

2012 IL App (2d) 120235-U
Nos. 2-12-0235 & 2-12-0236 cons.
Order filed June 28, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re Dario G., a Minor) Appeal from the Circuit Court
) of Du Page County.
)
) No. 09-JA-17
)
) Honorable
(The People of the State of Illinois, Petitioner-) Robert J. Anderson,
Appellee, v. Isidro S., Respondent-Appellant).) Judge, Presiding.

In re Omar S.G., a Minor) Appeal from the Circuit Court
) of Du Page County.
)
) No. 09-JA-18
)
) Honorable
(The People of the State of Illinois, Petitioner-) Robert J. Anderson,
Appellee, v. Isidro S., Respondent-Appellant).) Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

Held: The trial court did not err in finding respondent to be an unfit parent.

¶ 1 Respondent, Isidro S., appeals from the trial court's order terminating his parental rights to his sons Dario G. and Omar S.G. We affirm.

¶ 2

I. BACKGROUND

¶ 3 Dario was born on July 25, 2007, and Omar was born on September 26, 2008. Respondent is their biological father, and Elizabeth G. is their biological mother.

¶ 4 On February 18, 2009, the State filed abuse and neglect petitions for both children, alleging that Omar had sustained multiple injuries including a skull fracture, facial and knee bruises, subdermal hematomas, and healing rib fractures. The same day, the trial court gave temporary custody of the children to the Department of Children and Family Services (DCFS). On February 24, 2009, the parties stipulated to probable cause for the petitions, to the immediate and urgent necessity to remove the children, and to DCFS's reasonable efforts. Therefore, temporary custody remained with DCFS. On April 14, 2009, the parents again stipulated to temporary custody remaining with DCFS.

¶ 5 According to information from the service plans, on February 15, 2009, Elizabeth was lying in bed next to Omar when she saw him shaking. She thought he might be having a seizure, and she called 911. At the hospital, Omar was diagnosed with a skull fracture, rib fractures, fluid on the brain, and multiple suspicious bruises. Elizabeth initially reported that she was the primary caregiver and that Omar had slipped out of her hands when she was bathing him one week before. Later, she admitted that she had a part-time job at McDonald's and that Omar was left in Isidro's care. On February 16, 2009, the police informed DCFS that Isidro had confessed to causing injuries to Omar, specifically shaking him on two separate occasions and slapping his face when he was crying.

¶ 6 Following an adjudicatory hearing on July 19, 2010, the trial court found that the children were abused. It found that Omar sustained the alleged injuries; that doctors determined that they

were the result of abuse, and that Dario was Omar's sibling. On August 17, 2010, Elizabeth surrendered her parental rights to the children.

¶ 7 On April 12, 2011, the trial court found that it was appropriate to change the goal from return home to substitute care pending termination of parental rights. On August 9, 2011, the State filed a petition to terminate Isidro's parental rights as to Dario. On August 15, 2011, the State filed an amended petition to terminate Isidro's parental rights as to Dario, and a petition to terminate his parental rights as to Omar. The petitions alleged that Isidro was unfit based on: (a) extreme cruelty toward the children (750 ILCS 50/1(D)(e) (West 2010)); (b) depravity towards the minors, in that he had been convicted of aggravated battery to a child (750 ILCS 50/1(D)(i)(7) (West 2010)); (c) failure to make reasonable efforts to correct the conditions that were the basis of removal within nine months after an adjudication of neglect, abuse, or dependency, specifically from September 14, 2010, through July 14, 2011 (750 ILCS 50/1(D)(m) (West 2010)); and (d) failure to make progress to correct the conditions that were the basis for removal within nine months after an adjudication of neglect, abuse, or dependency, specifically from September 14, 2010, through July 14, 2011 (750 ILCS 50/1(D)(m) (West 2010)).

¶ 8 A hearing on the petitions to terminate Isidro's parental rights took place on January 3, 2012. The trial court admitted certified hospital records for Omar. It also admitted a certified copy of defendant's conviction of aggravated battery of a child causing great harm or permanent disability (720 ILCS 5/12-4.3 (West 2008)), for which Isidro received a sentence of seven years' imprisonment. The trial court further took judicial notice of the indictment, which alleged that Isidro committed the crime against Omar. The record indicates that the conviction was the result of a guilty plea.

