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2014 IL App (3d) 140494-U

Order filed September 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
A.D., 2014

In the Matter of the Petition of)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Julia Lappin and)	Rock Island County, Illinois,
Addarryll Crawford,)	
)	
Petitioners-Appellees,)	
)	
To Adopt)	Appeal No. 3-14-0494
)	Circuit No. 13-AD-34
R.A., Jr., a Minor,)	
)	
v.)	
)	
Ricky A., Sr.,)	Honorable
)	Peter W. Church,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Lytton and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The admission of uncertified printouts showing father's prior convictions, if error, constituted harmless error. The trial court's finding that father was unfit due to his failure to maintain a reasonable degree of interest, concern or responsibility of the minor was not against the manifest weight of the evidence.

¶ 2 Petitioners, Julia Lappin and Addarryll Crawford, filed a petition seeking to adopt the minor, R.A., Jr., pursuant to the Adoption Act. 750 ILCS 50/1 *et seq.* (West 2012). The trial court found the minor’s biological father, respondent, Ricky A., Sr., to be unfit to care for the minor and subsequently terminated father’s parental rights. Father appeals the finding of unfitness. We affirm.

¶ 3 **BACKGROUND**

¶ 4 On March 14, 2007, R.A., Jr., the minor, was born to Ricky A., Sr. and Lenora W. On August 2, 2013, petitioners Julia Lappin and Addarryll Crawford, filed a “Petition for Adoption,” alleging R.A., Jr.’s father was unfit because he failed to maintain a reasonable degree of interest, concern or responsibility for the minor’s welfare. Alternatively, the petition alleged father was depraved based on his prior, multiple, felony convictions. The petition also alleged the minor’s mother was unfit.¹ The petitioners requested a judgment allowing them to adopt the minor. On August 7, 2013, the trial court appointed a guardian *ad litem* (GAL) to represent the interests of the minor.

¶ 5 On September 27, 2013, the trial court received a letter from father responding to the adoption petition. In the letter, father stated he was “totally against” the adoption because the petitioners were not blood relatives of the minor. Father indicated he did not want to “give up” his parental rights to the minor.

¶ 6 On March 24, 2014, petitioners and father appeared before the court for a scheduled hearing. On that date, the court appointed counsel to represent father and scheduled the fitness hearing and best interest hearing for June 2, 2014.

¹ For purposes of this appeal, any evidence pertaining to the termination of mother’s parental rights is not included in our factual recitation, except for that evidence which also relates to the termination of father’s parental rights and the issues raised in this appeal.

¶ 7 On June 2, 2014, petitioners and their counsel, father’s counsel, and the GAL appeared as scheduled. The court denied father’s motion to continue and the matter proceeded to a fitness hearing. Petitioner Julia Lappin testified she had been married to Addarryll Crawford since May 2011. Lappin testified she and Crawford lived in Illinois since October 2010, and resided in a two-story, two bedroom home in Sherrard. Lappin explained she met the minor through Karen Houselong, the minor’s ex-guardian. Lappin explained the minor was born with cocaine in his system and the minor’s mother left him at the hospital. Lappin testified Houselong brought the minor home from the hospital after his birth. Lappin lived with the minor and Houselong in St. Louis for two years where Lappin helped care for the minor. During that time, Lappin said the minor’s father was “in and out” of the minor’s life. In October 2012, Houselong was killed in a car accident. Consequently, Lappin and Crawford retrieved the minor from Missouri and brought him to live with them in Illinois.

¶ 8 Lappin had contact with father when he was not incarcerated, but explained father was incarcerated when the minor was born and had been incarcerated at least four times since the minor’s birth. According to Lappin, father sent the minor one card around Christmas 2012, and made a “couple” of phone calls in late 2012 or early 2013. Lappin explained she did not have the money to facilitate father’s phone calls to the minor from prison. As a result, father stopped calling from prison. Lappin testified the minor did not talk about his father and when father called, the minor did not want to talk to him. Lappin believed the last time father saw the minor was in the beginning of 2012. Lappin explained father had been out of prison since July 2013, but had not attempted to see the minor.

¶ 9 Counsel for petitioners introduced a copy of a request to admit, which was served upon father on January 22, 2014. Since father did not respond to the request to admit, the court deemed the facts admitted. The request to admit provided, in relevant part:

“1. That you, [father] have been convicted of at least three felony offense[s].

2. That the last of those felony offenses occurred within five years of the filing of the Petition for Adoption in the above captioned matter, to wit: on September 9, 2013.

3. That you, [father], have been convicted of Robbery and Assault; sentenced to 13 years in the Department of Corrections; have been convicted of Felony Possession of Drugs; have been convicted of burglary and sentenced to four years in prison.”

