

2018 IL App (1st) 180051-U

No. 1-18-0051

Order filed September 28, 2018.

Second Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF T.W., a minor,)	Appeal from the
)	Circuit Court of
Minor-Respondent-Appellee,)	Cook County.
)	
(PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner-Appellee,)	No. 13 JA 00235
)	
v.)	
)	
Samantha W.,)	The Honorable
)	Andrea Buford,
Respondent-Appellant).)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in finding respondent unfit or in terminating her parental rights where the State proved she was statutorily deprived and the termination of her parental rights was in the minor’s best interests.

¶ 2 Respondent Samantha W. appeals from the trial court's order finding her unfit and terminating her parental rights with respect to T.W., her natural daughter. On appeal, Samantha asserts the unfitness finding was against the manifest weight of the evidence and the termination of parental rights was not in T.W.'s best interests. We affirm the court's judgment.

¶ 3 I. Background

¶ 4 T.W. was born on September 19, 2012. About six months later, the State petitioned for an adjudication of wardship, alleging that she was neglected due to a lack of necessary care. Specifically, Samantha and T.W.'s natural father, Jerry D., were both incarcerated.¹ The record indicates that Samantha was arrested on about March 7, 2013, and arranged for a friend, Alicia House, to care for T.W. until her maternal aunt could retrieve her. T.W.'s aunt changed her mind, however, and with no one to care for T.W., House brought her to a police station. The trial court found T.W. was neglected and made her a ward of the court. She was placed under the guardianship of the Illinois Department of Children and Family Services (DCFS), which in turn placed her in a non-relative foster home. The initial goal was to return T.W. home.

¶ 5 Over the course of this case, Samantha was incarcerated from March 2013 through March 2014, January 2015 through January 2016 and December 2016 through March 2017. It is undisputed that Samantha has prior convictions for residential burglary (09 CR 220342), deceptive practices by means of a bad check (14 CR 220621), retail theft (15 CR 0218604) and theft (16 CR 00873).

¶ 6 In February 2016, the trial court changed the permanency goal to "substitute care pending court determination on termination of parental rights" because T.W. had been with her foster family since she was six months old and that family wished to adopt her. Additionally, Samantha

¹ Jerry signed a final and irrevocable consent to adoption by specified persons, T.W.'s foster parents, in February 2016, and his rights were ultimately terminated. Jerry is not a party to this appeal.

had not completed any services and had only limited visitation with T.W. The State subsequently sought the appointment of a guardian with the right to consent to adoption, alleging that Samantha was unfit to parent under the Adoption Act (the Act) (750 ILCS 50/1D (b), (i), (m) (West 2016)). According to the State, Samantha (1) failed to maintain a reasonable degree of interest, concern or responsibility as to T.W.'s welfare, (2) failed to make reasonable efforts to correct the conditions which were the bases for removal and/or failed to make reasonable progress toward the return of T.W. within a nine-month period, and (3) was unfit because her prior felony convictions rendered her "depraved" under the Act. The State alleged it was in T.W.'s best interests for her foster parents to adopt her.

¶ 7

A. The Unfitness Hearing

¶ 8 Emily Reynoso of Children's Home + Aid Society, testified that when she began supervising T.W.'s case in November 2015, Samantha had failed to complete requisite parenting classes, parent coaching and individual therapy. Because Samantha was incarcerated at that time, Reynoso could not refer her for outstanding services. Samantha did not want T.W. to visit her in prison, either. Caseworker Kelly Clark later clarified that Samantha thought the drive would be too far for T.W. Furthermore, Reynoso acknowledged that, while in prison, Samantha spoke with T.W. on the phone. Moreover, Samantha had supervised visits with T.W. in her home in 2014.

