2018 IL App (5th) 180060-U

NO. 5-18-0060

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re M.L., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-JA-44
	)	
James L.,	)	Honorable
	)	Walter J. Brandon Jr.,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Barberis and Justice Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's determinations that M.L. was neglected and that respondent's parental rights should be terminated are not contrary to the manifest weight of the evidence.

¶ 2 Respondent, James L., appeals the judgment of the circuit court of St. Clair County terminating his parental rights to his biological daughter, M.L. On appeal, respondent contends that: (1) the trial court's finding that M.L. was neglected due to his actions is against the manifest weight of the evidence, and (2) the decision of the trial

court to terminate his parental rights is against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 Respondent and Amber W. are the biological parents of M.L. (d.o.b. December 16, 2008). M.L. and her half-sister, C.W., Amber W.'s biological child, were taken into protective custody in June 2009. C.W. was four years old at the time. Respondent has not lived with either Amber W. or M.L. since 2009.

¶ 5 Amber W. regained custody of M.L. and C.W. in 2010. C.W. died of an aneurysm in 2011. Amber W. gave birth to a son, J.W., in May 2011. Respondent is not J.W.'s father.

¶ 6 Respondent was incarcerated from July 2012 to December 2013 for obstruction of justice (12-CF-47). The charge stemmed from giving the police a false name because there was a warrant issued for his arrest. Respondent petitioned for visitation of M.L. in January 2014. A circuit court in Sangamon County granted him visits with M.L. in April, May, and June 2014. Respondent's visitation with M.L. was suspended in June 2014, when respondent was again arrested and convicted of burglary in Sangamon County (14-CF-586).

¶ 7 In May 2014, M.L. and J.W. were taken into protective custody. On July 18, 2014, the State filed a petition alleging M.L. and J.W. were abused/neglected/dependent children. At that time, the petition was only directed toward Amber W. On November 3, 2014, before respondent was served, the trial court adjudicated M.L. and J.W. as

dependent on the basis that Amber W. "does not have housing for the minors and is unemployed and has no funds to provide for the minors." Amber W. stipulated that M.L. was dependent.

¶ 8 On December 8, 2014, guardianship and custody of M.L. and J.W. were placed with the Department of Children and Family Services (DCFS). Proceedings on the termination of parental rights of all parents of M.L. and J.W. were conducted together, but in this appeal our focus is on respondent with regard to his daughter, M.L. On February 2, 2017, the State filed a combined petition for neglected minor and termination of parental rights with regard to M.L.

¶ 9 The petition raised two counts of neglect. Count I was directed against Amber W. and alleged neglect based upon abandonment. 705 ILCS 405/2-3(1)(a) (West 2016). Count II alleged that both Amber W. and respondent exposed M.L. "to an environment injurious to her welfare." *Id.* § 2-3(1)(b). The petition set forth that: (1) M.L. reported being fearful of respondent and described domestic violence when she resided with both her parents; (2) respondent has a prior "indicated" finding for abuse to C.W.; (3) Amber W. has been "indicated" by DCFS on five prior occasions for various forms of abuse and neglect with regard to her children, including sexual penetration and sexual molestation to C.W.; (4) despite the indicated reports neither Amber W. nor respondent completed recommended service plans; (5) prior to respondent's incarceration in 2014, he left M.L. in the care of Amber W., who has the above noted five indicated findings of abuse/neglect; and (6) it is in M.L.'s best interest that she remain a ward of the court and DCFS maintain her custody and guardianship.

¶ 10 Section II of the petition sought termination of respondent's parental rights with regard to M.L. on the basis that he: (1) "failed to maintain a reasonable degree of interest, concern or responsibility"; (2) "failed to protect [M.L.] from conditions within her environment injurious to her welfare"; and (3) "is depraved; specifically, [respondent] has been criminally convicted" of burglary, obstructing justice, and attempted armed robbery. The trial court heard testimony on the issue of wardship on August 28, 2017. On October 12, 2017, the trial court entered an order finding that M.L. was neglected in that both respondent and Amber W. failed to provide support or remedial care and created an environment in which M.L. is fearful for her safety.

