2017 IL App (4th) 160710-U

NO. 4-16-0710

FILED
February 8, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.G., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 14JA110
KENNETH GUISE,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's determinations that respondent was an unfit person and it was in the minor's best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In July 2014, the State filed a petition for adjudication of wardship with respect to K.G., the minor child of respondent, Kenneth Guise. In October 2014, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In October 2015, the State filed a motion to terminate respondent's parental rights. In June 2016, the court found respondent unfit. In October 2016, the court determined it was in the minor's best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding him to be unfit

and (2) determining it was in K.G.'s best interests that respondent's parental rights be terminated. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2014, the State filed a petition for adjudication of wardship with respect to K.G., born in March 2014, the minor child of respondent and Talavonte Smith. The petition alleged the minor was neglected pursuant to section 2-3(1)(a) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(a) (West 2014)) because the minor was not receiving the proper or necessary care for his well-being because the home, "shared by two sisters, one a mother of five and the other a mother of one, was found in deplorable condition with dirty diapers, trash, mattresses on the floor, no running water, a fouled toilet full of feces, and an open fan (*i.e.*, no cage around the fan blades)." The allegation indicated respondent did not appear to be involved. The petition also alleged K.G. was a neglected minor based on an injurious environment (705 ILCS 405/2-3(1)(b) (West 2014)) and because his parent or other person responsible for his welfare left K.G. "without supervision for an unreasonable period of time without regard of the mental or physical health, safety, or welfare of that minor, in that the children—five from one family and one from the other, ranging in age from 8 years to 3 months, were found home alone" by Decatur police officers (705 ILCS 405/2-3(1)(d) (West 2014)). The trial court found it a matter of immediate and urgent necessity that the minor be removed from the home and placed temporary custody with the guardianship administrator of DCFS.

¶ 6 In October 2014, the trial court found K.G. abused or neglected in that he suffered from a lack of support, education, and remedial care based on environmental neglect, lack of supervision, and substance-abuse issues in the home. The court noted respondent was not involved in the abuse or neglect. In its October 2014 dispositional order, the court found

respondent unfit, unable, and unwilling to care for, protect, train, educate, supervise, or discipline the minor and placement with him would be contrary to K.G.'s health, safety, and best interests because respondent had been defaulted. The court adjudged the minor neglected, made him a ward of the court, and placed custody and guardianship with DCFS.

¶ 7 In October 2015, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) he is depraved based on his criminal convictions for theft, robbery, unlawful possession of a controlled substance with intent to deliver, and being an armed habitual criminal (750 ILCS 50/1(D)(i) (West 2014)); (3) the minor was in the temporary custody or guardianship of DCFS and respondent was incarcerated at the time the motion was filed and, prior to that incarceration, he had little or no contact with the minor and his incarceration will prevent him from discharging his parental responsibilities for the minor for a period in excess of two years after the filing of the motion (750 ILCS 50/1(D)(r) (West 2014)); and (4) the minor was in the temporary custody or guardianship of DCFS and respondent has been repeatedly incarcerated as a result of his criminal convictions, which has prevented him from discharging his parental responsibilities for the minor (750 ILCS 50/1(D)(s) (West 2014)).

¶ 8 In March 2016, respondent, through his attorney, filed a motion to vacate the default finding and the motion to terminate his parental rights. Respondent argued the State failed to properly notify him of the case and did not conduct a diligent inquiry as to his whereabouts. In June 2016, the trial court allowed respondent's motion to vacate the default finding.

¶ 9 In June 2016, the trial court conducted the unfitness hearing. Carole Freeman, a

child welfare specialist with DCFS, testified she had been involved in K.G.'s case since March 2015. According to DCFS records, Freeman stated respondent requested to see K.G. at the Macon County jail in October 2014. Freeman stated respondent completed anger management and parenting services when he was imprisoned at Sheridan Correctional Center, which occurred prior to this case, but she had no verification of the completion of those services. Freeman stated DCFS last heard from respondent in October 2014. At that time, his service plan goals consisted of a substance-abuse assessment, visitation, and mental-health services to become a law-abiding, productive citizen. Due to K.G.'s age, it was determined that visitation at the jail was not in his best interests. Moreover, because respondent's incarceration in December 2014 was a long ride for the minor, DCFS decided not to transport K.G. to the prison.

¶ 10 Respondent testified he had been incarcerated since January 2014 and his current release date is May 2023. He stated K.G. was born in March 2014, and he had been in prison throughout K.G.'s life.

