2012 IL App (2d) 120779-U
No. 2-12-0779
Order filed November 20, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ADOPTION of S.R.W., J.W.E., and D.W.B.,	)	Appeal from the Circuit Court of Stephenson County.
	)	No. 11-AD-13
(James D.B. and Rosann B., Petitioners-Appellees, v. Daniel E., Respondent-Appellant).	)	Honorable Theresa L. Ursin, Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding that respondent's conviction for aggravated battery of a child supported the presumption of depravity under the statute and that respondent did not rebut the presumption. Unfitness finding (and termination) affirmed.

¶ 2 Following a hearing, the trial court found respondent, Daniel E., to be an unfit parent to S.R.W., J.W.E., and D.W.B. and also determined that it was in the children's best interests to terminate respondent's parental rights. Respondent appeals, challenging the two bases upon which the court found him unfit, namely, depravity (750 ILCS 50/1(D)(i)(7) (West 2010)) and failure to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare (750

ILCS 50/1(D)(b) (West 2010)). Because we hold that the court did not err in determining that respondent was unfit due to depravity, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On June 6, 2011, petitioners, James D.B. and Rosann B., petitioned to adopt S.R.E. (now age 13), J.W.E. (age 9), and D.W.B. (age 8). Rosann is the children's biological mother, James D.B. is Rosann's husband, and respondent is their biological father. Petitioners alleged that respondent was unfit to parent his children because he: (1) had failed to maintain a reasonable degree of interest, concern, or responsibility as to their welfare because he had not seen them or supported them for many years; (2) was guilty of statutory depravity because he was convicted of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2006)); and (3) was guilty of general depravity. Petitioners sought, *inter alia*, the termination of respondent's parental rights.

¶ 5 The fitness hearing occurred on December 5, 2011, and February 6, and April 3, 2012. During petitioners' case, the court took judicial notice of case No. 06-CF-342, in which respondent was convicted of aggravated battery to a child (Ava Welch) and sentenced, on January 29, 2007, to seven years' imprisonment. Next, Mike Welch testified that he is the grandfather of Ava Welch, respondent's victim. In October 2006, when she was nine months old, Ava was placed in Welch's care after being released from the hospital. She had been treated for a broken arm, broken leg, a fractured clavicle, and a fractured skull. He was not present when Ava sustained her injuries. Welch testified that Ava's mother was with her when the injury happened.

¶ 6 Respondent, age 33, testified that he has been incarcerated since February 5, 2007. He is aware that S.R.E. goes to Freeport High School and believes that, based on where they reside, J.W.E. and D.W.B. attend Center Elementary School. He does not know the children's teachers. Asked

about parent-teacher conferences, respondent testified that he attended one for S.R.E. in 2006 and one for J.W.E. when he was in preschool. He does not receive report cards, but received them (for S.R.E and J.W.E.) before he was incarcerated. Respondent stated that the children have moved about six times since he was incarcerated and that he knows their current address (due to the adoption proceedings). He knew their prior address, having learned it from friends.

¶ 7 Addressing letters he has written to his children since being incarcerated, respondent testified that he wrote to S.R.E. in 2007, and left a note with S.R.E. to tell J.W.E and D.W.B. that "I loved them and stuff." Since 2007, he has written a "couple" of times through S.R.E.'s best friend. The friend has written back "telling me how my daughter is doing and stuff and how the boys are doing." He has also received "a couple" of letters from S.R.E. (in 2006 and 2008). Respondent kept the letters but did not bring them to court because he was unaware that he was supposed to. He sent cards for birthdays or holidays in 2007 and received a card back in January 2008 stating that the children no longer resided there. He did not keep this card. Respondent did not send any more cards after January 2008 because he did not know where the children resided and, when he would find out where they lived, he was told by Rosann's family that Rosann and the children had moved.

¶ 8 Respondent further testified that he communicates with Rosann's family, including her mother and sister. He received a photograph of his children in 2009 from one of Rosann's family members. Respondent did not bring any documents to the hearing, explaining that he cannot bring photographs to court. When asked if he has sent any money to Rosann since he was incarcerated, respondent replied that he had not and that Rosann "knows if she needs money she writes me I'll send her whatever I got." He has not directly sent any money to his children since being incarcerated. Respondent has not seen his children since he was incarcerated.

