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2017 IL App (4th) 160701-U

NO. 4-16-0701

FILED
February 17, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 15JA2
DAVID BANKSTON,	)	
Respondent-Appellant.	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's finding that respondent was unfit was not against the manifest weight of the evidence and it committed no error in terminating his parental rights.

¶ 2 In August 2016, the trial court terminated the parental rights of respondent, David Bankston, to his child, N.B. (born December 30, 2014). Respondent appeals, arguing the court's fitness determination was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2015, the State filed a petition alleging N.B. was a neglected minor. Relevant to this appeal, it asserted N.B.'s environment was injurious to his welfare (1) due to domestic violence between his parents and (2) because his siblings had been adjudicated neglected and his mother failed to make reasonable progress toward having the children returned to her

care. In September 2015, the trial court conducted an adjudicatory hearing and found N.B. neglected based on the State's allegation involving the removal of N.B.'s siblings from the home. In October 2015, the court entered its dispositional order, making N.B. a ward of the court and placing his custody and guardianship with the Illinois Department of Children and Family Services.

¶ 5 In June 2016, the State filed a supplemental motion for termination of parental rights. It alleged, in May 2016, N.B.'s mother signed a final and irrevocable surrender of her parental rights to N.B. The State also asserted respondent was unfit because he (1) was depraved in that he had been criminally convicted of at least three felonies and at least one of his felony convictions occurred within five years of the motion to terminate (750 ILCS 50/1(D)(i) (West 2014)) and (2) failed to make reasonable progress toward N.B.'s return within a nine-month period after the neglect adjudication, specifically from September 3, 2015, to June 3, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2014)). It further maintained termination of respondent's parental rights was in N.B.'s best interests.

¶ 6 In July 2016, the trial court conducted a fitness hearing. Angela Manes testified she worked for Camelot Care Center (Camelot) and was assigned as N.B.'s caseworker from December 2014 to May 2015. She stated N.B. was removed from his parents' care shortly after his birth and before he was discharged from the hospital. Manes noted N.B.'s oldest sibling had been removed from the home in November 2014, due to allegations that respondent had abused that child.

¶ 7 Manes testified the first service plan in the case covered from February to approximately October 2015. She stated respondent received and signed the service plan in February

2015, which required him to complete an integrated assessment and engage in mental-health services. According to Manes, the purpose of the integrated assessment was to "get an overall picture of what services" respondent needed. Respondent was provided with a referral for an integrated assessment at the beginning of February 2015, but he refused, stating "if it wasn't court-ordered, he wasn't doing it." Manes testified that almost two months later, respondent completed his integrated assessment.

¶ 8 Manes testified respondent received a satisfactory rating on his service plan. However, she also stated that she was not present for the review of that service plan, which occurred in October 2015, when she was no longer N.B.'s caseworker. Further, Manes testified that in connection with the first service plan, respondent had only completed his integrated assessment. She stated respondent "had not completed mental health" or the additional services that were recommended following his integrated assessment. According to Manes, "referrals [were] put into place" for those additional services but they were delayed because respondent "refused to sign the personal releases for [Camelot] to refer him to those services." According to Manes, respondent "did finally sign releases."

¶ 9 Manes also testified she performed a criminal background check on respondent, which demonstrated that he had a "very extensive" criminal history. She stated he had "many" felony convictions. At the State's request, the trial court allowed into evidence a group exhibit containing three certified felony convictions for respondent—"two out of Cook County, one out of Sangamon County." (We note the actual exhibit is not contained within the appellate record.)

¶ 10 Sandra Puhlman testified she was N.B.'s caseworker from May 2015 to May 2016. In October 2015, she was present for the review of respondent's initial service plan. She

agreed respondent had completed an integrated assessment but testified he received an unsatisfactory rating "on all of his tasks." Respondent's second service plan covered from October 2015 to April 2016. Puhlman believed respondent's services remained the same. She testified his services included mental-health services, parenting classes, domestic-violence services, and anger-management services.

¶ 11 Puhlman testified respondent also received an unsatisfactory rating on his second service plan as "[n]one of his services were completed or started." She noted respondent was incarcerated while she was N.B.'s caseworker. According to Puhlman, respondent was initially incarcerated in the Sangamon County jail and, later, transferred to Graham Correctional Center (Graham). Puhlman stated that referrals for services were made in the community "under the assumption that [respondent] may have a chance [of] coming out [of jail] and that referral would have been in there for him." She also testified that the prisons offered services that respondent could complete. Specifically, Puhlman testified it was her understanding after speaking to the warden's secretary at Graham that services were available at the institution. Puhlman testified she corresponded with respondent while he was in prison and he reported that he was trying to enroll in services at the prison. She agreed respondent was "making reasonable progress in communicating with" her while in prison. Puhlman further agreed that a letter shown to her by defense counsel at the hearing and dated April 4, 2016, stated respondent was on a wait list for services in prison.

