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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re JAYKOB P., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	Nos. 14-JA-34
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. KYLE P.,)	Francis M. Martinez,
Respondent-Appellant.))	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's rulings that respondent was an unfit parent and that the termination of respondent's parental rights was in Jaykob P.'s best interests.

¶ 2 The trial court found respondent, Kyle P., to be an unfit parent and determined that it was in the best interests of his minor child, Jaykob P., to terminate his parental rights. On appeal, defendant challenges the trial court's rulings on unfitness and best interests, as well as its ruling on an evidentiary objection. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Jaykob P. was born on September 8, 2013. He is the biological child of respondent and Delia H.¹ The record reflects that respondent was incarcerated for a substantial period of time relevant to these proceedings.

¶ 5 On January 4, 2014, while Jaykob was in the care of Delia, he was hospitalized with pneumonia. Around that same time, the Department of Children and Family Services (DCFS) became aware that Jaykob had been living in a condemned house. DCFS initiated a safety plan and Jaykob was moved to a relative's house while Delia sought suitable housing. On January 28, 2014, the relative contacted DCFS and explained that she was no longer able to care for Jaykob. DCFS was unable to locate Delia or find a suitable relative or friend for placement, and accordingly took protective custody of Jaykob.

¶ 6 The State filed a two-count neglect petition on January 30, 2014. Respondent appeared at a hearing that same day while in the custody of the Winnebago County Sheriff. Count I of the State's petition alleged that Jaykob was not receiving proper or necessary support, including clothing and shelter, in that he was residing in a condemned building. Count II alleged that Jaykob had been living in an environment injurious to his welfare, in that Delia had a substance abuse problem which prevented her from properly parenting. Respondent waived his right to a temporary shelter care hearing, and the trial court transferred temporary guardianship to DCFS.

¶ 7 On May 15, 2014, following an adjudicatory hearing, the trial court found that the State had proved the allegations in Count I of its neglect petition by the preponderance of the evidence, but had failed to meet its burden on Count II. A dispositional hearing was held on June 11, 2014. Respondent once again appeared while in the custody of the Winnebago County

¹ Delia H. and two of her children not related to respondent were also subjects of these proceedings. Neither Delia H., nor the two other children, are involved in this appeal.

Sherrif. He stipulated that he was unfit or unable to properly care for, train and protect the minor, and guardianship and custody was placed with DCFS.

¶ 8 The first permanency review hearing was held on December 1, 2014. DCFS caseworker Kayla Evink testified that respondent had completed an integrated assessment and he was recommended for parenting classes, individual therapy, and drug screening. He also completed one drug test with negative results. Although respondent had been engaging in weekly visitations from the Winnebago County jail, his incarceration had prevented him from completing his parenting classes and individual therapy. The trial court found that respondent had not made reasonable efforts in the matter, but that the return home goal within twelve months was appropriate.

¶ 9 Following the second permanency review hearing, which was conducted on May 4, 2015, the trial court entered an order finding that respondent had made reasonable efforts, but not reasonable progress. The trial court also changed the goal to substitute care pending termination of parental rights. The record contains no report of proceedings from this hearing.

¶ 10 The State filed a petition for termination of respondent's parental rights on June 30, 2015. Count I alleged that respondent had failed to maintain a reasonable degree of interest, concern or responsibility as to Jaykob's welfare within any nine-month period after Jaykob had been adjudicated neglected; Count II alleged that respondent had failed to make reasonable efforts to correct the conditions that were the basis for the removal of Jaykob from him within any nine-month period after Jaykob had been adjudicated neglected; Count III alleged that respondent had failed to make reasonable progress toward the return of Jaykob to him within any nine-month period after Jaykob had been adjudicated neglected; and Count IV alleged that respondent was deprived.

¶ 11 The unfitness portion of the termination of parental rights hearing was held on December 3, 2015. The only witness to testify was caseworker Evink, who was called by the State. The bulk of the questions asked by the prosecutor on direct examination concerned Delia. The only questions pertaining to respondent were aimed at establishing that respondent was found to be Jaykob's father by way of DNA testing. On cross-examination, the guardian *ad litem* (GAL) asked Evink to confirm that respondent had been incarcerated for a substantial amount of time since the filing of the neglect petition. Respondent's attorney objected to the question as beyond the scope of direct examination. The trial court overruled the objection without further comment. Evink proceeded to testify that respondent's incarceration prevented him from completing his recommended services. Respondent's attorney elicited testimony from Evink that respondent had maintained consistent contact with DCFS and expressed his desire to consistently visit Jaykob while he was incarcerated. He also sent Jaykob letters with cutouts of Disney characters.

