2016 IL App (5th) 160383-U

NO. 5-16-0383

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re A.G., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Saline County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-JA-51
	)	
D.G.,	)	Honorable
	)	Todd D. Lambert,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly found father to be an unfit parent and that it was in the minor child's best interests for father's parental rights to be terminated.

¶ 2 Father, D.G., appeals from the order entered by the circuit court of Saline County terminating his parental rights to his minor daughter, A.G. Father argues on appeal that the court erred in finding him to be an unfit parent and further erred in finding that it was in the minor's best interest for his parental rights to be terminated. We affirm.

¶ 3 On October 22, 2014, a petition for adjudication of wardship was filed alleging that the minor child, A.G., was neglected because her environment was injurious to her

welfare. At the time of the filing of the petition, A.G. was six months old. Father and A.G.'s birth mother (hereinafter mother) had a history of domestic violence toward each other. The latest incident in front of the minor occurred on August 2 and resulted in A.G. being tipped over in her car seat during the argument. Mother was arrested and charged with domestic battery, endangering the life or health of a child, and resisting a peace officer. It was also noted that father had a criminal history reflecting substance abuse and domestic violence involving women from previous relationships.

¶ 4 An order of adjudication finding the minor to be neglected was subsequently entered and a dispositional order was entered shortly thereafter awarding custody of the minor to the Department of Children and Family Services (DCFS). A.G. was placed with her maternal grandmother, and at the time of placement, exhibited all the "red flags indicating the lack of parental skills and parental interaction."

¶ 5 As part of his service plan to have A.G. returned, father was required to enroll in and participate in parenting classes, to obtain a substance abuse assessment, and to obtain a domestic violence assessment. Father's participation, however, was reported to be sporadic as were his visits with the minor child. In fact, as of April 23, 2015, father had not begun any services and his progress was rated unsatisfactory.

¶ 6 By the time of the August 2015 permanency hearing, father had moved in with his parents and was working with his father. He was being compliant and consistent with his recommended services and consistent in his visits with A.G. The court issued a permanency order finding that father had made reasonable progress toward returning the minor home. Mother, on the other hand, had a felony domestic battery charge pending

against her. The court warned both parents that they should not be around each other because of the volatility of their relationship.

¶ 7 By the December 2015 permanency hearing, things had changed once again. Father was no longer attending his counseling sessions and was not returning calls to his caseworker or service providers. He also had missed the last three visits with A.G. Father claimed work was keeping him from completing his services because he was on call 24 hours a day.

¶ 8 At the March 2016 permanency hearing, it was reported that father still needed to complete mental health counseling and substance abuse treatment for alcohol dependence. The court advised father that the case was now some 17 months old and that the court did not see the light at the end of the tunnel. The court specifically noted that father's relationship with mother was "toxic," and while the court could not keep mother and father from having a relationship, it did not have to subject the child to that relationship. The goal was therefore changed to substitute care pending termination of father's parental rights. The court advised father that he still had time to fix the situation but he had a lot of work to do in hurry. The court reminded him that he needed to cooperate with DCFS, comply with his service plans, and correct the conditions which led A.G. to be in DCFS's care.

¶ 9 In April of 2016, the State filed its motion for termination of parental rights as to both parents. In June, mother consented to the adoption of A.G. by her mother. At the fitness hearing for father, the DCFS caseworker testified that father was sporadically engaged in parenting and anger management classes, and did not complete his required

substance abuse services. Communication from father was also sporadic as were visits with A.G. His domestic violence and drinking issues continued as well as his off and on again relationship with mother. The caseworker concluded that father had not corrected any of the conditions that brought the child into DCFS's care. Father acknowledged that he was an alcoholic, but he did not believe his alcoholism created a problem in his relationship with A.G. The court disagreed and found father to be unfit. The court ruled that the State had proven unfitness on three grounds: (1) failure to make reasonable progress during any nine-month period, (2) depravity on the basis of his conviction for felony driving while license suspended and three felony convictions for driving while license revoked, and (3) lack of reasonable efforts to correct the conditions which were the basis of removal during any nine-month period. Father's rights were terminated subsequently on August 2, 2016, after the best interest hearing established that it was in A.G.'s best interest for her to be adopted by her grandmother and for father's parental rights to be terminated.