¶ 11 After a hearing on termination of parental rights, the trial court entered an order finding both parents unfit in that both "have failed to progress to a level deemed necessary for reunification" and also failed to show sufficient concern for the child through noncompliance with service plans. The trial court determined that both parents "failed to maintain a reasonable degree of interest, concern or responsibility regarding [M.L.]". A best interests hearing was conducted. On January 18, 2018, the trial court entered an order terminating respondent's parental rights. Respondent now appeals.

¶ 12 ANALYSIS

¶ 13 I. NEGLECT

¶ 14 The first issue on appeal is whether the trial court's finding that M.L. was neglected is against the manifest weight of the evidence. Respondent contends it was improper for the trial court to find that he committed neglect based upon an allegation for

which no notice was provided. According to respondent, the trial court found M.L. was neglected based in part on the fact that respondent failed to provide any support or remedial care for M.L. and created an environment in which M.L. was fearful for her safety, but the petition did not contain any allegations that respondent failed to provide support or remedial care.

¶ 15 We first point out that respondent failed to cite any authority for this claim of error. Second, even if it was improper for the trial court to find that respondent committed neglect based upon an allegation for which he was not provided notice, a reviewing court may affirm the trial court's decision on any basis established in the record. *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002); *In re K.B.*, 314 Ill. App. 3d 739, 751 (2000). Third, and most importantly, we note that respondent incorrectly framed the issue in terms of whether or not he neglected M.L., not whether M.L. was neglected.

¶ 16 The best interest of the child drives a court's ruling on a petition for adjudication of wardship or any proceeding brought under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2016)). *In re K.G.*, 288 Ill. App. 3d 728, 734-35 (1997). At the adjudicatory stage, the court must focus solely on whether the child has been neglected or abused, not on whether the parents were neglectful or abusive. 705 ILCS 405/1-3(1) (West 2016); *In re Arthur H.*, 212 Ill. 2d 441, 465 (2004).

¶ 17 In *Arthur H.*, our supreme court specifically addressed the issue raised by respondent herein and concluded "the Act instructs the circuit court during the adjudicatory hearing to determine whether the child is neglected, and not whether the

parents are neglectful." *Arthur H.*, 212 Ill. 2d at 467. The court went on to note that such a finding "furthers the purpose and policy of the Juvenile Court Act, which is to ensure the best interests and safety of the child. [Citation.]" *Id.* The court pointed out that "[a] contrary result would lead to the unacceptable proposition that a child who is neglected by only one parent would be without the protections of the Act." *Id.* And a child would have no protection under the Act if the child was neglected, but it could not be determined which parent's conduct caused the neglect. *Id.*

¶ 18 Our supreme court succinctly summed up the situation we face as follows:

> "As the matter at bar involved an adjudicatory hearing, the appellate majority's analysis of the relative blame of each parent for the child's neglect was improper. We agree with the dissenting justice below that '[t]he basic principle overlooked by the majority is that parents are not adjudicated neglectful at the adjudicatory stage of the proceedings under the Act; rather, minors are adjudicated neglected.' [Citations]." *Id.*

Because the only question that needs to be resolved at an adjudicatory hearing is whether a child is neglected, not whether every parent is neglectful, we address the real issue, which is whether the trial court's finding that M.L. is a neglected minor within the meaning of the Act is against the manifest weight of the evidence.