¶ 9 Tammy Richmond, the case manager for the children's cases, provided the following testimony. Defendant was assigned anger management and parenting classes as part of his service plans because the "injuries that brought this case into DCFS custody [showed] that it was a violent crime against a child ***." Based on her review of the file, Isidro caused Omar's injuries. All service plans regarding Isidro were rated unsatisfactory because either Isidro did not complete any services, or if he had, providers did not submit any reports or submitted unsatisfactory reports. Isidro had been in jail since about February 2009. The agency did not try to facilitate any visitation with the children based on the children's age and the fact that Isidro was in jail. Isidro never called or wrote to Richmond regarding the case, nor did he send any cards, letters, or gifts to the children.

¶ 10 Richmond agreed that she never called or visited defendant, nor was she aware of the agency's name or phone number being provided to Isidro. Notice was sent to him through the jail for the administrative case reviews. She was aware that he had taken anger management courses in prison. Richmond agreed that Elizabeth "also battered the children" and "was probably more culpable" than defendant. She also agreed that Elizabeth was lying to Isidro's parents and telling them that she was in regular contact with the children, even after she had given up her parental rights. Therefore, Isidro's family thought that there was contact with the children.

¶ 11 Richmond was aware that Isidro had been represented by counsel the entire time she had the case, and she had contact with his counsel in court and by telephone. She told the attorney her name and phone number, and she also provided service plans to him. Richmond communicated with Isidro through his attorney and relied on the attorney to relay the information. Isidro also attended the hearings on the case. Richmond was not allowed to speak directly to Isidro based on her agency's rules, because Isidro had a serious criminal case pending.

¶ 12 Elizabeth Kimble testified as follows. She was the DCFS supervisor of a team of child protection investigators assigned to the case. The case came to DCFS attention because Omar was rushed to Good Samaritan Hospital when he was four months old. A CT scan showed a skull fracture and subdural hemorrhaging. Later x-rays showed rib fractures, and he also had bruising on his sternum, knees, ears, and face.

¶ 13 At the guardian *ad litem*'s request, the trial court took judicial notice of various hearings and case plans in the file. Defendant rested without presenting evidence for the fitness portion of the hearing. The trial court found that the State had proved allegations (a), (b), and (c), regarding unfitness, by clear and convincing evidence. It stated that the file reflected that Isidro had been represented by an attorney in the case and was present at the hearings. The trial court then proceeded to the best interests portion of the hearing, after which it found that it was in the children's best interests to terminate Isidro's parental rights.

¶ 14 Isidro filed a posttrial motion on February 1, 2012, which the trial court denied on February 21, 2012. Isidro timely appealed.

¶ 15

II. ANALYSIS

¶ 16 The termination of parental rights is a two-step process governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2010)) and the Adoption Act (750 ILCS 50/1 *et seq.* (West 2010)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first establish by clear and convincing evidence that the parent is unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)). *Id.* If the trial court determines that the parent is unfit, the trial court's focus shifts from the parent's fitness to the child's best interest in the second stage of the process, the best interest hearing. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 17 On appeal, Isidro challenges only the trial court's finding of unfitness. A court may find a parent unfit as long as one of the statutory grounds of unfitness is proven by clear and convincing evidence. *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009). We will not reverse a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 952 (2010). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the ruling is unreasonable, arbitrary, or not based on the evidence. *In re B.B.*, 386 Ill. App. 3d 686 at 697-98.

¶ 18 The trial court found Isidro unfit based on what we have labeled as allegations: (a) extreme cruelty toward the children (750 ILCS 50/1(D)(e) (West 2010)); (b) depravity towards the minors, in that he had been convicted of aggravated battery to a child (750 ILCS 50/1(D)(i)(7) (West 2010)); and (c) failure to make reasonable efforts to correct the conditions that were the basis of removal within nine months after an adjudication of neglect, abuse, or dependency, specifically from September 14, 2010, through July 14, 2011 (750 ILCS 50/1(D)(m) (West 2010)).