¶ 9 Respondent stated that he had custody of the children in 2005. He retained custody until October 25, 2006, when he realized that he was going to be incarcerated. While he had custody, respondent purchased items for the children for school and attended to their medical needs.

¶ 10 During his first year of incarceration, respondent knew the children's address and had Amanda, the mother of his other children, check in on them. Amanda took photographs and gave them to respondent's parents, who then forwarded them to respondent. Between 2006 and 2007, respondent sent about 10 to 15 cards or letters to his children. Other than one, he never received back any of them. In 2008, he stopped sending cards and letters because he did not know where the children resided. Respondent approached Rosann's family, but they would not reveal the address. Rosann's mother, Carol, did write to respondent, telling him about the children. The final letter from her came in 2010. Respondent did not ask her for an address because he believed her reply would not be truthful.

¶ 11 Respondent also had contact with his children through one of their friends, Hailey (age 12). He has corresponded with her through her mother. He last heard from Hailey in July 2011. Explaining how he knew that Rosann and the children had moved many times, respondent stated: "Because I'm gang-tied and my guys watch them. They bounce all over the area. They keep an eye on my kids." Respondent has fathered children with other women, but has no contact with the mothers.

¶ 12 Addressing his activities in prison, respondent testified that he has taken anger management classes and Alcoholics Anonymous classes. He is waiting to take a parenting class (he has submitted the paperwork).

¶ 13 James D.B. testified that he is Rosann's husband. Each time he has moved in the past seven years, he has had the mail forwarded. He has lived with Rosann since November 2005. During that time, he has never known respondent to call his children, nor has James been called by respondent. Also, the children have not received from respondent cards, presents, or money, but respondent's parents brought some gifts. James has not contacted respondent since his incarceration to let him know where the children are. According to James, the children have never asked about respondent.

¶ 14 Brenda Anderson testified that, in 2007 and 2008, she was a case manager for Catholic Charities, a Department of Children and Family Services contractor. Anderson was the case manager for Ava Welch's case and prepared reports to the court on the case. In her reports, she wrote that respondent had taken Ava out of her crib by her right arm and began abusing her. According to the hotline report, Ava had multiple bruises to her right side, a bruise on the right side of her face, old cigarette burns on her right side, and she was having difficulty moving her right arm and leg. Ava had a fractured clavicle, a fractured right tibia, fibula, and right radius, and a skull fracture. She also had healing fractures on her left fibula and tibia.

¶ 15 Respondent did not present any evidence, nor did the guardian *ad litem*.

¶ 16 On May 2, 2012, the trial court, in a memorandum opinion and order, found that respondent's conviction of aggravated battery to a child, a class X felony, was sufficient to show depravity. The court noted that the single conviction was sufficient because it is a class X felony and that the nine-month-old victim sustained a broken right arm, broken leg, broken collarbone, and skull fracture. Further, the court found that Welch's and Anderson's testimonies were relevant and admissible as to the depravity issue because, without them, the court would have been unable to make a determination on the issue. Addressing respondent's burden to show that he has been rehabilitated,

the court found that respondent had not shown that he had completed any of the classes he claimed to have taken. Accordingly, respondent did not show by clear and convincing evidence that he has been or may be rehabilitated. In sum, the court determined that petitioners proved that respondent is unfit as a parent in that he is depraved.

¶ 17 Next, the court found that petitioners proved that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. It noted that respondent did not present evidence that he availed himself of the court system to enforce contact or visitation with his children and that he agreed that he did not provide financial support to the children. The court found incredible respondent's claim that he has made significant efforts to maintain contact with the children or demonstrated interest, concern, or responsibility for them since his incarceration.

¶ 18 On May 7, 2012, in a correction to the foregoing findings, the court added that the statute allows a court to find that a conviction for aggravated battery to a child is a "*per se*" ground for depravity.[1] Given the language, the court noted, it was not necessary for the court to consider Anderson's or Welch's testimony. Accordingly, it struck their testimony and sustained respondent's objections to it. The court determined that, in the absence of any evidence overcoming the presumption of depravity, petitioners proved respondent to be depraved.

¶ 19 On June 15, 2012, following a best interests hearing, the court terminated respondent's parental rights and ordered that each minor was available for adoption. Respondent appeals the court's fitness findings.

¶ 20 II. ANALYSIS

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[1]There is no reference in the statute to *per se* depravity. Presumably, the court intended to state that the conviction alone raises the *presumption* of depravity.

