

NOTICE
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NO. 4-10-0642

Filed 1/11/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.G., H.G., O.G., and C.G., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	Nos. 05JA50
HERBERT GASTON,	)	05JA52
Respondent-Appellant.	)	05JA53
	)	05JA54
)	
	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court. Presiding Justice Knecht and Justice McCullough concurred in the judgment.

ORDER

Held: (1) Where the State sufficiently proved that respondent father had failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the children's welfare, the trial court did not err in finding respondent an unfit parent.

(2) Where the State sufficiently proved that termination of respondent father's parental rights was in the children's best interests, the trial court did not err in entering a judgment of termination.

In August 2010, the trial court terminated the parental rights of respondent, Herbert Gaston, to his four minor children. He appeals both the court's finding of unfitness and the best-interest determination, claiming each decision was against the manifest weight of the evidence. Following our review of the record, we affirm the court's judgment.

I. BACKGROUND

In July 2005, the State filed four separate petitions for adjudication of neglect in the circuit court of Vermilion County as to each of respondent's minor children: K.G., born June 29, 1997 (case No. 05-JA-50); H.G., born January 10, 1996 (case No. 05-JA-52); O.G., born October 12, 1998 (case No. 05-JA-53); and C.G., born September 19, 2000 (case No. 05-JA-54). The State alleged the children were neglected pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/2-3 (West 2008)) in that (1) their mother, Sylvia Gaston, had overdosed on her psychotropic medication in their presence, (2) they were exposed to domestic violence between respondent and Sylvia, and (3) they were without proper care due to Sylvia's hospitalization for issues relating to her mental health and respondent's incarceration. Sylvia eventually surrendered her parental rights. She is not a party to this appeal.

In September 2005, the trial court entered an order of adjudication of neglect, and in November 2005, a dispositional order, making the children wards of the court and appointing the Illinois Department of Children and Family Services (DCFS) as the children's custodian and guardian. For the next several years, respondent made little progress toward the completion of his case-plan services. Though he successfully completed a parenting course and eventually successfully completed individual counseling, he struggled with substance abuse and criminal activity. He failed multiple attempts to successfully complete substance-abuse treatment. He denied that he suffered from a drug addiction, but he tested positive for marijuana and cocaine on multiple occasions. Even after his positive results, he denied taking the drugs, claiming his wife put them in his food or drink. For the majority of the five-year duration of this case, respondent was unemployed.

Respondent's visits with his children were initially successful. According to the caseworker, he regularly attended, was excited to see the children, was very involved with each child, and appropriately controlled each child's behavior. However, respondent visited the children for the last time in March 2007 and has had no contact with them since.

In November 2009, the State filed its second amended petition to terminate parental rights, alleging respondent was unfit on the following grounds: (1) he abandoned the minors (750 ILCS 50/1(D)(a) (West 2008)); (2) he failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2008)); (3) he deserted the minors for more than three months preceding the commencement of the adoption proceedings (750 ILCS 50/1(D)(c) (West 2008)); and (4) he is deprived (based on his convictions of three felonies, one which occurred within five years of the filing of the petition to terminate) (750 ILCS 50/1(D)(i) (West 2008)).

On July 16, 2010, the trial court conducted a fitness hearing. The State called only one witness, Timothy Revello, the foster-care caseworker from Catholic Charities. He testified that he has been the caseworker since June 2008, replacing Amber Sullivan, who was no longer with the agency. When he started, respondent's whereabouts were unknown. In October 2008, Revello discovered that respondent had been incarcerated since August 2008. The first contact Revello had with respondent was after a court hearing in January 2009, when respondent told Revello he would contact him upon his release. Revello learned that in August 2008, respondent was sentenced to four years in prison after being convicted of felony retail theft. He was released in February 2010. In March 2010, respondent called Revello in response to a letter Revello had sent to respondent regarding resuming services. However, respondent did nothing further. He was sent back to prison

in June 2010 on a parole violation.

Revello testified that the last time respondent saw his children or attempted to make any contact with them was in March 2007. Revello said he would not feel comfortable returning the children to respondent due to his lengthy criminal history and unresolved substance abuse.

On cross-examination by the guardian *ad litem*, Revello testified regarding the effect respondent's criminal activity had on his children. Revello said that respondent's son, H.G., had advised that respondent taught him to be a "look out," to watch for drug deals, and to actually hold the money or drugs during a transaction.

After Revello's testimony, the prosecutor asked the trial court to take judicial notice of respondent's convictions. He stated: "Your Honor, I would move to submit People's Exhibit 1. It's certified copies of [respondent]'s criminal convictions, 2008-CF-532, and then his criminal convictions from Cook County." We are unable to discern what exactly was included in this exhibit as it does not appear in the record before us. No other evidence was presented at the hearing.