¶ 19 A neglected minor includes any minor under the age of 18 "whose environment is injurious to his or her welfare." 705 ILCS 405/2-3(1)(b) (West 2016). Neglect refers to the failure to exercise the care the circumstances justly demand and encompasses both willful and unintentional disregard of parental duty. *Arthur H.*, 212 Ill. 2d at 463. The

term has no fixed and measured meaning, but takes its meaning from the specific facts and circumstances of each case. *Id.* An injurious environment is an amorphous concept that cannot be defined with particularity, but includes the breach of a parent's duty to ensure a safe and nurturing shelter for children. *Id.*

¶ 20 The trial court has broad discretion when determining the existence of abuse or neglect because it has the best opportunity to observe the demeanor and conduct of the parties and the witnesses. *In re Davon H.*, 2015 IL App (1st) 150926, ¶ 47. On review, we will not disturb the trial court's determination of neglect unless it is against the manifest weight of the evidence. *In re Tamesha T.*, 2014 IL App (1st) 132986, ¶ 31. A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *Id.*

¶ 21 On February 2, 2017, the State filed a petition for adjudication of wardship on behalf of M.L. based on parental neglect due to (1) failure to provide any support or remedial care for M.L. (705 ILCS 405/2-3(1)(a) (West 2016)) and (2) an injurious environment (*id.* § 2-3(1)(b)). On October 12, 2017, the trial court entered an order finding that M.L. was neglected on both bases. Here, we concentrate on whether or not M.L. was neglected based on an injurious environment. After careful consideration, we conclude that the trial court's determination that M.L. was neglected as a result of her environment being injurious to her welfare is not contrary to the manifest weight of the evidence.

¶ 22 At the adjudicatory hearing, the State presented evidence that in June 2009, M.L., who was then six months old, and C.W., who was four years old, were taken into protective custody by DCFS after a hotline report charged respondent with twisting C.W.'s arm during a domestic violence dispute. This incident helped formed the basis for indicated findings against Amber W. and respondent with regard to C.W. The State also presented the testimony of M.L., who was then eight years old, at the adjudicatory hearing.

¶ 23 M.L. testified that she lived with respondent before he went to jail. The evidence showed that defendant was in jail between July 2012 and December 2013, and again between June 2014 and May 2016. J.W. was born in 2011. M.L. testified she was hit during the time she lived with respondent and Amber W. While M.L. did not specify who hit her, she did specify that she saw respondent hit J.W. She said it looked like it hurt J.W. She also testified J.W. bruised as a result of being hit by respondent. M.L. also saw respondent hit Amber W. in the leg. M.L. testified she did not want to see respondent, and, if someone told her she had to see him she would be "mad."

¶ 24 Allison Nance, the caseworker on M.L.'s case from April 2016 until November 2016, testified that M.L. repeatedly told her that respondent used to hit her, J.W., and Amber W. M.L. told her the abuse occurred when she was living with Amber W. Nance could not recall whether M.L. told her it happened when she was living with both Amber W. and respondent.

¶ 25 Jodie Robinson, who took over for Nance after Nance left her job at Hoyleton Youth and Family Services, testified that M.L. did not make specific statements regarding allegations of abuse or neglect by either parent, but M.L. told her she is scared of respondent. According to Robinson, when she has tried to broach the subject of visitation between M.L. and respondent, M.L. becomes so distraught that Robinson did not continue the discussion. Robinson testified that M.L. has discussed being afraid of her father during therapy sessions.

¶ 26 We find sufficient evidence in the record to support the trial court's determination that respondent and Amber W. "created an environment in which [M.L.] is fearful for her safety." While respondent contends M.L.'s credibility is suspect, we point out that the trial court was in a better position than we are to judge the credibility of the witnesses. And because of the evidence that there was physical violence against the children living in the house with Amber W. and respondent, we cannot say the trial court erred in concluding that M.L. was neglected. It is well settled that the State may use evidence of neglect and abuse of one child as evidence of abuse and neglect of another child who lives in the same household. *In re R.G.*, 2012 IL App (1st) 120193, ¶ 49.

¶ 27 Finally, we note that respondent's argument actually supports the trial court's finding that M.L. was neglected based upon an injurious environment. By asserting that M.L. was repeatedly beaten in 2014 by Amber W., not him, respondent essentially admits that M.L. was neglected. Accordingly, the trial court's finding that M.L. was neglected is not against the manifest weight of the evidence.

