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2014 IL App (3d) 130945-U

Order filed May 5, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> H.T. and A.T.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Minors)	Rock Island County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-13-0945 & 3-13-0946
)	Circuit Nos. 12-JA-12 & 12-JA-13
v.)	
)	
Wayne S. III,)	
)	The Honorable
Respondent-Appellant).)	Thomas C. Berglund,
)	Judge, presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The trial court's determination that respondent father was unfit on the basis of depravity was not against the manifest weight of the evidence.
(2) The trial court's termination of respondent's parental rights was not against the manifest weight of the evidence.
- ¶ 2 The State filed two petitions for termination of parental rights alleging that respondent, Wayne S. III, the putative father of H.T. and A.T., was an unfit parent based on depravity. The

trial court found respondent to be unfit by clear and convincing evidence, and following a best interest hearing, terminated respondent's parental rights. On appeal, respondent argues that the trial court's finding of unfitness and termination of his parental rights were against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

Respondent is the father of H.T., born on March 26, 2006, and A.T., born on June 22, 2007. On February 15, 2012, the State filed a petition for adjudication of wardship alleging that H.T. was neglected and abused. The petition alleged that "the minor is less than 18 years of age whose environment is injurious to his welfare, is not receiving proper or necessary education as required by law, has been left without supervision for an unreasonable period of time, and who has been abused with physical injury by other than accidental means." Specifically, the petition alleged that (1) on February 14, 2012, the Department of Children and Family Services (DCFS) received a report claiming that H.T.'s mother had inflicted a bruise on H.T.'s face when she threw a toy at him, (2) H.T.'s brother, who is seven, reported that the mother has left him to watch H.T. and two younger siblings when she is away, (3) H.T. has been absent from school for a total of 47 days this year, and when asked to explain, the mother indicated that her alarm clock was not working, and (4) H.T.'s brother, Anthony T., has previously been adjudicated neglected and remains a ward of DCFS.

¶ 5

On February 16, 2012, the State filed another petition for adjudication of wardship alleging that A.T. was neglected. A.T.'s petition also alleged that the minor was less than 18 years of age and that her environment was injurious to her welfare due to a risk of harm and that she had been left without supervision for an unreasonable period of time. The factual basis included allegations that (1) on February 14, 2012, DCFS received a report indicating that the

minor's mother had inflicted a bruise injury to H.T., and (2) A.T.'s seven-year-old brother, Anthony T., had been left to watch A.T. and two other siblings.

¶ 6 The mother stipulated to the allegations contained in both petitions at a hearing on March 27, 2012. The matter then proceeded to a dispositional hearing, at which H.T. was adjudicated neglected and abused and A.T. was adjudicated neglected.

¶ 7 At a permanency review hearing on March 22, 2013, the trial court changed the permanency goal from "return home within twelve (12) months" to "substitute care pending determination of termination of parental rights."

¶ 8 On May 2, 2013, the State filed a supplemental petition to terminate parental rights in both minors' cases, seeking to terminate the rights of H.T. and A.T.'s mother and H.T. and A.T.'s father-respondent. The petitions alleged that respondent was unfit in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare, (2) demonstrated substantial neglect that was continuous or repeated, (3) failed to make reasonable efforts to correct the conditions that were the basis for the removal, and (4) failed to make reasonable progress toward the return of the minors within nine months after the adjudication of neglect. In its supplemental petitions, the State set forth several facts in support of termination, including that respondent (1) failed to provide support or gifts for children and failed to communicate with them, (2) failed to provide verification of participation in any services, (3) had been incarcerated since May 3, 2010, and (4) had been convicted of at least three felonies within the past five years.

¶ 9 At the fitness hearing, certified copies of respondent's six felony convictions were admitted into evidence, including (1) a 2000 conviction for forgery (Class 3), (2) a 2002 conviction for aggravated battery with a deadly weapon (Class 3), (3) a 2004 conviction for theft

(Class 4), (4) a 2005 conviction for driving while license suspended (Class 4), (5) a 2007 conviction for theft from a person (Class 3), and a 2010 conviction for home invasion (Class X).

¶ 10 Lutheran Social Service (LSS) caseworker Alyse Egan testified that she worked on H.T. and A.T.'s cases from January 25, 2013 to March 14, 2013. When she was assigned to the cases, respondent was required to complete substance abuse counseling, mental health counseling and parenting services as ordered by the court. Respondent had not complied with any of the services from the time of adjudication to the time Egan received the case.

¶ 11 Jessica Sabel, another caseworker, testified that she was assigned to H.T. and A.T.'s cases from March 2013 to October 2013. Respondent was in prison when Sabel assumed responsibility, and respondent remained incarcerated during the entire termination proceedings. Respondent was ordered to complete substance abuse counseling and individual counseling. She testified that in May or June of 2013, LSS sent respondent letters informing him that he needed to complete various services or his parental rights would be terminated. In addition, she sent out letters every month informing respondent that he needed to contact her regarding the care and custody of his children. Sabel noted that services were available to inmates such as respondent but that there was a waiting list. The agency informed respondent that he should get on the waiting list, but Sabel was unaware if respondent heeded that advice.