¶ 10 Father argues on appeal that at the time the termination order was entered, he was out of prison, had passed a drug test, and had obtained employment that allowed scheduling of substance abuse appointments. He asserts that based upon all the services he had completed to date, his rapid progress upon release from imprisonment and the connection he has to A.G., that it was not appropriate at this time for his parental rights to be terminated.

¶ 11 Though one of the stated goals of the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2014)) is to preserve and strengthen family ties whenever possible,

in some circumstances the best interests of the child and community may require permanent severance of the family relationship and adoption of the child by others. The Act allows parental rights to be terminated involuntarily by proving by clear and convincing evidence that the parents are unfit within the meaning of unfitness as defined in the Adoption Act (750 ILCS 50/1 *et seq.* (West 2014)) and by proving that it is in the child's best interest to appoint a guardian with power to consent to adoption. The State must first prove, by clear and convincing evidence, that a parent is unfit under one or more grounds listed in the Adoption Act. *In re D.T.*, 212 Ill. 2d 347, 352-53, 818 N.E.2d 1214, 1220 (2004). If the parent is found to be unfit, then the court must determine whether the State has proven, by a preponderance of the evidence, that it is in the best interest of the child that the parental rights be terminated. *In re D.T.*, 212 Ill. 2d at 367, 818 N.E.2d at 1228. A trial court's determination of parental unfitness involves factual findings and credibility assessments that the court is in the best position to make. *In re M.J.*, 314 Ill. App. 3d 649, 655, 732 N.E.2d 790, 795 (2000). On review, we as the appellate court are to accord great deference to these factual findings and credibility determinations. *In re M.J.*, 314 Ill. App. 3d at 655, 732 N.E.2d at 795. Accordingly, a trial court's finding that termination of parent's rights is in the child's best interests will not be reversed on appeal unless that decision is against the manifest weight of the evidence. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 79, 44 N.E.3d 1144.

¶ 12 Here the trial court found father unfit on three grounds: (1) father failed to make reasonable efforts to correct the conditions that were the basis of A.G.'s removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i)

(West 2014)); (2) father failed to make reasonable progress toward her return during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (3) father is depraved in that he has been criminally convicted of at least three felonies, and at least one took place within five years of the filing of the present motion seeking termination (750 ILCS 50/1(D)(i) (West 2014)). We can affirm if there is sufficient evidence to satisfy any one ground of unfitness. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005); *In re M.J.*, 314 Ill. App. 3d at 655, 732 N.E.2d at 795. We agree with the court that father was unfit on all three grounds.

¶ 13 Clearly father was unfit pursuant to section 1(D)(m)(ii) and section 1(D)(m)(i). The reason A.G. was brought into care was because of the pattern of domestic violence between her parents, which was often fueled by substance abuse by both parents. Father's participation in substance abuse treatment and mental health counseling was sporadic at best. The domestic violence continued, and the arrests and incarcerations of both parents continued. Our supreme court has defined reasonable progress to mean demonstrable movement toward the goal of reunification (see *In re C.N.*, 196 Ill. 2d 181, 211-12, 752 N.E.2d 1030, 1047-48 (2001)), while reasonable effort is associated with correcting the conditions that caused the removal of the child in the first place (see *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004)). Being a subjective standard, the focus is on the amount of effort reasonable for that particular parent. *In re R.L.*, 352 Ill. App. 3d at 998, 817 N.E.2d at 966. See also *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1066-67, 859 N.E.2d 123, 137 (2006). In this instance, father made little to no effort at all to comply with his service plans. While he did manage to complete his

parenting and anger management classes, his compliance was short-lived. As the court noted, father's progress was halting at best. Father's low attendance at substance abuse classes was not only not in compliance with his service plans' requirements, but also revealed little reasonable effort to address the condition of substance abuse which led to removal of A.G. Moreover, father continued to argue and physically abuse mother, evidencing no reasonable effort to correct the condition of domestic abuse which led to A.G.'s removal. One or two permanency orders finding that father was making reasonable efforts at that time does not preclude the court from later finding that father's overall efforts were not reasonable. See *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶¶ 23-25, 980 N.E.2d 91. As pointed out in *Jacorey S.*, two months of participation in some of the required services, as compared to seven months of nonparticipation in any of the required services, is not reasonable effort. The court's finding of unfitness based on the lack of reasonable effort and the lack of reasonable progress toward reunification was not against the manifest weight of the evidence.

