

NOTICE  
Decision filed 05/10/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 180591-U

NOS. 5-18-0591, 5-18-0592, 5-18-0593, 5-18-0594 cons.

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).

IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

<i>In re</i> N.T., A.R., M.T., and A.B.,	)	Appeal from the
Minors	)	Circuit Court of
	)	St. Clair County.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Nos. 07-JA-82, 07-JA-83,
	)	07-JA-84, 08-JA-19
v.	)	
	)	
Tiffany B.,	)	Honorable
	)	William G. Clay IV,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.  
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Trial court properly terminated mother’s parental rights to four of her children based upon repeated incarceration and depravity as defined under the Adoption Act.
- ¶ 2 The Illinois Department of Children and Family Services (DCFS) filed motions in the circuit court of St. Clair County seeking termination of the parental rights of Tiffany B., mother, and for appointment of guardian with power to consent to adoption, in relation to four minor children N.T., A.R., M.T., and A.B. The trial court entered an order finding mother was unfit based upon section 1(D)(s) of the Adoption Act (750 ILCS

50/1(D)(s) (West 2018)), repeated incarceration, and upon section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2018)), depravity. After a best interests hearing, the court entered an order the same day terminating mother's parental rights to all four children. Mother appeals the termination of her parental rights.

¶ 3 Mother had four children born between 2004 and 2008, three of which were placed in foster care in 2007 and the fourth in 2008. All four remained in foster care until they were adopted in June 2017. The record further reveals that mother was incarcerated in Missouri from January 28, 2011, through August 17, 2013, for domestic assault in the first degree and armed criminal action. On June 4, 2015, mother was convicted in Illinois for unlawful possession of a weapon by a felon, aggravated battery, and domestic battery. She was incarcerated from August 12, 2014, to August 12, 2016. Upon her release, mother was picked up on an outstanding warrant from Missouri and was not released again until October 21, 2016. On August 30, 2016, the trial court held a hearing on the motions filed for termination of mother's parental rights to all four children. Mother did not appear at the hearing because she was being held in Missouri and was not able to contact anyone. A default order was entered against her terminating her parental rights to each child. On November 9, 2016, mother filed a motion to set aside the default judgment. After the trial court denied her motion, mother appealed the court's decision. On October 4, 2017, this court reversed the default judgment against mother terminating her parental rights and directed that a hearing be held on the merits. By this point, the four children had already been adopted. After the default judgment was reversed, the court held a new hearing in July 2018, on mother's unfitness. On August 28, 2018, the

court entered orders finding mother unfit as to each child. After the best interests hearing, an order terminating mother's parental rights to all four children was entered on November 27, 2018.

¶ 4 Mother testified that since her release in October of 2016, she has tried to turn her life around. Shortly after her release in October, mother testified she contacted her caseworker and asked her what needed to be done to work on mother's service plan. The caseworker told mother that her case had been closed, and any obligation to help mother ended on August 30, 2016, when mother's rights were terminated. Nonetheless, without the assistance of her caseworker, mother claimed she had completed a program on anger management, almost completed her GED, and had secured employment. Mother further pointed out that she has another child, who lives with mother, but who is not subject to this appeal. Mother believes she provides basic necessities and emotional needs for this child. She argues that the decision of the trial court terminating her parental rights to her first four children is against the manifest weight of the evidence.

¶ 5 Under the Juvenile Court Act of 1987, the involuntary termination of parental rights involves a two-step process. First, there must be a showing, based on clear and convincing evidence, that the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (Act) (750 ILCS 50/1(D) (West 2018)). If the court makes a finding of unfitness, the court then considers whether it is in the best interests of the child that parental rights be terminated. See 705 ILCS 405/2-29(2) (West 2018). 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. See 750 ILCS 50/1(D) (West 2018); *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). A trial court's finding of unfitness is entitled to great deference, and will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re K.B.*, 314 Ill. App. 3d 739, 748 (2000). We, as a reviewing court, are to defer to the trial court's factual findings and credibility assessments given that the trial court was in the best position to make such findings. In other words, we are not to reweigh the evidence or reassess witness credibility on appeal. *In re April C.*, 345 Ill. App. 3d 872, 889 (2004). The court's finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001). We conclude that in this instance the court's findings of mother's unfitness were not against the manifest weight of the evidence, and because the State need only prove one ground of unfitness by clear and convincing evidence, the trial court's judgment is affirmed. See *In re Donald A.G.*, 221 Ill. 2d at 244.