¶ 12 Sabel also testified that respondent failed to make reasonable efforts or substantial progress toward returning the minors home and that he failed to make additional progress on completing his court ordered services from March 2013, to May 2, 2013, when the State's termination petition was filed. Sabel stated that the minors were not any closer to being returned home than they were when they came into the department's care.

¶ 13 Ezekial Davis was the caseworker assigned to H.T. and A.T.'s cases from March 2012, to January 2013. He noted that both parents had attempted to make progress but had failed to do so when he was assigned to their cases. Respondent was incarcerated during Davis's review period. In April of 2012, the court ordered respondent to complete several services, which included a mental health evaluation and a substance abuse evaluation. Davis sent respondent a letter in June 2012, informing him that he was his caseworker and asking respondent to contact him regarding those services. He was not aware that respondent completed any of the required services between May 2012 and January 2013. Davis testified that the court made findings at both the October 5, 2012, permanency review hearing and the next permanency review hearing six months later that neither of the minors' parents had made reasonable efforts or made reasonable and substantial progress toward returning the minors home. On cross-examination, Davis admitted that the letter he sent respondent in June of 2012 was the last contact he had with respondent during the time he was assigned to the case.

¶ 14 Respondent testified that he currently resides at the Jacksonville Correctional Center where he is serving four years of an eight-year sentence that began in May of 2010. He will be released on May 3, 2014. He stated that he first became aware that he was a party to these cases in 2012, when he received a letter from the Department of Health Services stating that a telephone conference would be held with the department and several social workers. He testified that he had no knowledge of the cases prior to receiving that letter and that he never received any court order describing which classes or which requirements he needed to complete.

¶ 15 Respondent identified a request slip dated May 29, 2013, showing that he requested to be admitted into the drug program at the correctional facility. The response stated that respondent was under one year from release and therefore did not have time to complete the program.

Another slip was a request for an anger management course dated the same day. The response to that request indicated that he had been added to the wait list and would receive confirmation when the class started.

¶ 16 Respondent further testified that he stayed in contact with H.T. and A.T. by sending them letters. He explained that when he received a letter from Sabel at LSS he started corresponding with the children through her. He would send Sabel letters, and she would read them to the children. He stated that he also tried to call the foster parents to talk to H.T. and A.T. but was never able to speak directly to the children. Respondent testified that he planned to take care of H.T. and A.T. once he was released from prison. He indicated that he spoke with his father on the phone and his father said he had a construction job waiting for him when he returned home.

¶ 17 The trial court found respondent unfit based on depravity. The court found that the statutory presumption was not overcome, stating that the evidence failed to indicate that respondent was "willing to lead a law-abiding life."

¶ 18 The matter proceeded to a best interest hearing on December 4, 2013. In preparation for the best interest hearing, caseworker Collette Johnson filed a best interest report. She testified that H.T. and A.T. live in separate foster homes. H.T. resides with his godparents, Janet and Rick Schultz, who are not biologically related to him, but he has had a relationship with them since his birth. His half-brother Anthony T. also resides with them. H.T. seems comfortable in the foster parents' home, his needs are met and he refers to them as "Maw Maw" and "Paw Paw." H.T. has been diagnosed with attention deficit hyperactivity disorder (ADHD), oppositional defiant disorder and posttraumatic stress disorder. Johnson testified that the foster parents have been able to meet H.T.'s therapeutic needs, and she had no concern about their ability to continue to do so. When Johnson spoke with H.T., he indicated that he wanted to stay with his foster

parents and that he had no desire to have visits with his parents. Johnson indicated that the foster parents were able and willing to adopt H.T., and she believed it was an appropriate placement for them.

¶ 19 Regarding A.T.'s placement, Johnson testified that A.T. lives with the Schultz's daughter, Amy Owens and her husband, Nate, and has been living with them since February of 2012. Owens lives in close proximity to her parents, and she provides day care for them on the weekends when the Schultz's work. As a result, H.T. and A.T. have regular contact with each other. Johnson testified that A.T. refers to her foster parents as "Mom" and "Dad" and that she has bonded with them. The Owens's are also willing to adopt A.T. On cross-examination, Johnson testified that she did not know why the children lived in separate foster homes.

¶ 20 Janet Schultz testified that she considers herself H.T.'s grandparent. H.T. was placed in her home after he threatened to run away from another foster home. Schultz stated that she decided to enroll H.T. in several therapy programs to help him address his emotional issues. H.T. was not in therapy prior to living with the Shultz's. She further testified that respondent was welcome to visit H.T. in her home if H.T. was willing to see him.

¶ 21 Owens, A.T.'s foster mother, testified that she has a close relationship with A.T.'s mother and has known her since they were both 13 years old. A.T.'s mother requested that A.T. and another sibling be placed with Owens. Owens testified that A.T. is "very comfortable" in her home. She stated that A.T. was upset when she was placed into DCFS custody but when A.T. was placed in the Owens's home, "it's like all her fears went away." Owens has also worked to address A.T.'s ADHD diagnosis with medical appointments. She testified that A.T. does not know respondent but that she would allow him to be a part of A.T.'s life.