¶ 9 Following Samantha's release from prison in January 2016, she, Reynoso and caseworker Samantha Pucci discussed referring Samantha for outstanding services, but the goal then changed to substitute care pending the court's determination regarding her parental rights. According to Reynoso, the agency recommended that the goal change because T.W. entered care in June 2013, Samantha had been incarcerated for much of the time since then, visitation was inconsistent and incarceration prevented Samantha from progressing in services. Reynoso could

not recommend the goal of returning T.W. home because Samantha was unable to remain out of jail and her incarceration prevented her from providing T.W. a stable home. Reynoso acknowledged that Samantha had engaged in some individual guidance and parenting classes but such efforts were insufficient. Because the goal was no longer to return T.W. home, the agency could not provide referrals or finance services, and the agency could facilitate only monthly visits with T.W.

¶ 10 Kelly Clark testified that when she became T.W.'s caseworker in August 2016, the goal was substitute care pending termination of parental rights. Although services were outstanding, Samantha did not ask Clark to help her find community-based providers. That said, Samantha engaged in monthly supervised visits of an hour or more. Some visits were supervised by T.W.'s foster parents, such as visits at the Children's Museum, Build-A-Bear and Wagner's Farm. Samantha brought T.W. gifts and threw her a birthday party. Samantha was affectionate toward her. While Samantha had concerns about the foster family posting photos of T.W. on social media, Clark found it was inappropriate to ask T.W. if a photo of a child's back side depicted T.W.

¶ 11 Samantha, age 34, testified that she had some college education and presently worked for CMX Promotions (CMX). Although T.W. was now five years old, she had lived with Samantha in a hotel for the first six months of her life. Prior to T.W.'s birth, Samantha worked at CMX, but, in October 2012, health issues prevented Samantha from working and she exhausted her savings. She was at risk of being evicted: "The only thing that was presented to me at this point from somebody was to start stealing to pay for a roof over our head and anything that [T.W.] got." In March 2013, she was arrested. At some point, House informed her that DCFS was involved.

¶ 12 Upon release, Samantha made some efforts to obtain services and was given a place to live rent-free for three months. In addition, T.W.'s foster parents supervised a visit with Samantha at a museum and, after that, visits occurred three times a week at the agency or in Samantha's home. When T.W. visited, they played, watched a movie or did science experiments. Visits in Samantha's home ceased, however, when she was incarcerated in 2015. During this period, she spoke to T.W. every week and had her first in-person visit with her in prison in June or July 2015. Upon release, Samantha moved in with a friend and returned to her prior job but, once again, she was arrested. She completed one parenting class and Skyped with T.W. When released from prison in January 2016, Samantha returned to her position and found housing. When the goal changed, supervised visits with T.W. became monthly. At Build-A-Bear, T.W. made Samantha a bear that said, "I love you." T.W. called her "mommy" or "Sam" during their visits.

¶ 13 T.W.'s paternal cousin, Jennifer DuBonetti, testified that Samantha did not take controlled substances and was a positive influence on DuBonetti's children. DuBonetti, who had not seen T.W. since she was six months old, believed T.W. should be with Samantha. Several exhibits were entered into evidence, including copies of Samantha's convictions and the several service plans created in this case.²

¶ 14 The trial court found the State proved by clear and convincing evidence that Samantha was unfit on all the grounds alleged. The court found, among other things, that Samantha failed to complete services, had inconsistent visits and was never offered unsupervised visits. The court found Samantha loved T.W. but would not refrain from criminal conduct, which was necessary

² The service plans showed that on July 10, 2009, Samantha's son, T.W.'s half brother, was placed with his father after a mandated reporter asserted that the minor was living in unsanitary conditions.

to complete services and to be reunited with her. With respect to depravity, she had four convictions and did not rebut the resulting presumption of depravity under the Act. Moreover, the court found Samantha was not credible, in part because she testified that she stole at the suggestion of person she did not identify.