¶ 21 Respondent challenges the two bases upon which the trial court found that he is unfit to parent his children. For the following reasons, we conclude that the court did not err in finding that respondent was unfit due to depravity and we do not reach the second basis.

¶ 22 A proceeding on a petition for termination of parental rights involves a bifurcated approach: (1) where the trial court first holds a hearing to determine whether a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)); and (2) if the parent is found unfit, the trial court conducts a subsequent hearing to determine whether the termination of parental rights is in the children's best interests (705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352 (2004)).

¶ 23 Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if proven, is sufficient to enter a finding of unfitness. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. Proof of parental unfitness must be clear and convincing, and a trial court's finding of unfitness will not be disturbed unless it is against the manifest weight of the evidence, *i.e.*, unless the opposite conclusion is clearly evident. *Id.* The trial court is generally in the best position to assess the credibility of the witnesses and, therefore, we will not reweigh or reassess credibility on appeal. *Id.* As cases concerning parental unfitness are *sui generis*, *i.e.*, unique unto themselves, courts generally do not make factual comparisons to other cases. *In re Adoption of G.L.G.*, 307 Ill. App. 3d 953, 963 (1999).

¶ 24 The Adoption Act provides that a parent can be found unfit based on a finding of depravity. 750 ILCS 50/1(D)(i) (West 2010). Depravity is defined as "an inherent deficiency of moral sense and rectitude." *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000) (*quoting Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Under the Adoption Act, if the parent has been convicted of aggravated battery of a

child, there is a presumption of depravity that can be overcome by clear and convincing evidence. 750 ILCS 50/1(D)(i)(7) (West 2010) ("Conviction of any one of the following crimes shall create a presumption that a parent is depraved which can be overcome only by clear and convincing evidence: *** (7) aggravated battery of any child in violation of the Criminal Code of 1961"). "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." *In re A.L. & R.L.*, 301 Ill. App. 3d 198, 202 (1998).

¶ 25 Here, respondent argues that the trial court erred because it made its findings based solely on his conviction of aggravated battery of a minor child and excluded evidence of the nature of the crime. He also contends that, although he is incarcerated, he presented uncontroverted evidence that he took anger management and alcoholics anonymous classes (and was waiting to take a parenting class) while in prison. Respondent also argues that the trial court's treatment of Welch's and Anderson's testimony (it first found it admissible and later struck it) reflects that it "was determined to find" depravity.

¶ 26 We conclude that the trial court did not err in finding that respondent was depraved and failed to overcome the presumption. Clearly, his conviction of aggravated battery of a child, without additional evidence, was a sufficient basis for the statutory presumption of depravity. As to any rebuttal, we note first that respondent presented no evidence at the fitness hearing. Second, while it is true that respondent's claim that he took classes (anger management and Alcoholics Anonymous) in prison was uncontroverted, it is not well-taken because he did not provide any documentary evidence to support his claim that he completed such classes; therefore, the trial court was free to assess the truthfulness of this testimony in light of its overall assessment of respondent's

credibility. We further find *In re Gwynne P.*, 346 Ill. App. 3d 584 (2004), upon which he relies, distinguishable. In that case, the court held that one of the respondents rebutted the presumption of depravity, where there was testimony by a social worker that the respondent had completed parenting and substance abuse classes while in prison, and where the respondent remained drug-free, worked as a detox specialist, was meeting the requirements of her parole, and acted appropriately during her visits with her child. *Id.* at 591-92, 599. Here, the court did not err in finding that respondent's testimony alone was insufficient to rebut the presumption of depravity. Finally, we note that respondent did not offer any testimony that he was rehabilitated or changed.

¶ 27 As to respondent's argument that the court's treatment of Welch's and Anderson's testimony reflects that it was predisposed to find depravity, we reject it outright as speculative. Based on this record and without more, the court's corrected findings reflect nothing more than a reconsideration in light of its initial misapprehension of the law.

¶ 28 We cannot conclude that the trial court erred in finding that the evidence (*i.e.*, respondent's conviction for aggravated battery of a child) created a presumption of depravity and further finding that respondent did not overcome that presumption. Accordingly, we uphold the court's finding that respondent was unfit to parent his children on the basis of depravity. Because we uphold one statutory ground of parental unfitness, we need not consider any other bases of parental unfitness. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000).

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 31 Affirmed.