¶ 12 At the close of the evidence, the prosecutor presented certified copies of respondent's felony convictions. These included two convictions for theft in 2015, one conviction for attempted unlawful possession of a stolen vehicle in 2014, one conviction for possession with intent to deliver a controlled substance in 2009, one conviction for attempted unlawful possession of a stolen vehicle in 2005, and one conviction for retail theft in 2003. In addition, respondent had multiple convictions for driving with a suspended or revoked license and aggravated driving after revocation.

¶ 13 The trial court delivered its ruling on unfitness on December 9, 2015. The trial court first found that, although respondent had made some efforts at reunification, he been unable to make any progress toward reunification due to his continual incarceration. The trial court further noted

that respondent's multiple convictions created a rebuttable presumption that he was deprived, which he had not overcome. Accordingly, the trial court found that the State had proved Counts I, II, and IV of its petition for termination by clear and convincing evidence; Count III was dismissed.

¶ 14 The trial court proceeded to conduct a hearing on Jaykob's best interests, taking judicial notice of the evidence and testimony that had been presented in the unfitness portion of the proceeding. Caseworker Evink testified that Jaykob had been residing in a traditional foster home for approximately eight months, which represented his longest placement since DCFS had obtained temporary custody. Evink further testified that she had visited the foster home and observed that Jaykob had a good relationship with the foster mother, who was willing to adopt him. Jaykob felt secure with his foster mother; he called her "mom," turned to her for comfort, and was attached to her. The foster mother had also been providing all of the food and clothing for Jaykob. Evink opined that it would be in Jaykob's best interests if he were freed for adoption by the foster mother.

¶ 15 The foster mother confirmed during her testimony that she was willing to adopt Jaykob. She also testified that she had been taking day trips with Jaykob to zoos and other community events, and she had created a photo album for Jaykob with pictures of his biological family to help maintain those relationships.

¶ 16 Respondent testified that he was incarcerated at the time of Jaykob's birth, but he had maintained weekly visitation through a video screen. Respondent further testified that he had been released from incarceration approximately six months prior to the date of the best interest hearing. During this time, he had been visiting Jaykob for one hour per month. Respondent

admitted that Jaykob appeared to be doing well in his foster placement, but he believed that the best placement for Jaykob would be with his parents or with a sibling “because they are family.”

¶ 17 In delivering its findings, the trial court acknowledged that it would be ideal for Jaykob to be placed with a family member, but noted that respondent had not proffered any family members or other evidence to contradict caseworker Evink’s opinion that adoption by Jaykob’s foster mother would be in his best interests. The trial court further commented, “[w]e can only base our decisions on the evidence that’s before us and our beliefs as to what will be in the best interest of [Jaykob] and allow [him] to flourish into adulthood.” Accordingly, the trial court concluded that the State had proved by a preponderance of the evidence that it was in Jaykob’s best interests to terminate respondent’s parental rights and allow for adoption.

¶ 18 The order terminating respondent’s parental rights was entered on December 16, 2015. Respondent filed a timely notice of appeal.

¶ 19 **II. ANALYSIS**

¶ 20 Respondent first contends that the trial court erred in ruling that there was clear and convincing evidence that he was unfit on Counts I, II, and IV of the State’s motion to terminate his parental rights. His next contention is that the trial court abused its discretion in overruling his objection to the GAL’s questioning of caseworker Evink as beyond the scope of direct examination. Finally, respondent contends that the State failed to prove by a preponderance of the evidence that it was in Jaykob’s best interests that his parental rights be terminated. For the following reasons, we affirm.

¶ 21 The Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) provides a two-step process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); *In re B’Yata I.*, 2013 IL App (2d) 130558, ¶ 28. First, the State must prove by clear and

convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). 705 ILCS 405/2-29(2) (West 2014). If the trial court finds that the parent is unfit, it must conduct a second hearing, during which the State must prove by a preponderance of the evidence that it is in the best interest of the minor to terminate parental rights. *In re D.T.*, 212 Ill.2d 347, 352, (2004). A reviewing court will not disturb the trial court's findings regarding parental unfitness or the best interest of the minor unless those findings are against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (2008); *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 22 Pursuant to the Adoption Act, there is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least three felonies, and at least one of these convictions took place within five years of the filing of the petition or motion seeking termination of parental rights. 750 ILCS 50/1(D)(i) (West 2014)). A presumption of depravity may be rebutted with evidence of rehabilitation or by showing the circumstances surrounding the offenses did not result from depravity. *In re T.T.*, 322 Ill.App.3d 462, 466 (2001). If the parent produces evidence opposing the presumption, the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24. A determination of depravity requires close scrutiny of the character and credibility of the parent. *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 201. Because each case involving parental unfitness is *sui generis*, courts do not make factual comparisons to other cases. *Id.*