¶ 28 II. TERMINATION

¶ 29 The other issue raised by respondent in this appeal is whether the decision of the trial court to terminate his parental rights is against the manifest weight of the evidence. Respondent contends the trial court's finding that he failed to maintain a reasonable degree of interest, concern, or responsibility for the welfare of M.L. is against the manifest weight of the evidence. We disagree.

¶ 30 The Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2016); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)). *J.L*, 236 Ill. 2d at 337; *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Adoption Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Tiffany M.*, 353 Ill. App. 3d at 889. A trial court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on appeal unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 31 If the trial court finds the parent unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2016); *J.L.*, 236 Ill. 2d at 337-38. At this stage of the proceedings, the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). Before terminating parental rights, the State must prove by a

preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). A trial court's decisions are afforded great deference because the trial court is in a superior position to assess the credibility of the witness and weigh the evidence. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 65.

¶ 32 In this case, the State raised three allegations of unfitness against respondent, asserting that he: (1) failed to maintain a reasonable degree of interest, concern, or responsibility regarding the minor (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to protect the minor from conditions within her environment injurious to her welfare (*id.* § 1(D)(g)); and (3) was depraved based upon his three felony criminal convictions, the most recent occurring within the past five years (*id.* § 1(D)(i)). The trial court granted respondent's motion for a directed verdict with regard to the second alleged ground. In its order dated December 26, 2017, the trial court found respondent unfit on the basis that he "failed to maintain a reasonable degree of interest, concern or responsibility regarding the minor." We cannot say this finding is against the manifest weight of the evidence.

¶ 33 Respondent contends that because he did not receive Sangamon County referrals for services until early 2017, it was unfair to find him unfit on the basis that he did not successfully complete all aspects of his service plan in a year. However, there is overwhelming evidence in the record to show that respondent's failure to comply with several aspects of his service plan was caused by his own indifference and inactivity.

¶ 34 Respondent's service plan goals were set in July 2016, shortly after he was released from jail. Prior to that, defendant was unable to receive services due to his

incarceration from June 2014 until May 2016. Respondent's service plan goals included: (1) domestic violence counseling; (2) complete an integrated assessment; (3) substance abuse counseling; (4) employment; (5) adequate housing; (6) family counseling; (7) parenting classes; and (8) to comply with parole. In July 2017, a year after his service plan goals were set, his progress was unsatisfactory in several of these areas.

¶ 35 Other than completing the initial integrated assessment and a few other assessments, respondent did little to comply with the service plan. For example, the record shows respondent took approximately 16 months to submit proof of a legal source of income. At the August 28, 2017, hearing, respondent testified that he worked at a couple of jobs. He was currently working as a roofer, but "that's not with a—a [*sic*] actual company." He did not submit any pay stubs until the November 2017 fitness hearing. At that time, respondent introduced evidence from pay stubs from Golden Corral, showing he had been employed from September 21, 2017, until October 4, 2017, and from October 19, 2017, until November 1, 2017. He also testified that he started working at IHOP the day before the termination hearing.

¶ 36 As to housing, the July 2017 service plan showed that respondent did not have suitable housing at the time. He was living with his grandmother in Springfield but was planning on moving to New Jersey within the next couple of months. Jodie Robinson noted that respondent was not rated unsatisfactory on either the basis of living with his grandmother or considering a move to New Jersey, but rather because respondent supplied her with two different addresses for him in the Springfield area.

¶ 37 Robinson testified that respondent told her he moved in with his girlfriend and her child. He promised to provide Robinson with an address and proof he was living there, but failed to do so. The previous caseworker, Allison Nance, testified that respondent told her he was planning to move back to Washington Park. Under these circumstances, where respondent failed to show that he could provide M.L. with safe and affordable housing, he was correctly categorized as making unsatisfactory progress with regard to housing.

