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2018 IL App (4th) 180145-U

NO. 4-18-0145

FILED
July 13, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re A.S., a Minor	)	Appeal from the
	)	Macon County
	)	Circuit Court
(The People of the State of Illinois,	)	No. 16JA30
Petitioner-Appellee,	)	
v.	)	Honorable
Trenton Foster,	)	Thomas E. Little,
Respondent-Appellant).	)	Judge Presiding.

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

ORDER

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

¶ 2 In February 2018, the trial court terminated the parental rights of respondent, Trenton Foster, as to his minor child, A.S. (born July 12, 2012). On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

¶ 3 Respondent and Capri Walker are the parents of A.S. In the underlying proceedings, the parental rights of Walker were also terminated. However, she is not a party to this appeal. We address the issues only as they relate to respondent and A.S.

¶ 4 In March 2016, the State filed a petition for adjudication of wardship, alleging A.S. was abused and neglected because burn marks on his face, chest, and abdomen were discovered while in his mother's care. It further asserted that respondent had not responded to Department of Children and Family Services (DCFS) inquiries; however, it was later established that respondent failed to respond to DCFS inquiries because he was imprisoned. In July 2016, the trial court entered a dispositional order adjudicating A.S. a neglected minor, making him a ward of the court, and placing custody and guardianship with the DCFS.

¶ 5 On July 6, 2017, the State filed a petition seeking a finding of unfitness and termination of respondent's parental rights. The State alleged respondent was unfit because he (1) was depraved in that he had been 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 2016)); and (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.S.'s welfare (750 ILCS 50/1(D)(b) (West 2016)). The State further alleged that termination of parental rights was in A.S.'s best interest.

¶ 6 On January 17, 2018, the trial court conducted a fitness hearing. The State presented the testimony of Amanda Beasley-Ricks. She testified she worked as a foster care supervisor at Webster-Cantrell Hall and she had been involved with A.S.'s case since July 2016 when respondent first reported issues with A.S.'s mother's ability to care for him. According to Beasley-Ricks, respondent was incarcerated when this case began.

¶ 7 She further testified that respondent had made efforts to complete services while incarcerated. She explained that he completed anger-management services, a psychological assessment, and parenting classes. However, he was placed on a waiting list for substance-abuse

treatment and he was unable to complete domestic-violence services because they were unavailable to him in prison. She stated that respondent never received an overall satisfactory rating for his service plans due to his imprisonment. She further testified that respondent was allowed visits with A.S. every 90 days, respondent regularly attended each visit, and he appeared to have a bond with A.S.

¶ 8 At the State's request, the trial court admitted into evidence a group of exhibits containing certified copies of respondent's convictions, including two counts of armed robbery in 2008; felony domestic battery with a prior unlawful violation of an order of protection in 2014; and felony criminal trespass to a residence in 2016.

¶ 9 Respondent testified on his own behalf. He stated he was incarcerated and his projected release date was June 12, 2018. Upon his release, he intended to reside in Coffeen, Illinois, with his fiancée and he had been offered employment assisting his prospective landlord with residential properties.

¶ 10 Respondent stated that, during his imprisonment, he had engaged in all of the services available to him. He also explained that he regularly sent A.S. cards and inquired about his welfare. Prior to his imprisonment, there was a time when he had temporary custody of A.S. According to respondent, during that time, respondent changed A.S.'s diapers, fed him, and purchased his clothes and shoes. However, respondent acknowledged that his most recent felony conviction occurred when he had temporary custody of A.S. in 2016.

¶ 11 Following the parties' arguments, the trial court found respondent unfit, noting Beasley-Ricks's testimony that no service plan had been rated overall satisfactory. Further, the court stated that "[respondent] has concern for the child, but he has not maintained responsibility

for the child, and [therefore] the State has proven *** depravity."

¶ 12 On February 26, 2018, the trial court conducted a best-interest hearing. Beasley-Ricks testified that A.S. was living with his maternal grandmother and younger sister. According to Beasley-Ricks, A.S. appeared bonded to his grandmother who moved from Tennessee to Illinois specifically to care for him. Beasley-Ricks stated that other family members also lived nearby and provided additional support. She stated that A.S. regularly attended church with his grandmother. Further, Beasley-Ricks testified that A.S.'s grandmother had "been able to provide all of his medical needs, housing needs, food, clothing, [and] nurturing[.]" Beasley-Ricks confirmed that A.S.'s grandmother was an adoptive resource.

¶ 13 Beasley-Ricks further testified that respondent regularly visited with A.S. during his imprisonment. She stated that A.S. recognized respondent as his father and she believed there was a bond between them.

¶ 14 Respondent testified on his own behalf, stating, in pertinent part, as follows:

> "I love my son, *** I've been fighting for him as long as I can. I get out soon and I'm trying to be a father, the best father I can, because I never got the chance to be a father. *** This is my only kid and I *** don't feel like it's in his best interest for my parental rights to be terminated."

¶ 15 Based on the evidence presented, the trial court found it was in A.S.'s best interest that respondent's parental rights be terminated. In reaching this decision, the court stated as follows:

> "[T]he child has a sense of security with his grandmother. There are other family members close by that *** give him support *** as well. *** [A.S.] is very

comfortable with his grandmother and has developed a strong bond and attachment to her as well as with his sister.

* * *

[Respondent] wants to remain involved in the child's life. *** It's actually rare, surprising. [Respondent has] convinced me that [he] really do[es] want to remain with the child. The focus here, in this hearing, is just not *** on what [respondent] want[s] ***. The focus has to be *** based upon what's best for the child.