¶ 19 We address allegation (b), that Isidro was deprived because he had been convicted of aggravated battery to a child. Such a conviction "create[s] a presumption that a parent is deprived which can be overcome only by clear and convincing evidence." 750 ILCS 50/1(D)(i) (West 2010). Depravity is defined as "'an inherent deficiency of moral sense and rectitude.'" *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005), quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952). Where parental unfitness is alleged based on depravity, the trial court must closely scrutinize the parent's credibility and character. *In re Yasmine P.*, 328 Ill. App. 3d 1005, 1011 (2002). The legislature created a presumption of depravity where adults have committed crimes against children because its

“paramount concern was to protect children from parents who have harmed other children.” *In re Donald A.G.*, 221 Ill. 2d 234, 248 (2006).

¶ 20 Here, the State submitted into evidence a certified copy of defendant’s conviction of aggravated battery of a child causing great harm or permanent disability (720 ILCS 5/12-4.3 (West 2008)), thereby creating the rebuttable presumption that Isidro was deprived. See *In re A.H.*, 359 Ill. App. 3d 173, 180 (2005) (certified copies of requisite convictions create a *prima facie* showing of depravity, shifting the burden to the parent to show by clear and convincing evidence that he or she is not deprived). The State also submitted into evidence defendant’s indictment, which alleged that he caused great bodily harm to Omar by causing trauma to his body.

¶ 21 Defendant cites *In re A.M.*, 358 Ill. App. 3d at 253, for the proposition that the acts constituting depravity must be of sufficient duration and repetition to establish a moral deficiency and either an inability or unwillingness to conform to accepted morality. Defendant argues that there was insufficient evidence that any abuse by him was of sufficient duration or repetition to cause depravity. The appellate court first recited this “boilerplate” language regarding sufficient duration and repetition in *Young v. Prather*, 120 Ill. App. 2d 395, 397 (1970), which cited *Stalder*, 412 Ill. 488. However, in *Stalder* our supreme court stated that having one child out of wedlock alone would not indicate depravity, but having a series of affairs with different men could. *Stalder*, 412 Ill. at 498. Thus, *Stalder* never stated that all deprived acts must be of a minimum duration or repetition. Indeed, to so require would be contrary to the language of section 1(D)(i), which creates a rebuttable presumption of depravity based on certain convictions, without regard to any other factors. Our supreme court also has not applied duration or repetition requirements when analyzing issues of fitness under section 1(D)(i). See *In re Donald A.G.*, 221 Ill. 2d at 253. Even otherwise, the

evidence here would satisfy the requirement that the acts be of sufficient duration and repetition to establish a moral deficiency, as the evidence showed not just one isolated injury to Omar but rather a series of injuries, including a skull fracture, subdural hemorrhaging, rib fractures, and bruising on many parts of his body.

¶ 22 Isidro points to Richmond’s testimony that Elizabeth “also battered the children” and “was probably more culpable” than defendant. He argues that although he admitted harming Omar, it is likely that Elizabeth was more at fault for the severity of Omar’s injuries. We note that Richmond additionally testified that Isidro caused Omar’s injuries. Moreover, as stated, defendant’s conviction alone created a rebuttable presumption of depravity. That Elizabeth may have contributed to some of the injuries does not provide clear and convincing evidence to rebut the presumption of depravity, especially considering that Isidro pleaded guilty to aggravated battery of Omar “causing great harm or permanent disability.”

¶ 23 Isidro also argues that he has taken steps to correct the potential source of any anger problems that may have caused such abuse, in that he voluntarily participated in anger management classes. Isidro argues that his participation shows that he has a willingness to conform to accepted morality and a desire to correct the deficiencies that led to the removal of the children. However, the fact that Isidro participated in some classes is not clear and convincing evidence that he no longer has anger management problems or is otherwise no longer depraved. See *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003) (receiving certificates for prison classes, while commendable, is not difficult and does not show rehabilitation). In sum, we conclude that the trial court’s finding that Isidro is unfit based on depravity is not against the manifest weight of the evidence. As a trial court’s finding of unfitness can be sustained on a single statutory ground (*In re P.M.C.*, 387 Ill. App. 3d at 1149), we

do not address Isidro's challenge to the trial court's ruling that he was also unfit under allegations (a) (extreme cruelty) and (c) (failure to make reasonable efforts to correct the conditions that were the basis of removal within nine months after the abuse adjudication). See *In re Shauntae P.*, 2012 IL App. (1st) 112280, ¶ 103.

¶ 24

III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 26 Affirmed.