¶ 6 Here the trial court concluded that State had successfully proven two grounds of unfitness against mother, specifically that she was deprived (750 ILCS 50/1(D)(i)) and her repeated incarceration prevented her from discharging her parental responsibilities (750 ILCS 50/1(D)(s)). In order to prove that mother was unfit under section 1(D)(s) of the Act, the State had to show that the minor children were in the custody or guardianship of DCFS, that mother was incarcerated when the termination petition was filed, that mother had been repeatedly incarcerated as a result of criminal convictions, and that her repeated incarceration had prevented her from discharging her parental responsibilities for the minor children. In considering an allegation of unfitness under section 1(D)(s),

courts are to consider the overall impact that repeated incarceration may have on that parent's ability to discharge his or her parental responsibilities, such as the diminished capacity to provide financial, physical, and emotional support for the child. *In re Gwynne P.*, 215 Ill. 2d 340, 356 (2005); *In re D.D.*, 196 Ill. 2d 405, 421 (2001).

¶ 7 The evidence reveals that because of her repeated incarceration, mother provided little or no support for her children for some 10 to 11 years. The children were three months, and one, two, and three years old when they came into the care of DCFS, and by the time of the termination hearing were 13, 12, 11, and 10 years old. Mother had been convicted in Missouri of domestic assault and armed criminal action and was incarcerated from January 2011 to August 2013. In August 2014, mother was arrested and incarcerated in St. Clair County on charges of unlawful use of weapons by a felon and aggravated battery. She was released on August 12, 2016, but immediately taken into custody upon her release by Missouri pursuant to an outstanding warrant. She was released by Missouri on October 21, 2016, but incarcerated again on December 12, 2016, for a parole violation, and not released again until 2017. Her caseworker testified that mother's repeated incarceration hindered her ability to make progress toward the completion of her service plan tasks. Admittedly some services were not available to mother while she was incarcerated, but even during the year she was not incarcerated, mother only completed that part of her service plan pertaining to signing releases. The remainder of her service plans, implemented at the time of the children's removal, required mother to obtain domestic violence counseling, mental health assessment and counseling, education or vocational training, and employment. She was also to attend

anger management and parenting classes in addition to staying out of jail. While incarcerated, mother visited with her children 23 times, but she failed to provide them with any support, either financially or emotionally, the entire time they were in foster care. Clearly mother's low level of visitation along with the lack of support and her inability to acquire life skills diminished her capacity to discharge her parental responsibilities and rendered her unfit. Mother asserts however that her caseworker did little to help, especially after mother was released from prison. What her caseworker did or did not do was immaterial to what effect mother's stretches of incarceration had on her ability to discharge her parental responsibilities. Mother's decade long period of neglect of her children, plus the impact of several periods of incarceration during that same decade, well-preceded the 2016 entry of default judgment and the caseworker's inability to assist mother further once her rights had been terminated. As the trial court noted, the overall impact of mother's incarcerations diminished her capacity to acquire appropriate life skills or provide financial, physical, mental, moral, or emotional support for her children.

¶ 8 The trial court also concluded that the State met its burden of establishing mother's unfitness under section 1(D)(i) of the Act, depravity. Depravity must be shown to exist at the time of the petition to terminate parental rights, 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. *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000).

¶ 9 To prove depravity, the State first must show that mother was criminally convicted of at least three felonies, and at least one of the convictions took place within five years of the filing of the petition seeking termination of parental rights. Mother was convicted on June 4, 2015, for three felonies, those being unlawful possession of a weapon by a felon, aggravated battery, and domestic battery. The petition to terminate was filed on July 17, 2015, within five years of the convictions. This evidence in and of itself created a rebuttable presumption that mother was unfit. It was then mother's responsibility to come forward with evidence in opposition to the presumption. Mother, however, was unable to rebut the presumption of depravity. Rather, the evidence revealed that mother engaged in a consistent pattern of violent behavior, both inside and outside prison walls. One of her convictions stemmed from an incident in which mother went to her sister's home and stabbed her sister in the neck while mother's son was present. And, while incarcerated, mother was placed in segregation for fighting. During that time, mother refused to see her children because she believed it would have been embarrassing. Mother also made little to no progress in achieving her service plan goals. Most of her goals were directed toward rectifying her violent behavior, and since 2007, mother had completed only two. As the court noted, mother's actions, her failure to take responsibility for them, and her failure to show any consistent effort in working to improve herself or to support her children demonstrated to the court that mother remained in a depraved state of mind. The trial court's findings of unfitness in this instance were not against the manifest weight of the evidence.

¶ 10 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County terminating mother's parental rights.

¶ 11 Affirmed.