* * *

I find [Beasley-Ricks's] testimony to be credible. [She testified that] *** [A.S.] is bonded to his grandmother as well as to his little sister. *** I note that the grandmother is an adoptive resource for this child. Ms. Beasley-Ricks testified that it would be best for [A.S.] to remain with the grandmother *** and she stresses this child's need for stability and notes that *** the grandmother is committed to the welfare of this child. That commitment is demonstrated, at least in part, by the fact that she's moved to Illinois from Tennessee to care for this child. Lastly, I think that [Beasley-Ricks] stresses that the child is very much in need of permanence."

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent argues the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 19 A. Fitness

¶ 20 Parental rights may be involuntarily terminated when the trial court finds that a parent is unfit based on grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)) and termination is in the child's best-interest. *In re J.L.*, 236 Ill. 2d 329, 337–38, 924 N.E.2d 961, 966 (2010). "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).

¶ 21 Here, the trial court determined respondent was unfit based on two grounds alleged by the State. Specifically, the court determined respondent (1) was depraved due to multiple felony convictions (750 ILCS 50/1(D)(i) (West 2016)); and (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to A.S.'s welfare (750 ILCS 50/1(D)(b) (West 2016)). With regard to the former, our supreme court has defined depravity as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *In re Abdullah*, 85 Ill. 2d 300, 305, 423 N.E.2d 915, 917 (1981); see also *In re J.B.*, 2014 IL App (1st) 140773, ¶ 61, 19 N.E.3d 1273. "There 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." 750 ILCS 50/1(D)(i) (West 2016). Further, certified copies of such 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) ("Certified copies of the requisite convictions create a *prima facie* showing of depravity ***."); see also *In re J.B.*, 298 Ill. App. 3d 250, 254, 698 N.E.2d 550, 552 (1998). On review, respondent bears the burden of refuting the presumption of depravity by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 253, 850 N.E.2d 172, 182 (2006).

¶ 22 The trial court in this case found defendant was depraved because the evidence showed respondent had been convicted of at least three felonies, one of which occurred within five years of the State's motion to terminate respondent's parental rights. Respondent argues, however, that he rebutted the statutory presumption of depravity "by presenting evidence of all that he has accomplished both prior to and since his incarceration." Specifically, respondent contends that he was able to provide for A.S.'s needs when he had temporary custody of A.S., during his imprisonment he sent cards to A.S., he has a bond with A.S., he participated in services while imprisoned, and upon his release from prison he will have employment as well as housing with his paramour. We disagree with respondent's contention that he rebutted the statutory presumption of depravity.

¶ 23 Evidence at the fitness hearing showed respondent had a significant criminal history. Notably, respondent testified that his most recent conviction occurred when he had temporary custody of A.S. in 2016. Indeed, respondent acknowledged on cross-examination that he spent the majority of his adult life in prison. Further, respondent's efforts to engage in services during his imprisonment, while commendable, were insufficient to rebut the presumption of depravity. The foster care supervisor, Beasley-Ricks, testified that respondent never received an overall satisfactory rating on his service plans. And while respondent maintains that he will have housing and employment following his release from prison, we find

his intentions regarding the future fail to demonstrate his current rehabilitation or lack of depravity. Based on the evidence presented, we cannot say the trial court's finding of depravity was against the manifest weight of the evidence.

¶ 24 Because we affirm the trial court's finding of unfitness on the ground of depravity, we need not review the other basis for the court's unfitness finding. *Gwynne P.*, 215 Ill. 2d at 349 (A parent's rights may be terminated if even a single alleged ground for unfitness is supported by the evidence.).

¶ 25 B. Best Interest

¶ 26 Respondent next argues termination of his parental rights was not in A.S.'s best interest. Specifically, he argues that "the child knows [respondent] as his father and is bonded to him." Respondent asserts that it would be in A.S.'s best interest to be reunited with respondent upon his release from prison. We disagree.

¶ 27 "Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphases in original.) *In re D. T.,* 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* At this stage of the proceedings, "the State bears the burden of proving by a preponderance of the evidence that termination is in the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). We will not disturb the trial court's best-interest determination unless it is against the manifest weight of the evidence. *Id.* at 1071. "A finding is against the manifest weight of the evidence only if the opposite conclusion is

clearly evident." *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

¶ 28 Under the Juvenile Court Act of 1987, there are several factors a court should consider when making a best-interest determination. 705 ILCS 405/1-3(4.05) (West 2016). These factors, considered in the context of the child's age and developmental needs, include the following:

> "(1) the child's physical safety and welfare; (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, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative; (5) the child's wishes; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the persons available to care for the child." *Jay. H.*, 395 Ill. App. 3d at 1071 (citing 705 ILCS 405/1-3(4.05) (West 2008)).

¶ 29 In this case, sufficient evidence was presented at the best-interest hearing to support the trial court's determination that terminating respondent's parental rights was in A.S.'s best interest. The court stated that A.S. lived with his maternal grandmother and sister. The court noted that A.S. had a "sense of security with his grandmother ***." Although A.S. had a strong bond with respondent, the court noted that A.S. also had a strong bond and attachment with his grandmother. The court further noted that other family members lived nearby who could provide additional support. The trial court acknowledged respondent's testimony that he loved A.S. and

commended his desire to "remain involved in the child's life." However, the court noted Beasley-Ricks's testimony that "it would be best for [A.S.] to remain with the grandmother" because she could provide A.S. with the stability that respondent had been unable to provide due to his repeated felony convictions. The court noted that the grandmother demonstrated her commitment to A.S. by moving from Tennessee to Illinois to care for him. She provided for his medical needs, housing, food, clothing, and ensured A.S. regularly attended church. The court noted she was also an adoptive resource. In light of this evidence, we find the trial court's best-interest determination was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

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

¶ 32 Affirmed.