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March 9, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160796-U

NOS. 4-16-0796, 4-16-0797 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Logan County
v. (No. 4-16-0796)	)	No. 15JA4
CHRISTOPHER HARRIS,	)	
Respondent-Appellant.	)	
	)	
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In re: C.H., a Minor,	)	No. 15JA5
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-16-0797)	)	Honorable
CHRISTOPHER HARRIS,	)	William G. Workman,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness finding and best-interest determinations were not against the manifest weight of the evidence.

¶ 2 In April 2016, the State filed a petition to terminate the parental rights of respondent, Christopher Harris, and Nicole Gee as to their minor children, A.H. (born April 14, 2000) and C.H. (born August 6, 2009). In July 2016, the trial court found respondent and the minors' mother were unfit and, in October 2016, determined it was in the minors' best interest to terminate their parental rights. Respondent appeals, arguing the trial court's unfitness finding and

best-interest determinations are against the manifest weight of the evidence. The minors' mother is not a party to this appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2016, the State filed a petition to terminate respondent's parental rights. The State alleged respondent was an unfit parent as he (A) was depraved (750 ILCS 50/1(D)(i) (West 2014)); (B) failed to make reasonable efforts to correct the conditions necessitating the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2014)); (C) failed to make reasonable progress toward the return of the minors within nine months following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (D) was imprisoned, which prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2014)). The State further alleged it was in the minors' best interest to terminate respondent's parental rights and appoint the Department of Children and Family Services (DCFS) as guardian with the power to consent to adoption.

¶ 5 A. The Fitness Hearing

¶ 6 In July 2016, the trial court held a fitness hearing. At the hearing, the State presented a certified copy of respondent's felony convictions in Logan County case No. 09-CF-171 and elicited testimony from a foster-care case manager. Respondent did not present evidence.

¶ 7 In 2009, respondent was convicted and sentenced to five terms of natural life imprisonment for first degree murder (720 ILCS 5/9-1(a) (West 2008)), 30 years' imprisonment for attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(3) (West 2008)), 30 years' imprisonment for home invasion (720 ILCS 5/12-11(a)(1) (West 2008)), and 20 years'

imprisonment for armed robbery (720 ILCS 5/18-2(a)(1) (West 2008)), all of which were imposed consecutively. Since being imprisoned, respondent completed a father's program, visited with both minors in June and November 2015, visited with A.H. in January and June 2016, and sent the minors letters and birthday cards. The case manager indicated A.H. had established a relationship with respondent, and respondent had done everything he could do under the circumstances. Respondent's imprisonment, however, prevented him from being able to actively parent or provide the minors with care, financial support, clothing, food, or shelter.

¶ 8 In closing, respondent's counsel stated as follows:

> "In reading the petition, *** there were four allegations, A, B, C, and D. I believe the [S]tate's met its statutory burden with respect to A, possibly C and D as well[;] however, I don't think that they met their burden on Subparagraph B. I believe that he's made as much efforts as possible given his current condition[;] however, I think the evidence would probably be reasonable given his [imprisonment]. Thank you."

¶ 9 The trial court found respondent unfit for all the reasons alleged in the State's petition.

¶ 10 B. The Best-Interest Hearing

¶ 11 In October 2016, the trial court held a best-interest hearing. The State presented a certified copy of respondent's felony convictions in case No. 09-CF-171 and asked the court to consider the evidence outlined in the best-interest report. A.H., who was then 16 years old, also testified at the hearing.

¶ 12 The minors experienced discord in numerous foster homes, including physical abuse and exposure to alcohol. The minors were eventually placed in separate homes, which were not adoptive placements. A.H. ran away from several foster homes and struggled with anxiety and attention deficient disorder. C.H. struggled with behavioral issues, expressing his emotions, speech issues, and his separation from A.H. The caseworker met with the minors on a regular basis to stabilize placement and provide additional support. A.H. expressed a desire to continue visitation with respondent in the future.

¶ 13 Following his 2009 arrest for the offenses for which he was later convicted, respondent had little contact with the minors. After DCFS became involved in February 2015, respondent began receiving quarterly visits with the minors. Respondent maintained an interest in the minors and completed a father's program in April 2016. Respondent, however, was unable to provide for the minors' needs. The best-interest report recommended the trial court terminate respondent's parental rights.

