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No. 3--10--0922

Order filed March 24, 2011

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re R.G. and R.M. III,) Appeal from the Circuit Court
Minors) of the 10th Judicial Circuit,
) Tazewell County, Illinois,
)
(The People of the State of)
Illinois,)
) Nos. 07--JA--110 and
Petitioner-Appellee,) 07--JA--111
)
v.)
)
Julia M. K.,) Honorable
) Timothy M. Lucas,
Respondent-Appellant).) Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concur in the
judgment.

ORDER

Held: The trial court's order denying respondent's motion to rescind the final and irrevocable surrender of her two children was not against the manifest weight of the evidence because she did not demonstrate by clear and convincing evidence that her surrender was the result of duress or fraud on the part of the trial judge.

Respondent, Julia M. K., voluntarily surrendered her two

minor children, R.G. and R.M. III, without discussion with her attorney or current caseworker. The trial court previously adjudicated both children neglected because respondent had left them alone in her car while she was grocery shopping. Eight months after the surrender, respondent filed a motion to rescind her final and irrevocable surrender, arguing that she had signed away her children due to duress and fraud (750 ILCS 50/11 (West 2008)). The trial court denied respondent's motion. On appeal, respondent argues that the trial court's decision was in error because her surrender was obtained by duress and fraud. We affirm.

FACTS

Respondent's minor children were adjudicated neglected following a September 2007 incident where respondent left them alone in her car while she was grocery shopping. On September 12, 2008, the trial court found respondent unfit to parent the two children as a result of her continued drug problems and failure to complete her court-ordered rehabilitation program.

In December 2009, respondent was arrested for residential burglary¹ and housed in the Peoria County jail. While incarcerated, respondent was transported to the Tazewell County courthouse for a hearing before Judge Collier on the State's

¹Respondent was convicted of residential burglary and sentenced to serve seven years in the Department of Corrections.

petition to terminate her parental rights. At the start of the proceedings, respondent sought to discharge her attorney and then announced that she would like to surrender her two children. As a result of respondent's sudden declaration, the trial court asked Kelly Hubert, a Counseling and Family Services caseworker who had previously worked with J.M.K. to discuss with the respondent the ramifications of signing a final and irrevocable surrender. Hubert testified that she had a 15-minute discussion with respondent. During this discussion, respondent asked if there was any opportunity to make a deal regarding the placement of her children in exchange for signing the surrender forms. Respondent indicated throughout the discussion that she wanted to do what was best for her children and inquired further about their placement. Hubert stated that, in response to respondent's questions about placement, "I did tell her, her daughter would stay with her mom. Her mom was going to adopt her." Respondent viewed this statement as a promise used by Hubert to induce her to sign the irrevocable surrender form. When asked about this alleged promise during the hearing to revoke the surrender, Hubert replied "No, there [were] no deals." Hubert ended the conversation with respondent by reading the final and irrevocable surrender form to respondent. Respondent then signed the form without reading it herself. Hubert never signed the irrevocable surrender form.

Following this conversation and a subsequent 30-minute wait, respondent returned to the courtroom. The judge then admonished respondent in separate hearings for each child, and he formally accepted the surrender of her children as follows. When the judge asked if it was her desire to execute a final and irrevocable surrender, respondent replied "[y]es, it's inevitable." Respondent further acknowledged that this was an irrevocable order and that she understood the meaning of "irrevocable." She told Judge Collier that there had been no force, threats, or promises made to her. Respondent also stated that she was not under the influence of any drugs or alcohol but was taking medication that actually improved her ability to think and understand. The judge asked if she had a discussion with Hubert about the surrender and she replied "[y]es, Kelly [Hubert] was very clear." Respondent first signed the form irrevocably surrendering her parental rights to R.M. III. Shortly thereafter, respondent was admonished a second time and surrendered her parental rights to R.G. The trial judge also signed the forms, acknowledging the respondent's irrevocable surrender of her two children.

Approximately eight months later, respondent filed a motion to rescind her final and irrevocable surrender. Respondent argued to Judge Lucas that she involuntarily surrendered her children as a result of duress and fraud. Specifically, she

claimed she had acted while suffering from extreme stress, rising to the level of duress. Respondent stated that while she was incarcerated in the Peoria County jail on burglary charges she had been denied some of her medication, was forced to sleep on a mat on the floor, and suffered seizures. Consequently, she was not thinking coherently and was induced to surrender her children. More specifically, respondent further argued that Hubert used their brief conversation to fraudulently deceive her into surrendering her children. Respondent alleged that Hubert caused her to believe that voluntarily surrendering her children was the only way to prevent them from being placed with strangers.

The trial court was not persuaded by respondent's duress and fraud arguments. In denying respondent's motion, it reasoned that the stress resulting from her burglary arrest and subsequent incarceration did not rise to the level of duress suggested by case law as justifying revocation. Additionally, the trial court examined both respondent's and Hubert's testimony regarding their discussion about the irrevocable surrender and determined that Hubert did not deceive respondent into surrendering her children. In weighing this evidence, the trial court made specific note of respondent's own credibility issues because she had admitted to lying under oath during the surrender proceedings. The trial court then denied respondent's motion for rescission. Respondent

appeals.