¶ 15

B. Best Interests Hearing

¶ 16 At the best interests hearing, the combined testimony of Clark and T.W.'s foster parents showed that T.W. had been with her foster family for four years and eight months, there were no signs of neglect or abuse, and the home was both safe and appropriate. T.W. was in a stable home with people committed to her long-term care. During visits, Stephanie prepared T.W.'s food and help her put shoes on. They said, "I love you," to one another and T.W. called Stephanie "mom." James was attentive to T.W., hugged her and helped meet her needs. Furthermore, T.W. played with and hugged her foster sister and had positive interactions with her foster brothers as well. Stephanie testified that their family loved T.W. and wanted to adopt her. James added that T.W. knew no life other than the one with her foster family. Clark testified it would not be in T.W.'s best interests to be removed from her foster family. The agency recommended the termination of parental rights and the appointment of the guardianship administrator with authority to consent to adoption.

¶ 17 Clark acknowledged that T.W. hugged and kissed Samantha and was usually happy to be around her. During a visit in March 2017, T.W. wanted to talk to "Mommy Sam." Additionally, Samantha seemed to understand T.W.'s needs during visits and maintained that she wanted to be in T.W.'s life. That being said, Clark was of the understanding that T.W. may continue to see Samantha even if parental rights were terminated.

¶ 18 According to Stephanie, their family needed to trust Samantha to continue having a relationship. Stephanie noted “pesky allegations” that the foster family had inappropriate pictures of T.W. or spanked her, “which is all silliness; but we still try to reason with [Samantha] because we feel like it’s in [T.W.’s] best interests.” An ongoing relationship would require that Samantha not question everything the family did. Stephanie believed T.W. should have contact with Samantha as long as it remained healthy and in T.W.’s best interests.

¶ 19 In contrast, Samantha testified she feared that that T.W. would never see her again, which would confuse and anger T.W. Additionally, Samantha had always wanted T.W. and did not like that she was sheltered her from her biological family. Furthermore, House testified that she was last allowed to see T.W., her god daughter, when T.W. was three years old. DuBonetti added to her prior testimony that she loved T.W., even though DuBonetti had not seen her in over four years.

¶ 20 The trial court found it was in T.W.’s best interests to terminate Samantha’s parental rights and appoint a guardian with the right to consent to adoption. Having “considered all of the best interest factors,” the court observed that T.W. was five years old, had essentially lived with the foster family for her entire life, and considered them to be her family. Samantha had multiple opportunities to correct problematic conditions but failed to do so. The court stated, “I know she loves her daughter but obviously not enough to do what she needed to do [to] have her daughter returned to her.” T.W.’s present home was safe and appropriate, and she was bonded to her foster family, which was meeting all of her needs. “I am here to do what’s in her best interests, not the mother’s best interests.” The court found that T.W. deserved permanency.

¶ 21

II. Analysis

¶ 22

A. Finding of Unfitness

¶ 23 On appeal, Samantha first contends that the trial court's finding of unfitness was against the manifest weight of the evidence. The Juvenile Court Act of 1987 sets forth a two-stage process for involuntarily terminating parental rights. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). The State must first prove by clear and convincing evidence that the parent is unfit and then demonstrate that severing parental rights would serve the child's best interests. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 19. In assessing parental unfitness, the court must not consider the child's best interests, which is a separate matter. *In re Syck*, 138 Ill. 2d 255, 276 (1990).

¶ 24 Section 1(D) of the Adoption Act lists several grounds for finding a parent to be unfit, any of which may alone support a finding of unfitness. *In re Tiffany M.*, 353 Ill. App. 3d at 889. The State must prove by clear and convincing evidence that a parent is unfit under at least one of the grounds set forth therein. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. Additionally, we defer to the trial court's findings as to the witnesses' character and credibility. *In re J.A.*, 316 Ill. App. 3d 553, 563 (2000). We will not reverse those findings unless they are against the manifest weight of the evidence, which occurs only where the opposite conclusion is clearly evident, or the court's determination is arbitrary, unreasonable and not based on the evidence. *In re Tiffany M.*, 353 Ill. App. 3d at 890. Moreover, every case regarding parental unfitness is *sui generis* and requires courts to closely analyze the individual facts before it. *In re Jacorey*, 2012 IL App (1st) 113427, ¶ 19.

¶ 25 Samantha challenges the trial court's determination that she was unfit to parent under section 1(D) (i) of the Adoption Act:

“ ‘Unfit person’ ” means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:

* * *

(i) *** 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 2016).