¶ 11 The State submitted certified copies of respondent's convictions and prison sentences, including theft of property having a value in excess of $300 (No. 04-CF-40 (2 years)), robbery (No. 04-CF-820 (6 years)), unlawful possession of a controlled substance with intent to deliver (No. 10-CF-518 (3 years)), and being an armed habitual criminal (No. 14-CF-63 (11 years)). Following closing arguments, the trial court found respondent unfit under all four grounds in the State's motion.

¶ 12 In October 2016, the trial court conducted the best-interests hearing. Lindsay Horcharik, a child welfare specialist with DCFS, testified K.G. was "doing well" in his current placement and all of his medical and emotional needs were being met. She stated K.G. is "very bonded" with his foster parent, who is an adoptive placement. Horcharik stated she had never

had any direct contact with respondent.

¶ 13 Following closing arguments, the trial court found it in the minor's best interests that respondent's parental rights be terminated. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Unfitness Finding

¶ 16 Respondent argues the trial court's finding of unfitness was against the manifest weight of the evidence. We disagree.

¶ 17 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 18 In this case, the trial court found respondent unfit for (1) failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) his depravity; (3) his incarceration; and (4) his repeated incarceration. Our supreme court has defined depravity as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *Stalder v. Stone*, 32 Ill. 488, 498, 107 N.E.2d 696, 701 (1952); see also *Donald*

A.G., 221 Ill. 2d at 240-41, 850 N.E.2d at 175. As to an allegation of depravity, section 1(D)(i) of the Adoption Act provides, in part, as follows:

> "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; 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." 750 ILCS 50/1(D)(i) (West 2014).

¶ 19 A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003). Once evidence rebutting the presumption is presented, the presumption ceases to operate and the issue is decided on the evidence as if no presumption had existed. *In re J.A.*, 316 Ill. App. 3d 553, 562-63, 736 N.E.2d 678, 686 (2000).

¶ 20 Here, the evidence indicated respondent had four felony convictions, including theft of property having a value in excess of $300 (No. 04-CF-40), robbery (No. 04-CF-820), unlawful possession of a controlled substance with intent to deliver (No. 10-CF-518), and being an armed habitual criminal (No. 14-CF-63). The latter conviction fell within five years of the 2015 filing of the motion seeking termination. See 750 ILCS 50/1(D)(i) (West 2014). Respondent's convictions created a rebuttable presumption of his depravity.

¶ 21 Respondent argues he rebutted the presumption by the fact he tried to visit K.G. but was hindered in doing so by DCFS. However, merely requesting visits with K.G. does not rebut the presumption. See *In re A.H.*, 359 Ill. App. 3d 173, 181, 833 N.E.2d 915, 921-22 (2005)

(finding the respondent's testimony he loved his child and participated in services did not rebut the presumption of depravity because the respondent did not show he had changed himself into an individual with the " 'moral sense and rectitude' capable of parenting a child"). Instead, respondent has shown a history of criminality, which has led to his incarceration throughout the entirety of K.G.'s young life. As respondent meets the statutory definition of an unfit person based on depravity, the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the remaining grounds. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 22 B. Best-Interests Finding

¶ 23 Respondent argues the trial court's finding that it was in K.G.'s best interests that his parental rights be terminated was against the manifest weight of the evidence. We disagree.

¶ 24 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These include the following:

"(1) the child's physical safety and welfare; (2) the development of

> the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

¶ 25 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 26 The best-interests report indicated K.G. lives in a relative foster home with his stepsiblings. The report stated K.G. is "a very happy and healthy little boy," and his foster parent is committed to providing him with permanency through adoption. The report also stated K.G.'s foster parent is able to meet the needs of the children, who have bonded with her and "achieved a sense of stability and safety within her home."

¶ 27 At the best-interests hearing, Horcharik testified K.G. was doing well in his placement and all his medical and emotional needs were being met. She also stated respondent's projected parole date is 2023. After reviewing the statutory factors, the trial court noted the most important factors in this case centered on K.G.'s need for permanence, his sense of security, his sense of familiarity, and the continuity of relationships with parent figures and siblings.

¶ 28 The evidence indicates respondent has not been a parent to K.G. during his young life and will be unable to do so in the near future due to his prison sentence. K.G. is currently in a safe and loving home, and his foster parent is willing to provide him with the permanency he needs and deserves. Considering the evidence and the best interests of the minor, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

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

¶ 31 Affirmed.