ANALYSIS

Respondent argues that the trial judge's denial of her motion to rescind her final and irrevocable surrenders was against the manifest weight of the evidence. However, we find that the trial judge's decision was not against the manifest weight of the evidence because the opposite result was not clearly demonstrated by the facts.

Reviewing the trial court's denial of a motion to revoke an irrevocable surrender, we apply a manifest weight of the evidence standard. *In re Adoption of Hoffman*, 61 Ill. 2d 569 (1975). Under this standard, we will not overturn the trial court's decision unless "the facts clearly demonstrate that the court should have reached the opposite result." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). Conducting our review of the evidence, we give great deference to the trial court because it is in the best position to weigh the credibility of the witnesses and evidence presented. See *Hoffman*, 61 Ill. 2d 569.

Generally, voluntary surrenders are irrevocable because public policy favors finality and stability in adoptions. *Hoffman*, 61 Ill. 2d 569. However, section 11(a) of the Adoption Act (Act) provides for revocation if the voluntary surrender "shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document

equivalent to a surrender is acknowledged." 750 ILCS 50/11(a) (West 2008). Our supreme court has defined fraud as " 'anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo[.]' " *Regenold v. Baby Fold, Inc.*, 68 Ill. 2d 419, 435 (1977) quoting *People ex rel. Chicago Bar Ass'n v. Gilmore*, 345 Ill. 2d 28, 46 (1931). It has also defined duress as a " 'condition which exists where one is induced by the unlawful act of another to make a contract or perform or forego an act under circumstances which will deprive him of the exercise of his free will.' " *Regenold*, 68 Ill. 2d at 432-33, quoting *People ex rel. Drury v. Catholic Home Bureau*, 34 Ill. 2d 84, 92 (1966).

Here, respondent first argues that she demonstrated by clear and convincing evidence that her surrenders were the involuntary result of duress. In particular, she contends that she surrendered her children in a state of extreme stress amounting to the statutorily defined duress exception. Respondent argues that the conditions resulting from her incarceration for residential burglary left her in an incoherent state of mind and therefore involuntarily induced her to surrender her two children.

Despite respondent's contentions, her evidence did not clearly demonstrate that she signed the irrevocable surrender

agreement as a result of duress. The trial court correctly determined that the situations and stress caused by her residential burglary arrest were not duress. The record indicates that respondent was not induced to surrender her children but voluntarily requested the surrender before consulting with either her attorney or caseworker. Further, respondent's replies during the judge's admonition indicate that she was coherent and understood the repercussions of the proceedings. Respondent even acknowledged that she understood that she could not change her mind because the surrender was irrevocable. Moreover, section 11(a) of the Act requires the duress to be caused by the individual acknowledging the surrender and not the respondent's living conditions. 750 ILCS 50/11(a) (West 2008). Here, respondent did not argue that the trial judge, who acknowledged her surrender, caused her duress. Instead, the trial judge only admonished the respondent of her rights and accepted her surrender. Therefore, the respondent cannot use duress as a basis to revoke her voluntary surrender.

Respondent next argues that she was induced by Hubert's fraudulent statements to voluntarily surrender her children. Respondent testified that Hubert's statements regarding the placement of her children with family members were offered in exchange for her agreement to surrender her children. Absent her voluntary surrender, respondent claimed to believe that Hubert

would not ensure that her children were placed with family members.

We find that the facts do not clearly demonstrate that the trial court should have found respondent's decision to be the result of fraud. Rather, the record supports the trial court's conclusion that Hubert's statements regarding the placement of respondent's children were merely answers to questions posed by the respondent. Therefore, these statements were not "calculated to deceive" respondent into surrendering her children. *Regenold*, 68 Ill. 2d at 435.

Moreover, our review of both respondent's and Hubert's testimony indicates that the evidence was conflicting. As a court of review, we are not in the best position to determine witness credibility. See *Hoffman*, 61 Ill. 2d 569. On the other hand, the trial court was positioned to consider this testimony and was justifiably concerned with respondent's statement that she lied to the court in surrendering her children. Thus, the evidence, though conflicting, was not so one-sided as to demonstrate that the trial court should have reached the opposite result. Rather, the evidence presented witness credibility determinations, which were best left for the trial court to decide because it had the opportunity to directly observe the witnesses. See *In re Marriage of Bates*, 212 Ill. 2d 489 (2004).

Respondent's claim of fraud must fail for another reason.

Application of section 11(a) of the Act further indicates that respondent's irrevocable surrender was not procured by fraud of the trial judge who acknowledged the surrender. 750 ILCS 50/11(a) (West 2008). Section 11(a) of the Act provides that a surrender of a child by a parent "shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged." 750 ILCS 50/11(a) (West 2008). Respondent contends that Hubert's statements were the fraudulent inducement that prompted her to surrender her children. However, Hubert did not acknowledge the respondent's surrender; she only read and explained the form to the respondent. The trial judge acknowledged the respondent's surrender by signing the irrevocable surrender forms. The record does not provide evidence that the trial judge deceived or coerced the respondent into surrendering her children. Consequently, the respondent's surrender was not procured by fraud on the part of the individual accepting it, and thus it was not revocable.

Because our review of the evidence did not lead us to the opposite result, the trial court's denial of respondent's motion to rescind the final and irrevocable surrender of her children was not against the manifest weight of the evidence.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

Affirmed.