¶ 14 After considering the evidence presented, the trial court found it was in the minors' best interest to terminate respondent's parental rights. Specifically, the court found respondent's imprisonment prevented him from providing for the minors. The court indicated it considered A.H.'s desire to have a relationship with respondent but also noted her desires had changed throughout the pendency of the case. The court set a goal of adoption for both minors.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent argues the trial court's unfitness finding and best-interest determinations are against the manifest weight of the evidence.

¶ 18 A. Fitness Finding

¶ 19 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* A decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 135 (2006). Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 20 The trial court found respondent unfit based on depravity (750 ILCS 50/1(D)(i) (West 2014)). Our supreme court has defined depravity as " 'an inherent deficiency of moral sense and rectitude.' " *In re Abdullah*, 85 Ill. 2d 300, 305, 423 N.E.2d 915, 917 (1981) (quoting *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1952)). Respondent asserts, citing *In re S.H.*, 284 Ill. App. 3d 392, 396, 672 N.E.2d 403, 405 (1996), his criminal convictions alone are insufficient to support the trial court's finding of unfitness based on depravity.

¶ 21 A party cannot take a position on appeal inconsistent with a position the party took in the trial court or complain of an error to which it consented. *In re Ch. W.*, 408 Ill. App. 3d 541, 547, 948 N.E.2d 641, 648 (2011). During the fitness hearing, respondent's counsel conceded the State met its statutory burden with respect to its depravity allegation. Respondent was present and did not object to his counsel's statement. Because respondent conceded the State met its statutory burden on this ground, he cannot now complain the trial court's unfitness finding on this ground was in error. As only one ground for a finding of unfitness is necessary to

uphold the trial court's judgment, respondent's concession is sufficient to sustain the trial court's finding of unfitness. See *Gwynne P.*, 215 Ill. 2d at 349, 830 N.E.2d at 514.

¶ 22 Even if we were to consider respondent's contention, we would find it meritless. *S.H.* is inapposite given the applicable statutory presumption. Respondent was convicted of five counts of first degree murder. Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2014)) provides "[t]here is a rebuttable presumption that a parent is depraved if that parent has been criminally convicted of *** first *** degree murder of any person as defined in the Criminal Code of 1961 *** within 10 years of the filing date of the petition or motion to terminate parental rights." The State's introduction of respondent's first degree murder convictions established a rebuttable presumption of depravity. Upon establishing the rebuttable presumption of depravity, it was incumbent on respondent to rebut said presumption. See *In re Donald A.G.*, 221 Ill. 2d 234, 253, 850 N.E.2d 172, 182 (2006). Respondent offered no evidence in rebuttal. We reject respondent's suggestion the State's evidence, which he characterizes as demonstrating he "took every step within the constraints of his [imprisonment] to parent his children from prison" and had a "genuine love and concern for his children," was sufficient to rebut the presumption of depravity. Respondent has failed to demonstrate the trial court's unfitness finding is against the manifest weight of the evidence.

¶ 23 B. Best-Interest Findings

¶ 24 Following a finding of unfitness, the State must prove by a preponderance of the evidence it is in the child's best interest parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). At the best-interest stage, a parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. *Id.* at

364, 818 N.E.2d at 1227.

¶ 25 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in a child's best interest: (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, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 26 This court will not reverse a trial court's best-interest determination 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). As previously stated, a decision will be found against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 135.

¶ 27 Again, respondent asserts the trial court’s best-interest determinations were against the manifest weight of the evidence. In support, respondent highlights (1) the minors lacked a sense of safety and permanency while in DCFS custody, (2) A.H. desired to have contact with respondent, and (3) any future visits would be monitored by prison staff. Respondent further suggests, while “he is unable to provide for the [minors’] physical safety and welfare ***, he is certainly able to aid in the development of the identity of his children” and

"serve as a guide and [a] parent." Initially, we outright reject respondent's suggestion his participation in shaping the minors identity—the participation of a man who was convicted of murdering the minors' grandfather and members of his family—would serve their best interest. See *People v. Harris*, 2015 IL App (4th) 130672-U, ¶ 11. It is undisputed the minors suffered significant setbacks in their placement, however, the caseworker maintained contact with the minors to stabilize placement and provide additional support. Finally, the trial court indicated it considered A.H.'s desire to have a relationship with respondent but also noted her desires had changed throughout the pendency of the case. It is clear respondent is unable to provide for the minors' most basic needs. Given the evidence presented, we find the trial court's best-interest determinations were not against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

¶ 29 We affirm the trial court's judgment in case Nos. 4-16-0796 and 4-16-0797.

¶ 30 No. 4-16-0796, Affirmed.

¶ 31 No. 4-16-0797, Affirmed.