After considering the evidence and arguments of counsel, the trial court stated:

"I think there was a time when the Court's had difficulty dealing with the issue of incarceration, but I think the law is pretty settled now. [Respondent] drove that car. The kids didn't. I don't know what could be more clear, as far as the allegations and the burden met here. There's no doubt in the Court's mind, based upon the testimony and evidence presented, that there's been

abandonment as alleged. There absolutely is no doubt, and I am clearly--more than clearly--convinced that there's been an utter lack of any effort to demonstrate any reasonable degree of interest, concern, or responsibility as to any of these children's welfare. I don't have enough to really pinpoint on your allegation of desertion for more than three months preceding. At least based upon what I've heard today. But with John [(the guardian *ad litem*)] clarifying the law for me, I can also clearly find depravity as alleged in paragraph 7(d). So, I'm finding the State has met their burden on 7(a), 7(b), sub (i), sub (ii), and sub (iii), and 7 (d), in all petitions, as to all cases."

In other words, the trial court found the State had sufficiently proved that respondent was unfit on three of the four grounds alleged in the petition. The court did not find respondent unfit based on the allegation that he had deserted the minors (750 ILCS 50/1(D)(c) (West 2008)) but did find that he had abandoned the children (750 ILCS 50/1(D)(a) (West 2008)), failed to demonstrate a reasonable degree of interest, concern, or responsibility as to their welfare (750 ILCS 50/1(D)(b) (West 2008)), and that he was depraved (750 ILCS 50/1(D)(i) (West 2008)).

The trial court immediately proceeded to the best-interest hearing. Again, the State presented only the testimony of Revello, who testified that all four children were placed together in a traditional single-parent foster home. Their foster dad had expressed a willingness to adopt them all and all had expressed their desire to be adopted by him. According to Revello, each child was "doing wonderful." In his opinion, this was "the best the children have been in the two years [he's] had the case. They just keep doing better and better. It's an amazing turn around all four children have had." Each child had successfully completed his or her individual counseling sessions.

Rather than have the children appear personally in court, Revello advised them to prepare a letter for the judge. Each did so, and the guardian *ad litem* introduced their four handwritten letters as guardian *ad litem* group exhibit No. 1 (also not included in the record). Revello again testified that each child has expressed his or her desire to remain in the foster home, "to be normal children who are not involved with DCFS." No further evidence was presented.

In announcing its decision, the trial court stated that the presentation of the letters from the children convinced her "even more" that it would be in the children's best interests to terminate respondent's parental rights. The court noted that, although the children had expressed in their letters their love for their mother, they, at the same time, expressed that they did not want to live with her because they knew she could not care for them. The court stated: "What's really interesting, [respondent], is that there's not even one mention of you. *** There isn't even one howdy-do reference to you by any of these children. You don't exist in their minds, their hearts, or their lives. Under those circumstances, I can't see making any other decision." Accordingly, the court entered a judgment terminating respondent's parental rights. This appeal followed.

II. ANALYSIS

Respondent first argues the trial court erred in finding that he was an unfit parent. He claims the court failed to consider the facts that (1) he had successfully completed "many of the services" set forth in his case plan, (2) he had regularly and successfully visited with his children early in the case, and (3) his abandonment and desertion of the children were the result of his incarceration, not his desire.

The termination of parental rights is a serious matter and, therefore, the State

must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005) Because the various grounds for unfitness are independent, the court's judgment of unfitness may be affirmed if the evidence supports any one of the alleged statutory grounds. *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

Here, the trial court found the State had sufficiently proved that respondent was unfit on three grounds, one of which centered on respondent's failure to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. "Before finding a parent unfit on this ground, the court must examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." (Internal quotation marks omitted.) *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1202 (2007), quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). As the three elements are listed in the disjunctive, proof of all three is not required. *Richard H.*, 376 Ill. App. 3d at 166, 875 N.E.2d at 1202.

The primary deciding factor in this case is that respondent's last contact with his children was in March 2007. Contrary to his argument on appeal, his incarceration did not prevent this contact for the entire three years. From what we discern from the record, respondent was taken into custody in August 2008, where he remained until February 2010. Prior to his incarceration, he had not had contact with his children for 17 months. Upon his release in February 2010, he had four months to enjoy contact with his children

until he was returned to prison in June 2010. However, again, he chose not to do so.

In addition, respondent did not put forth a good-faith effort to overcome his drug addiction during his periods of release, as he failed multiple drug screens and attempts at treatment. Nor did he put forth a good-faith effort in securing a legitimate means of financial support. Respondent's conduct is not the type that demonstrates a reasonable degree of concern, interest, or responsibility toward the children's welfare. The evidence of his drug use, his unemployed status, his criminal record, and the fact that he has had no contact with his children for three years overwhelmingly supports the trial court's finding that respondent was an unfit parent. Because of our conclusion on this ground of unfitness, we need not analyze the remaining grounds.

We further find the evidence supports the trial court's finding that termination was in the children's best interests. Revello's testimony of how well the children were doing in their current foster placement and that they anxiously anticipated being adopted by their foster dad was undisputed. Given respondent's voluntary absence from the children's lives for more than three years, it was time they be given the permanency and stability that they deserve. Without any supporting evidence to the contrary, we affirm the court's judgment, finding termination was in the children's best interests.

III. CONCLUSION

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

Affirmed.