¶ 26 Depravity is “an inherent deficiency of moral sense and rectitude.” (Internal quotation marks omitted). *In re J.A.*, 316 Ill. App. 3d at 561 (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Additionally, depravity may be demonstrated by a series of acts or a course of conduct reflecting an inability to conform to accepted standards of morality. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). Because the statutory presumption of depravity is rebuttable, a parent can present evidence showing she is not depraved, in spite of her convictions. *Id.* Assessing statutory depravity requires the trial court to closely scrutinize the parent’s character and credibility. *In re J.A.*, 316 Ill. App. 3d at 563.

¶ 27 Samantha concedes that she has four convictions: (1) the 2009 residential burglary conviction, (2) the 2015 conviction for deceptive practices by means of a bad check, (3) the 2015 retail theft conviction, and (4) the 2017 felony theft conviction. Three of those convictions occurred within five years of the State seeking termination of parental rights and after T.W. was taken into custody in March 2013. Thus, the State established a rebuttable presumption of

depravity. *Cf. In re Keyon R.*, 2017 IL App (2d) 160657, ¶¶ 21, 23 (finding that the certified copies of conviction alone were not clear and convincing proof of depravity where all three felony convictions were entered eight years before the motion to terminate rights was filed and the State conceded that it did not establish the statutory presumption of depravity). Nonetheless, Samantha argues that evidence rebutted the statutory presumption of depravity and that the State failed to prove by clear and convincing evidence that she was depraved. We disagree.

¶ 28 The record shows that Samantha's convictions involved failing to adhere to our society's accepted standards of morality requiring her to respect the property and money of others. Her failure to adhere to those standards led to her arrest in 2013 and T.W.'s placement in foster care. Even after DCFS became involved and Samantha was aware that her parental rights were in jeopardy, she could not refrain from committing offenses. *Cf. In re J.A.*, 316 Ill. App. 3d at 555, 559, 561, 563 (upholding the trial court's finding that natural father rebutted the presumption of depravity where, among other things, only his controlled substance conviction occurred after the minor was taken into care and his negative drug test, substance abuse evaluation and regular employment showed no ongoing problem with substance abuse). As the trial court stated, "[c]learly, this mother loves her daughter but not enough to refrain from her criminal conduct or long enough to successfully complete the services necessary for reunification." The State proved by clear and convincing evidence that Samantha was depraved within the meaning of the Act.

¶ 29 Samantha argues that she demonstrated her concern for T.W. by attending court, participating in family meetings, expressing concern over the foster parents' behavior, sacrificing in-person visits for T.W., and participating in services. Samantha's positive actions, however, did not rebut the presumption of depravity: they in no way suggest that Samantha is able to conform her behavior to society's standards so as to stay out of jail or prison. Furthermore, these actions

did not show that Samantha had learned to appreciate the impact that any future incarceration would have on T.W. See *In re A.M.*, 358 Ill. App. 3d 247, 254 (2006) (stating that while commendable, the respondent's completion of a GED, before committing another two felonies, and his completion of prison classes did not show rehabilitation); *In re Shanna W.*, 343 Ill. App. 3d at 1167 (finding that the respondent had not shown evidence of rehabilitation because the felonies for which she was responsible caused her lengthy incarceration and prevented her from visiting the minor as well as receiving necessary services); *In re Addison R.*, 2013 IL App (2d) 121318, ¶¶ 25, 34 (finding the record supported the trial court's finding of depravity where, among other things, the respondent's conduct in committing the three requisite offenses on the same day showed a complete disregard for the effect such conduct would have on the minor).