¶ 12 Puhlman further testified that no visits occurred between respondent and N.B. while she was the caseworker. She stated that, initially, respondent was in the Sangamon County jail, which "would not host infant visits." Later, respondent was transferred to Graham.

Puhlman testified she spoke with the warden's secretary regarding services and was informed that respondent "was in receiving classification" and could not start services or receive visits until he was "put into general population." Puhlman further stated that respondent did not send N.B. cards, gifts, or letters while she was N.B.'s caseworker.

¶ 13 Jessica Atterberry testified she became N.B.'s caseworker in May 2016. She stated the last administrative case review in the matter occurred in June 2016. At that time, respondent's service plan was rated unsatisfactory because he was not participating in services. Atterberry testified respondent had completed his integrated assessment but "had not performed any of the other services." She stated she was aware respondent was in the custody of the Illinois Department of Corrections (DOC) when she became involved in the case; however she was not required to make contact with him because a motion to terminate his parental rights had been filed.

¶ 14 Atterberry testified respondent was located at Graham. She stated she talked to a counselor from Graham to determine if respondent's required services were being offered and was informed they were offered "when there was enough people signed up to participate in them." According to Atterberry, the counselor "would not release to [her] whether [respondent] was participating in services at that time." She acknowledged that she had not asked respondent to sign a release. Additionally, Atterberry testified that while she was N.B.'s caseworker, respondent did not send any gifts, cards, or letters to N.B.

¶ 15 Respondent testified on his own behalf. He stated he was currently in DOC's custody at its Illinois River facility. Respondent acknowledged that he had not participated in any services while imprisoned but asserted he was on a waiting list for services. He also stated he

had been seeing a mental-health professional, whom he identified as "Ms. Wolff," since being in DOC's Illinois River facility. Respondent stated he and Ms. Wolff worked on his coping skills and anger issues.

¶ 16 Respondent testified that, prior to his incarceration, he attended all scheduled visitations with N.B. He stated visits occurred every Friday and he would play with N.B., hold him, change his diapers, and bring him "toys and stuff." Respondent testified he bought N.B. diapers, bottles, pacifiers, clothing, and a diaper bag. He denied that he ever abused N.B.'s sibling. Further, respondent asserted he always cooperated with caseworkers and denied that he ever refused to sign any releases. Additionally, he asserted his failure to send cards or letters to N.B. was due to changes in caseworkers and his confusion about whom to communicate with.

¶ 17 Respondent testified he was scheduled to be released from prison on October 24, 2016. Upon his release, he intended to get a job and start a landscaping business.

¶ 18 On cross-examination by the State and guardian *ad litem* and examination by the trial court, respondent testified N.B. was taken into care around early January 2015. In early February 2015, he was arrested but "bonded out" after approximately two weeks in jail. On April 24, 2015, he was arrested again and remained in jail until he was transferred to DOC. Respondent testified he had been at DOC's Illinois River facility since December 23, 2015. Respondent also acknowledged having at least three felony convictions. He specifically agreed that he was convicted of possession of a stolen vehicle in 2012; aggravated unlawful use of a weapon in 2008; two counts of robbery in 2008; and criminal damage to property, for which he was arrested in February 2015 and incarcerated at the time of the underlying proceedings.

¶ 19 Following the parties' arguments, the trial court found respondent unfit based up-

on both grounds alleged by the State. It acknowledged that respondent was incarcerated for much of the time period that N.B.'s case was pending but stated that his incarceration was due to "his own actions." Further, the court found the State's depravity allegation proved, noting, "no evidence has been presented that [respondent] has rehabilitated himself, [or] shown that he's a productive member of society." On August 31, 2016, the trial court conducted a best-interests hearing and determined termination of respondent's parental rights was in N.B.'s best interests.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, respondent argues the trial court erred in terminating his parental rights to N.B. Specifically, he contends the court's finding that he was unfit was against the manifest weight of the evidence.

¶ 23 To involuntarily terminate parental rights, the trial court must find that (1) the State proved a parent unfit by clear and convincing evidence and (2) termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). Section 1(D) of the Adoption Act sets forth various grounds for finding a parent unfit. 750 ILCS 50/1(D) (West 2014). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 24 Here, the State alleged respondent was unfit based on two grounds. It first alleged

the ground of depravity set forth in section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)). Pursuant to that section, "[t]here is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies *** and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." *Id.* "Certified copies of the requisite convictions create a *prima facie* showing of depravity ***." *In re A.H.*, 359 Ill. App. 3d 173, 180, 833 N.E.2d 915, 921 (2005).