¶ 38 Robinson also rated respondent unsatisfactory with regard to completing parenting classes. Respondent attended a few parenting classes in March/April 2017 but was dropped from the program after he missed some classes. When questioned about missing parenting classes, respondent noted that one time "it kind of slipped my mind" and another time he had to work and simply "forgot about, you know, going to class." Respondent's admissions that he repeatedly forgot about parenting classes in what was his second failed attempt to complete them is indicative of his overall efforts.

¶ 39 During the termination hearing, respondent was specifically asked why he was dropped from parenting classes, and he replied, "To be honest, it's a commitment. And I'm committed to so many other things right now that share my time, it could be kind of conflicting with my schedule." Respondent explained his schedule consisted of getting his girlfriend's son to and from school and doing whatever was necessary to survive. If respondent cannot make time for required parenting classes, then it is highly unlikely he would have time to actually parent his daughter.

¶ 40 Our review of the record shows that respondent was more focused on his lack of visitation with M.L. than on compliance with the goals outlined in the service plan. His efforts were lax at best. A parent is not fit simply because he or she has shown some interest in the minor. *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). Under the circumstances presented here, the trial court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility toward M.L. is not against the manifest weight of the evidence.

¶ 41 Finally, even though the trial court did not specifically find respondent unfit on the basis of depravity, we agree with the State that the record before us would support such a finding. Depravity for purposes of determining whether a parent is unfit is an inherent deficiency of moral sense and rectitude. *In re S.W.*, 315 Ill. App. 3d 1153, 1158 (2000). Depravity is demonstrated by a series of acts or a course of conduct that indicates a moral deficiency along with an inability or unwillingness to conform with accepted morality. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005). Section 1(D)(i) of the Adoption Act creates a rebuttable presumption of depravity where a parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2016).

¶ 42 In the instant case, certified copies of respondent's three felony convictions (2014-CF-586, 2012-CF-47, 2005-CF-1404), two of which occurred within five years of the filing of the combined petition for wardship and termination of parental rights, were admitted into evidence. Respondent conceded that the State presented evidence sufficient to trigger the statutory presumption of depravity, but testified at the fitness hearing that

he turned his life around. He said he was living with his girlfriend and her son and he was working. Respondent's girlfriend, Victoria, testified that respondent provided for her and her son.

¶ 43 Respondent's and his girlfriend's testimony was sufficient to overcome the presumption of depravity, but frankly it is not compelling enough so that a finding of depravity would be against the manifest weight of the evidence. Respondent's contention that he turned his life around was based mainly on the fact that he was now living with his girlfriend and her son and he was working. However, respondent had only been living with his girlfriend for a few months at the time of the fitness hearing, and he only provided proof of income for four nonconsecutive weeks, totaling less than $700. This, combined with respondent's half-hearted efforts to comply with the service plan, does not show he had changed from his criminal ways "into an individual with 'moral sense and rectitude' capable of parenting a child." *In re A.H.*, 359 Ill. App. 3d 173, 181 (2005) (quoting *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003)). Consequently, a finding that respondent is unfit based on depravity would not be against the manifest weight of the evidence.

¶ 44 This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Under Rule 311(a)(5), we are required to issue our decision within 150 days after the filing of the notice of appeal, except for good cause shown. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Here, respondent's notice of appeal was filed on February 21, 2018, making the deadline to issue our decision July 20, 2018. However, this case was not placed on the oral argument schedule until August 21, 2018. A motion to

continue oral argument was filed by appellant on July 16, 2018, and an order was entered denying the motion and dispensing with oral argument. Therefore, we find good cause to issue our decision after the 150-day deadline.

¶ 45 CONCLUSION

¶ 46 Respondent does not contest the trial court's finding that it was in M.L.'s best interest to terminate his parental rights. He argues only that the trial court erred in finding M.L. neglected and in finding him unfit. We disagree with respondent on both issues. Accordingly, we affirm the judgment of the circuit court of St. Clair County terminating respondent's parental rights.

¶ 47 Affirmed.