¶ 30 Moreover, Samantha states that a parent's criminal record is but one ground for the court to consider and that statutory depravity also requires the court to closely scrutinize the parent's credibility and character. Historically, this was the rule in Illinois, that convictions themselves were insufficient to show depravity. *In re T.S.*, 312 Ill. App. 3d 875, 878 (2000); see, e.g., *In re Perez*, 173 Ill. App. 3d 922, 937 (1988); *In re Sanders*, 77 Ill. App. 3d 78, 82 (1979). In 1998, however, Public Act 90-608 (eff. June 30, 1998) created the rebuttable presumption of depravity at issue here. *In re T.S.*, 312 Ill. App. 3d at 878. Thus, Samantha's reliance on a historical rule that has been superseded by statute is misplaced. See *In re Travarius O.*, 343 Ill. App. 3d 844, 853 (2003).

¶ 31 Because clear and convincing evidence supports the finding of unfitness based on statutory depravity, we need not consider whether evidence supported the other grounds underlying the court's finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 32

B. Best Interests

¶ 33 Next, Samantha challenges the court's determination that it was in T.W.'s best interests to terminate Samantha's parental rights. Following a finding of unfitness, the trial court must consider whether the State has proven by a preponderance of the evidence that the termination of parental rights would be in the child's best interests. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. The preponderance of the evidence standard requires proof that the fact at issue is more likely than not. *In re Curtis W., Jr.*, 2015 IL App (1st) 143860, ¶ 53. That being said, the court need not articulate any particular rationale for its decision. *In re Tiffany M.*, 353 Ill. App. 3d at 893. We review the court's determination under the manifest weight of the evidence standard. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 34 Section 1-3(4.05) of the Juvenile court Act sets forth factors relevant to a best interests determination, including (1) the child's physical safety and welfare, (2) the child's development of identity, (3) the child's background and ties to the community, (4) the child's sense of attachment, including her sense of being valued, loved and secure, as well as the continuity of affection (5) the child's need for permanence in stable relationships, (6) the unique qualities of the child and family, (7) the risks of substitute care, and (8) and the preferences of the child's caretaker. 705 ILCS 405/1-3(4.05) (West 2016). Additionally, a court is entitled to consider the length and nature of a child's relationship with her current caretaker as well as the emotional and psychological impact of a change in placement. *In re Tajannah*, 2014 IL App (1st) 133119, ¶ 19. A child's best interests are more important than any other consideration, however, including the natural parent's rights. *Id.* ¶ 18. All considerations yield to the minor's interests in maintaining a stable and loving home. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45.

¶ 35 The record supports the trial court's determination that it was in T.W.'s best interests to terminate Samantha's parental rights. As the court observed, T.W. has lived with her foster

family almost her entire life and she was bonded to them. Samantha concedes that T.W. and her foster family have a good relationship and that the family wants to adopt her. Additionally, that family is stable and the record shows no barriers to satisfying T.W.'s needs. While Samantha argues that guardianship would be more appropriate than adoption, guardianship is only available where adoption has been ruled out. See 705 ILCS 405/2-27 (a-5) (West 2016) (stating that the court can arrange for a private guardianship "for whom the permanency goals of return home and adoption have been ruled out").

¶ 36 Samantha argues that while she loved T.W. and had positive interactions with her, Stephanie would not guarantee that Samantha would have continuing contact with T.W. We reiterate that T.W.'s best interests must take precedence over Samantha's best interests. In addition, Stephanie testified that she believed T.W. should have contact with Samantha, so long as that situation remained healthy. Thus, Samantha may yet have a relationship with T.W., albeit not a parental one. In addition, no evidence suggested that the termination of Samantha's parental rights would lead T.W. to feel abandoned by her biological mother. In any event, Samantha disregards that she already removed herself from T.W.'s daily life by failing to abstain from criminal conduct. See *In re Tajannah*, 2014 IL App (1st) 133119, ¶¶ 22-23 (finding that while the respondent made great effort to complete services, conscientiously maintained a bond with the minor and failed to complete certain services only because they were unavailable where she was incarcerated, the evidence overwhelmingly supported the trial court's decision to terminate her parental rights). In light of the above, we uphold the trial court's best interests determination.

¶ 37

III. Conclusion

¶ 38 For the foregoing reasons, we affirm the trial court's judgment.

No. 1-18-0051

¶ 39 Affirmed.