¶ 25 A parent may rebut a presumption of depravity "with proof of rehabilitation or with evidence that the circumstances surrounding the crimes show the crimes did not result from depravity." *In re T.T.*, 322 Ill. App. 3d 462, 466, 749 N.E.2d 1043, 1046 (2001). "[O]nce evidence opposing the presumption comes into the case, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." *In re J.A.*, 316 Ill. App. 3d 553, 562, 736 N.E.2d 678, 686 (2000).

¶ 26 In this case, the trial court found the State's allegation of depravity was sufficiently proved. It noted the evidence showed respondent had been convicted of at least three felonies, one of which occurred within five years of the motion to terminate and while N.B.'s case "was in the system." The court further stated respondent acknowledged additional convictions, all of which occurred within a period of time that was not "that long" because respondent was "not that old." As stated, it also found no evidence was presented that respondent "has rehabilitated himself" or "that he's a productive member of society." We find no error in the court's fitness determination.

¶ 27 On appeal, respondent does not challenge the finding that his criminal record included at least three felony convictions, one of which occurred within five years of the State's

motion to terminate. Rather, he contends he presented evidence of his rehabilitation. Specifically, in a single sentence in his appellant's brief, respondent asserts that "contrary to the Trial Court's comment, [he] did present evidence as to his rehabilitation and plans for his post-prison release life." To support that claim, he provides one citation to the record, which corresponds with testimony he provided at the best-interests hearing and concerned his intentions upon his release from prison.

¶ 28 We find respondent's argument with respect to depravity and his alleged rehabilitation is insufficient. Each appellant's brief must have an argument section, "which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). "Points not argued are waived ***." *Id.* Although respondent asserts he presented evidence of rehabilitation, he failed to set forth any specific argument as to what that evidence was or cite any relevant portion of the record. In fact, respondent's only citation as it related to his alleged rehabilitation was to his testimony at the best-interests hearing, which is irrelevant to the issues presented at the earlier fitness hearing. Additionally, to the extent respondent argues his "plans for his post-prison release life" show he is rehabilitated, we disagree, and we find assertions of future intentions fail to demonstrate current rehabilitation.

¶ 29 Further, after reviewing the record, we find it supports the trial court's finding of depravity. Evidence at the fitness hearing showed respondent had a significant criminal history, and his most recent felony conviction occurred after N.B. was taken into care. While respondent presented some evidence that he was seeing a mental-health professional at his most recent prison and was on a wait list for other services, we find evidence of such minimal efforts by re-

spondent were insufficient to show that he was rehabilitated. See *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 30, 989 N.E.2d 224 (finding the respondent mother's "efforts in prison, while commendable, were insufficient evidence of rehabilitation or lack of depravity").

¶ 30 Finally, we note that, on appeal, respondent points to four "discrepancies" in the caseworkers' testimony at the fitness hearing, which he asserts demonstrated that the "caseworkers had a mindset that [respondent's] rights were going to be terminated and acted accordingly." He argues that the "discrepancies" amount to a failure by the State to satisfy its burden of proving that he was unfit by clear and convicting evidence.

¶ 31 Initially, in setting forth the alleged "discrepancies," respondent failed to cite any corresponding portions of the record, making it difficult for this court to evaluate his specific claims. He also failed to address how these "discrepancies" relate to the ground of depravity, which, as discussed, was supported by sufficient evidence. Moreover, after reviewing the testimony presented at the fitness hearing, we find it is not as characterized by respondent and fails to demonstrate any bias toward him.

¶ 32 First, respondent identifies "discrepancies" which are not supported by the record. He asserts a "discrepancy" existed regarding whether he completed an integrated assessment; however, the record refutes this contention and reflects each caseworker clearly acknowledged respondent's completion of an integrated assessment. Respondent also contends that one caseworker, presumably Manes, did not know whether she was substituted in the case in May 2015 or May 2016. However, the record reflects Manes merely misstated the date on which she was no longer N.B.'s caseworker and, ultimately, corrected herself. Second, although there may have been conflicts in the evidence, those conflicts in no way demonstrate a particular mindset by the

caseworkers. Rather, respondent's own actions resulted in his incarceration, which necessarily affected his ability to engage in services, communicate with caseworkers, and maintain contact with N.B.

¶ 33 Here, the evidence was sufficient to support the trial court's finding that respondent was unfit based on the ground of depravity. Thus, the court's fitness determination was not against the manifest weight of the evidence. On review, respondent does not challenge the court's best-interests finding. Therefore, we find the court committed no error in terminating respondent's parental rights to N.B.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment.

¶ 36 Affirmed.