¶ 14 As for the ground of depravity (section 1(D)(i)), there is a rebuttable presumption that a person is depraved if he has been convicted of three or more felonies, one of which occurred within the last five years. Here, father's four felony convictions all occurred within five years of the State's filing the motion to terminate his parental rights. In fact, on March 20, 2015, while allegedly working on his goal of reunification with his daughter, father committed aggravated driving while license revoked (625 ILCS 5/6-303(d-3) (West 2014)), a Class 4 felony carrying a mandatory minimum sentence of 180 day's imprisonment. Father was subsequently sentenced to one year imprisonment.

¶ 15 Father contends his convictions did not involve violence or moral turpitude and therefore should not be used to find him depraved. The nature of the felonies is not what is critical in this instance. What is important is that father has not shown that he has reformed or gained the capacity to conduct himself in accordance with the law and stop committing the same crimes over and over. Even though father knows his license is revoked, he continues to drive. Such conduct evidences a blatant lack of respect for the law, as well as an indication that he will continue to put people at risk by driving when he wants, and where he wants, despite his legal inability to do so. Moreover, a parent does not overcome the presumption of depravity by presenting some evidence that he or she completed some services and attended some visits with the minor child. See *In re A.H.*, 359 Ill. App. 3d 173, 180-81, 833 N.E.2d 915, 921-22 (2005). Illinois courts have defined depravity an "inherent deficiency of moral sense and rectitude." *In re A.H.*, 359 Ill. App. 3d at 180, 833 N.E.2d at 921. Clearly father's actions fall within the intendments of section 1(D)(i) of the Act.

¶ 16 We conclude that the court correctly terminated father's parental rights in this instance. Once the court has established parental unfitness, then and only then may the court hear evidence concerning the child's best interest. *In re Adoption of Syck*, 138 Ill. 2d 255, 277, 562 N.E.2d 174, 184 (1990). The evidence presented here clearly established that it was in A.G.'s best interests to have father's rights terminated and for her to be adopted by her grandmother. A.G. is now 2½ years old. She has been living with her grandmother since she was six months old. When she first arrived, she exhibited a flat affect and poor motor skills. Now, she is alert and happy, and living in a loving,

safe, and child-appropriate home. The grandmother is also the guardian of A.G.'s five-year-old cousin. Having been raised together, A.G. is strongly bonded with her cousin and believes her to be her big sister. The grandmother is diligently working to meet A.G.'s special needs, taking her to development therapy as well as to all of her medical appointments. As a result, A.G. is improving in speech development and her ability to walk. She does not ask about her father, and is often standoffish around him. In fact, she had not even seen her father since his release from incarceration. Based on the fact that father can barely keep his own appointments, there is little hope that father can meet A.G.'s medical needs and appointments. The court is not required to treat father's claimed intentions of a more responsible behavior in the future as proof that his legal relationship with his daughter should be allowed to continue in the hopes that he follows through with his stated plans. Courts are not to allow children to live indefinitely with the lack of permanence inherent in foster homes. *In re A.H.*, 215 Ill. App. 3d 522, 530, 575 N.E.2d 261, 267 (1991). To allow father to retain parental rights indefinitely while he attempts to achieve stability frustrates the purpose of the Juvenile Court Act. Based on the evidence, it was in the best interest and welfare of A.G. and the public that father's parental rights be terminated. We cannot say under the circumstances presented that the court's determination was against the manifest weight of the evidence.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Saline County.

¶ 18 Affirmed.