¶ 23 Here, respondent concedes that his felony convictions created a rebuttable presumption of his depravity. He argues, however, that he sufficiently opposed the presumption by presenting evidence of his rehabilitation. Namely, respondent asserts that he was “constantly inquiring about and visiting with his child whenever he was able.” He also points to Evink’s testimony that he “acted appropriately and cared for his child during those visits.” We disagree that this constitutes sufficient evidence of rehabilitation to rebut the presumption of respondent’s depravity. While we commend respondent for his desire to remain a part of Jaycob’s life, it remains that he showed no evidence in the trial court that he was able to properly care and provide for Jaycob. See *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003) (holding that evidence of rehabilitation “can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely”). Thus, the trial court’s finding of depravity was not against the manifest weight of the evidence. Because we affirm the trial court’s finding of unfitness on the ground of depravity, we need not address respondent’s contentions regarding the other bases of unfitness. See *Julian K.*, 2012 IL App (1st) 112841, ¶ 2 (noting that a single ground of unfitness under section 1(D) of the Adoption Act is sufficient to support a finding of unfitness).

¶ 24 We now turn to respondent’s contention that the trial court abused its discretion in overruling his objection regarding the scope of caseworker Evink’s testimony. Respondent points out that the prosecutor asked no questions of Evink regarding his criminal history during direct examination. Thus, he argues, the trial court should not have allowed the GAL to ask any such questions during his cross-examination of Evink. See *People v. Terrell*, 185 Ill. 2d 467, 498 (1998) (“Generally, cross-examination is limited in scope to the subject matter of direct examination of the witness and to matters affecting the credibility of the witness.”).

¶ 25 We note that an abuse of discretion is found where the trial court acts “arbitrarily without conscientious judgment, exceeds the bounds of reason, or ignores recognized principles of law, so that substantial prejudice results.” (Emphasis added.) *In re G.L.*, 329 Ill. App. 3d 18, 25 (2002); see also *In re Leona W.*, 228 Ill. 2d 439, 460 (2008) (holding that a trial court’s erroneous evidentiary ruling will not warrant reversal absent the existence of substantial prejudice affecting the outcome of the trial). Respondent asserts that, if the trial court had disallowed the GAL’s questioning of Evink regarding his criminal history, “there would be no testimonial evidence against him and none of the [State’s] allegations of unfitness could be proven by clear and convincing evidence.” We disagree. The prosecutor presented certified copies of respondent’s felony convictions, which the trial court admitted into evidence. Moreover, as noted above, respondent concedes in his brief that his felony convictions created a rebuttable presumption of his depravity. Thus, even if we were to conclude that the trial court erred by allowing the GAL’s line of questioning, we would not conclude that respondent was substantially prejudiced.

¶ 26 Respondent’s final contention is that the State failed to prove by a preponderance of the evidence that it was in Jaykob’s best interests that his parental rights be terminated. Respondent argues that Jaykob would be better served if his parental rights had not been terminated, which would have allowed Jaykob to stay connected to respondent’s family. Once again, we disagree.

¶ 27 At a best-interest hearing, “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *In re D.T.*, 212 Ill. 2d at 364. The factors to be considered by the trial court in making its best-interest determination include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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, including church, school, and friends; (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 preference of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 28 Jaykob was born on September 8, 2013. DCFS obtained guardianship of Jaykob in January 2014, when he was less than five months old. The best-interest hearing was conducted on December 9, 2015, approximately three months after Jaykob's second birthday. At this point, Jaykob had been living with his foster mother for approximately eight months, which constituted the longest placement of his young life. Caseworker Evink testified that she had visited the foster home and observed Jaykob's positive interactions with the foster mother. Jaykob followed the foster mother's directions and looked to her for care and comfort. In Evink's opinion, it would be in Jaykob's best interests if he were freed for adoption by the foster mother. The foster mother testified that she was willing to adopt Jaykob. She further testified that she had been taking Jaykob to daycare while she worked. Jaykob's evening routine included chores, dinner with fruits and vegetables, coloring, and reading. She had also created a photo album with pictures of Jaykob's biological family to help maintain those relationships. Finally, the foster mother had been providing all of the food and clothing for Jaykob, and she had been saving the financial assistance from DCFS to enroll him in a private school. Given Jaykob's need for permanence and the level of care that he was receiving with the foster mother, we conclude that respondent's parental interests must yield to Jaykob's interests in a stable, loving home. See *In re D.T.*, 212 Ill. 2d at 364.

¶ 29

III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 31 Affirmed.