed their intention of adopting all of the children to maintain the family unit. P.R.'s needs were being met, and the placement provided P.R. with permanency and security.

¶ 34 Conversely, nothing indicates respondent will be in a position to provide permanency for the children in the near future. Even if respondent is released from prison in January 2018, he would need to establish a relationship with P.R., as he has never visited with her or played any role in her life. He has also not been able to complete any recommended services, such as securing stable housing and legal employment. Respondent's lack of a relationship with P.R., his inability to complete services, and his proclivity for committing illegal acts support the trial court's best interest finding.

¶ 35 Accordingly, we conclude the trial court's best-interest finding was not against the manifest weight of the evidence.

¶ 36

### III. CONCLUSION



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

¶ 38 Affirmed.