¶ 10 Petitioners’ counsel also introduced “a printout from the Missouri Department of Corrections showing the various charges that [father] has been incarcerated on the duration of his incarceration within the Missouri Department of Corrections on those various offenses.” Father’s counsel objected to the admission of the printout on the grounds that the convictions were not certified. Petitioners’ counsel responded that father already admitted, under the request to admit, the existence of the convictions. The court admitted the document, over objection, stating, “I understand it’s not certified. Although with regard to those types of foundational issues, the Court has some degree of latitude. And the Court will consider the document and the weight to be accorded to the document in light of the fact that it’s not specifically certified. Although essentially it appears that with a raised seal, it would be a certified document.” The

court also admitted the September 24, and December 18, 2013, and January 13, and May 30, 2014, GAL reports. After petitioners rested,² father did not present any evidence.

¶ 11 After hearing arguments, the court found petitioners proved by clear and convincing evidence father failed to maintain a reasonable degree of interest, concern or responsibility for the minor. 750 ILCS 50/1(D)(b) (West 2012). The court also found father depraved based on his convictions, pursuant to the request to admit, and father's failure to rebut the presumption of depravity. 750 ILCS 50/1(D)(i) (West 2012).

¶ 12 The matter immediately proceeded to the best interest hearing. Petitioner Addarryll Crawford testified he was 38 years old and held an Associate's degree in applied science from Brown Mackie College. Crawford testified he worked as a technician with Peoria-based DSI. Crawford explained the minor was a very happy and intelligent child who liked to garden. Crawford testified the minor blended into the family well and the couples' nine children treated the minor as family.

¶ 13 Julia Lappin testified she had a general equivalency diploma and was a certified nurse assistant. Lappin testified she worked the midnight shift at Hope Creek while Crawford worked the evening shift. Lappin's brother helped care for the children when both Lappin and Crawford were at work. Lappin testified the minor was a shy, fun-loving, intelligent, and well-adjusted child who loved to garden. Lappin explained the minor was doing "excellent" in school. Lappin testified all of the children are protective of each other and get along well together.

¶ 14 The court took judicial notice of the GAL reports and determined, based on the statutory factors, it was in the minor's best interest to terminate father's parental rights and to allow the

² Petitioners' counsel also introduced a copy of a certified order from the State of Missouri indicating the guardianship involving the minor would be terminated upon the entry of a judgment allowing petitioners to adopt the minor in the instant case.

petitioners to adopt the minor. On June 13, 2014, father filed his notice of appeal challenging the trial court's order finding him unfit and the trial court's order terminating his parental rights. On July 1, 2014, the court entered a written "Order Terminating Parental Rights" setting forth its June 2, 2014, oral decision and a "Judgment of Adoption."

¶ 15 ANALYSIS

¶ 16 On appeal, father contends the trial court erred when it admitted uncertified printouts showing his convictions during the fitness hearing. A trial court's determination that a parent's unfitness has been established by clear and convincing evidence will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). "A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *Id.*

¶ 17 The record reveals the trial court found father unfit on two separate grounds, as follows: (1) father's failure to maintain a reasonable degree of interest, concern or responsibility for the minor's welfare; and (2) father's depravity. 750 ILCS 50/1(D)(b) and 50/1(D)(i) (West 2012). The case law provides that "[e]vidence of a single statutory ground is sufficient to uphold a finding of parental unfitness." *In re T.Y.*, 334 Ill. App. 3d 894, 905 (2002).

¶ 18 Father challenges the court's finding of unfitness based on depravity, but does not contest the trial court's finding that father was unfit because he failed to maintain a reasonable degree of interest, concern or responsibility for his child's welfare pursuant to section 1(D)(b) of the Act. After our independent review of the record, we agree the trial court's finding of father's unfitness based on section 1(D)(b) of the Act is well-supported by the record. When determining whether a parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the minor's welfare, a court should consider the parent's efforts to visit and maintain contact with

the minor, as well as other indicia of interest, such as inquiries into the minor's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 19 Here, regardless of father's periodic incarceration, he did not contact or visit with the minor for more than two years prior to the fitness hearing. Father showed no interest in caring for the minor, despite being released from prison for more than one year before the fitness hearing. Since father does not challenge the trial court's finding of unfitness based on section 1(D)(b) of the Act, and the record supports the court's finding of unfitness on this basis, it becomes less significant whether the trial court incorrectly relied on uncertified copies of father's previous felony record with respect to the separate and independent allegations of his unfitness due to alleged depravity based on section 1(D)(i) of the Act.

¶ 20 Nonetheless, we briefly address whether the admission of the uncertified printouts of father's prior felony convictions compromised the veracity of the proceedings. It is well-settled that facts set out in a request to admit which are not responded to, are deemed admitted. *Montalbano Builders, Inc. v. Rauschenberger*, 341 Ill. App. 3d 1075, 1080 (2003). In this case, father failed to respond to petitioners' request to admit the facts related to the existence of father's three previous felony convictions. Therefore, the court could properly rely on those admitted facts for purposes of finding father unfit. Accordingly, assuming *arguendo*, the trial court erred by allowing the State to introduce uncertified copies of convictions for purposes of proving depravity, the error, constitutes harmless error because the printouts merely duplicated the father's procedural admission of the same facts following his failure to respond to the request to admit. Consequently, we affirm the termination of father's parental rights.

¶ 21

CONCLUSION

¶ 22

For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 23

Affirmed.