¶ 22 Respondent testified that he would be released from prison in May of 2014, that he had a job and that he planned to find a house. He stated that before he was incarcerated, he had custody of H.T. when H.T. was four years old. He testified that he loved his children and that he felt they should live with a biological parent.

¶ 23 At the conclusion of the hearing, the trial court ruled that it was in the best interests of H.T. and A.T. that respondent's parental rights be terminated. Respondent appeals.

¶ 24 I

¶ 25 Respondent first challenges the trial court's finding of unfitness on the basis of depravity. He claims that after he rebutted the presumption that arose from evidence of his prior convictions, the State failed to present evidence to establish depravity.

¶ 26 The termination of parental rights involves a two-step process. The trial court must first determine whether the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2012); 750 ILCS 50/1D (West 2012). If the parent is unfit, the trial court then determines whether it is in the child's best interest that the parent's rights be terminated. 705 ILCS 405/2-29(2) (West 2012).

¶ 27 One of the grounds upon which a respondent may be found unfit is depravity. See 750 ILCS 50/1(D) (West 2012). Depravity is defined as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *Stalder v. Stone*, 412 Ill. 488, 498 (1952). There is a rebuttable presumption that a parent is depraved if he or she has been convicted of three felonies, at least one of which occurred within five years of the filing of the petition to terminate. 750 ILCS 50/1(D)(i) (West 2012). Certified copies of the respondent's convictions create a presumption of depravity. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 23. A parent may offer evidence to show that he is not depraved in spite of his convictions. *Id.* at ¶ 24. Once the parent rebuts the presumption, it ceases to exist and the State must prove depravity by clear and

convincing evidence. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). We will not reverse the trial court's finding of unfitness on review unless it is against the manifest weight of the evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004).

¶ 28 In this case, the trial court's finding that respondent was unfit on the basis of depravity was not against the manifest weight of the evidence. Respondent's acts were of sufficient duration and repetition to establish that he was depraved. Respondent was 31 years old at the time of the fitness hearing. The certified copies of his convictions indicated that he pled guilty to forgery, was convicted of aggravated battery with a weapon, was sentenced to 20 months in prison for theft and received a three-year sentence for driving while license suspended. In 2007, he was sentenced to 180 days in jail for theft and in 2010 he was convicted of home invasion, a Class X felony for which he was still incarcerated at the time the petition to terminate was filed. Respondent had been in and out of jail for most of his adult life. His criminal behavior negatively affected his ability to provide for H.T. and A.T. physically, emotionally and financially. The trial court did not err when it determined that respondent was unfit on the grounds of depravity.

¶ 29 II

¶ 30 Respondent also claims that the trial court's finding that it was in the best interests of H.T. and A.T. to terminate his parental rights was against the manifest weight of the evidence.

¶ 31 Following a finding of parental unfitness, the trial court must determine whether it is in the minor's best interest to terminate the parental rights of the unfit parent. *In re D.T.*, 212 Ill. 2d 347, 352 (2004). At the best interest hearing, the parent's interest in maintaining the parent-child relationship must yield to the minor's interest in a stable, loving home life. *Id.* at 364. The trial court must consider several factors listed in section 1-3(4.05) of the Juvenile Court Act of 1987

(Act) (705 ILCS 405/1-1 *et seq.* (West 2012)), including (1) the child's physical safety and welfare, (2) the development of the child's identity, (3) the child's background and ties, including familial, cultural, and religious, (4) the child's sense of attachments, (5) the child's wishes and long-term goals, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of every family and child, (9) the risks attendant to entering and being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). The trial court's decision to terminate parental rights will not be disturbed unless it is against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 892 (2004).

¶ 32 Here, evidence at trial established that H.T. and A.T. had known their foster parents their entire lives and had developed a close relationship with them as caregivers. Although H.T. and A.T. were placed in separate homes, they spent time together frequently because the foster families were related and lived nearby. Both children were receiving all of their necessary physical, medical and emotional support, and they enjoyed living with their foster parents. Evidence also indicated that neither H.T. nor A.T. had seen respondent since 2010. The caseworker testified that H.T. did not wish to have contact with respondent and A.T. did not really know him. Further, the trial court heard evidence that both sets of foster parents were willing and able to adopt the children.

¶ 33 Respondent claims that the trial court's ruling was against the manifest weight of the evidence because he never had a chance to establish a relationship with his children due to his incarceration and he believed they should live with a biological parent. However, in a best interest hearing, the child's familial ties represent one factor among many that the court must consider. See 705 ILCS 405/1-3(4.05) (West 2012). Even if respondent expressed a sincere

desire to establish a parent-child relationship with H.T. and A.T. upon his release from prison, that one factor alone is not be sufficient to reverse the trial court's determination in light of the other factors enumerated in section 1-3(4.05) of the Act. Considering all of the evidence presented, we cannot say that the trial court's termination of respondent's parental rights was against the manifest weight of the evidence.

¶ 34

CONCLUSION

¶ 35

The judgment of the circuit court of Rock Island County is affirmed.

¶ 36

Affirmed.