2016 IL App (5th) 160318-U

NO. 5-16-0318

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re K.M.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-JA-25
	)	
K.S.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determinations that the respondent was unfit and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence.

¶ 2 The respondent, K.S., appeals the judgment of the circuit court of Saline County terminating his parental rights to K.M.S. Counsel was appointed to represent K.S. on appeal. Appointed counsel has filed a motion with an attached memorandum pursuant to *Anders v. California*, 386 U.S. 738 (1967), alleging that there is no merit to the appeal and requesting leave to withdraw as counsel. See *McCoy v. Court of Appeals*, 486 U.S.

429 (1988). K.S. was given proper notice and was granted an extension of time to file briefs, objections, or any other documents supporting his appeal. He has filed a response. We have considered appointed counsel's motion to withdraw as counsel on appeal and the attached memorandum, as well as K.S.'s response thereto. We have examined the entire record on appeal and find no error or potential grounds for appeal. For the following reasons, we now grant appointed counsel's motion to withdraw and affirm the judgment of the circuit court of Saline County.

¶ 3 BACKGROUND

¶ 4 K.S. and L.E. are the biological parents of K.M.S., who was born on June 8, 2007.[1] On June 18, 2014, the State filed a petition for the adjudication of wardship alleging that K.M.S. was neglected as defined by section 2-3 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2012)) in that he was in an environment injurious to his welfare. K.S. and L.E. stipulated to the allegations of the petition and K.M.S. was adjudicated neglected. Following a dispositional hearing, K.M.S. was made a ward of the court and placed in the custody of the Department of Children and Family Services (DCFS).

¶ 5 Permanency review hearings were held on January 13, 2015, and May 12, 2015. Following these hearings, the court found that neither parent had made reasonable and substantial progress toward returning K.M.S. home. On October 13, 2015, L.E. surrendered her parental rights to K.M.S. Following a permanency review hearing held

[1]L.E. is not a party to this appeal.

that same day the court found that K.S. had failed to make reasonable and substantial progress toward returning K.M.S. home.

¶ 6 On October 24, 2015, the State filed a petition to terminate the parental rights of K.S. The petition alleged that K.S. was an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)) in that he (1) failed to maintain a reasonable degree of interest, concern or responsibility as to K.M.S.'s welfare (750 ILCS 50/1(D)(b) (West 2014)), (2) failed to make reasonable progress toward the return of K.M.S. within any nine month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)), and (3) was depraved (750 ILCS 50/1(D)(i) (West 2014)).

¶ 7 A hearing on the petition to terminate was held on April 12, 2016. The State dismissed the allegations that K.S. was unfit based on his failure to maintain a reasonable degree of interest, concern or responsibility as to K.M.S.'s welfare and his failure to make reasonable progress toward the return of K.M.S. within any nine month period following the adjudication of neglect, and proceeded solely on the allegation of depravity. Admitted into evidence without objection were certified copies of K.S.'s September 24, 1998, conviction for predatory criminal sexual assault of a child, and his June 28, 2013, convictions for unlawful participation in methamphetamine manufacturing and felony driving while license revoked. The State presented no other evidence. K.S. testified that he was incarcerated in the Hill Correctional Center and was due to be released on August 26, 2016. He stated that he had taken several classes at Egyptian Mental Health in connection with another case and that Egyptian had prepared a report indicating that he was not a danger to children. K.S. testified that he had given the report to his DCFS

caseworker. He had attempted to obtain another copy of the report but had been unsuccessful. K.S. stated that he had been unable to complete his service plan because his constant trips to court prevented him from taking any classes in prison. Following the hearing, the circuit court found that K.S.'s convictions had raised a statutory presumption of depravity, that K.S. had failed to rebut the presumption, and that he was therefore unfit.

¶ 8 A best-interests hearing was held on May 24, 2016. Meagan Pinkerton, K.M.S.'s caseworker, testified that K.M.S. was thriving in his foster home and had bonded with his foster family. He considered his foster parents to be his parents and wanted to be adopted by them. His foster parents wanted to adopt him. K.M.S. had some issues with school initially but had progressed "tremendously" since being placed in foster care and was now doing well. K.M.S. never inquired about K.S. or L.E. Pinkerton recommended that the foster parents be allowed to adopt K.M.S. K.S. testified that he was due to be paroled on August 26, 2016, and that he had been approved to live with his parents. K.M.S. would live with them and would have his own room. Prior to his incarceration K.M.S. lived with him and he provided for K.M.S. At the conclusion of the hearing, the circuit court found that it was in K.M.S.'s best interests to terminate the parental rights of K.S. K.S. appeals.

¶ 9 ANALYSIS

¶ 10 Initially, we note that although motions to withdraw as counsel on appeal pursuant to *Anders* are typically made in criminal appeals, the *Anders* procedure has been held to

be applicable in cases where counsel has been appointed for indigent parents appealing the termination of their parental rights. *In re Keller*, 138 Ill. App. 3d 746 (1985).

¶ 11 The Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2014). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 12 One of the bases for finding a parent unfit is depravity. "Depravity," for purposes of determining whether a parent is unfit, is an inherent deficiency of moral sense and rectitude (*In re S.W.*, 315 Ill. App. 3d 1153, 1158 (2000)) and is demonstrated by a series of acts or a course of conduct that indicates a moral deficiency and an inability or unwillingness to conform with accepted morality. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). Section 1(D)(i) of the Adoption Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2012). A conviction for predatory criminal sexual assault of a child

likewise raises a rebuttable presumption of depravity, which can be overcome only by clear and convincing evidence. *Id.*

¶ 13 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2014). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the factors set forth in section 1-3(4.05) of the Act (705 ILCS 405/1-3(4.05) (West 2014)). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). With these standards in mind, we review appointed counsel's motion to withdraw.

¶ 14 At the hearing on parental fitness the State introduced, without objection, certified copies of three felony convictions, at least one of which occurred within five years of the filing of the petition to terminate parental rights. Additionally, one of those convictions was for predatory criminal sexual assault of a child. This evidence raised a rebuttable presumption that K.S. was depraved. The only evidence K.S. offered to rebut the presumption was his own testimony that Egyptian Mental Health had prepared a report indicating that he was not a danger to children. K.S. did not introduce a copy of this

report into evidence, and the report was not prepared in connection with the present case. This is well short of the clear and convincing evidence necessary to rebut the presumption of depravity, and we agree with appointed counsel that no meritorious argument can be made that the circuit court's determination that K.S. was unfit based on depravity is contrary to the manifest weight of the evidence.

¶ 15 A report prepared by Lutheran Social Services of Illinois in preparation for the termination proceedings noted that K.M.S. had been in care since July 22, 2014. He was receiving counseling and had made "tremendous" progress. He was thriving in placement and wanted to be adopted by his foster parents, whom he referred to as "mom" and "dad." At the best-interests hearing K.M.S.'s caseworker testified that he had bonded with his foster family and that they wanted to adopt him. The only evidence submitted by K.S. was his own testimony that he had provided for his children when not incarcerated and that upon his release from prison he and K.M.S. could live with his parents. Again, we agree with counsel that given the evidence adduced at the best-interests hearing, no meritorious argument can be made that the circuit court's decision that termination of K.S.'s parental rights was in K.M.S.'s best interest is contrary to the manifest weight of the evidence.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, appointed counsel's motion to withdraw as counsel on appeal is granted, and the judgment of the circuit court of Saline County is affirmed.

¶ 18 Motion granted; judgment affirmed.