2012 IL App (1st) 120667-U

Third Division
August 22, 2012

No. 1-12-0667

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(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF B.P., Minor,	)	Appeal from the
Minor-Respondent-Appellee,	)	Circuit Court of
	)	Cook County.
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner-Appellee,	)	08 JA 523
v.	)	
	)	
BRUCE P.,	)	Honorable
	)	Peter J. Vikelis,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

¶ 1 *HELD*: The Illinois and United States constitutions do not require the trial court to make jury trials available to litigants in proceedings for termination of parental rights. Petitions for termination of parental rights provide parents with adequate notice of their grounds when they list the statutory sections that state the grounds for finding the parents unfit.

¶ 2 The State took custody of B.P. shortly after his birth because he had illegal narcotics in his system at birth. After a bench trial held almost four years later, the court, relying on the Adoption Act (750 ILCS 50/1 *et seq.* (West 2008)), granted the State's petition to terminate

the parental rights of B.P.'s father, Bruce P. Bruce now appeals.

¶ 3 Bruce argues that the trial court violated his constitutional rights because (1) the court denied his request for a jury trial, (2) the court permitted the State to proceed on a petition to terminate Bruce's parental rights that alleged only that he violated specific statutes, without specifying the facts allegedly underlying the statutory violations, and (3) the court applied a section of the Adoption Act that the legislature did not narrowly tailor to protect a compelling state interest.

¶ 4 We find that Bruce had no constitutional right to a jury trial because this case involves rights unknown at common law. The proceedings as a whole, up to the time that the State filed its petition for termination of parental rights, adequately informed Bruce of the factual basis for the State's claims. Bruce did not show the Adoption Act facially unconstitutional in the circumstances of this case. Accordingly, we affirm the trial court's judgment terminating Bruce's parental rights.

¶ 5 BACKGROUND

¶ 6 Sharon K. gave birth to B.P. on April 28, 2008, while B.P.'s father, Bruce, sat in jail. Because B.P. tested positive for heroin and cocaine, he immediately came to the attention of the Department of Children and Family Services (DCFS). DCFS petitioned for adjudication of wardship, and the trial court ordered DCFS to take temporary custody of B.P. When B.P. was seven weeks old, DCFS placed him with a foster parent, Debbie B. Debbie has retained custody of B.P. since that time.

¶ 7 On October 1, 2008, after an adjudicatory hearing, the trial court found that Sharon and

Bruce had neglected B.P. On November 25, 2008, the court placed B.P. under the guardianship of DCFS. DCFS offered a variety of services to help make both Sharon and Bruce fit parents for B.P. Most of the services focused on helping Sharon and Bruce overcome drug addiction and its effects on their lives. In its permanency order dated February 17, 2009, the trial court established a goal of returning B. P. to his natural parents' custody within 12 months. Bruce made some progress in services for a little while, but he and Sharon both resumed use of illegal narcotics by April 2009, and Bruce spent more time in jail. On May 27, 2011, DCFS petitioned to terminate Sharon's and Bruce's parental rights and moved for the appointment of a guardian with a right to consent to B.P.'s adoption.

¶ 8 In the petition for termination of parental rights, DCFS alleged that Bruce:

> "failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare, in violation of 750 ILCS 50/1 D(b) and 705 ILCS 405/2-29[;]
>
> ***
>
> *** has behaved in a depraved manner, in violation of 750 ILCS 50/1 D(i) and 705 ILCS 405/2-29[; and]
>
> *** failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child from [him] and/or *** failed to make reasonable progress toward the return of the child to [him] within 9 months after the adjudication of neglect or abuse under the Juvenile Court Act, *** and/or within any 9 month period

after said finding, in violation of 750 ILCS 50/1 D(m) and 705 ILCS 405/2-29."

¶ 9 The trial court held the termination hearing on January 5, 2012. Bruce demanded a jury trial, and he moved for a declaration of the unconstitutionality of the applicable sections of the Adoption Act. The trial court denied Bruce's motions.

¶ 10 Kylynn Brown, the caseworker who assessed Bruce for services, testified that Bruce had not made satisfactory progress after April 2009. He missed many visits with B.P. and he refused to return to treatment for drug abuse. Criminal charges put Bruce in jail from July 2009 until January 2010 and again from November 2010 through May 2011. Brown told the court about the decreasing frequency of Bruce's visits with his son, and noted that Bruce had not tried to communicate with B.P. while he was in jail.

¶ 11 Criminal records admitted into evidence showed that Bruce had two felony convictions for drug possession, one from 2005 and one from 2009, two felony convictions for theft and three for retail theft, from 1997, 2001, 2002, 2005 and 2011, one conviction for burglary from 1989, and one for possession of a stolen vehicle from 1989.

¶ 12 The trial court found Bruce unfit to parent B.P. under all three grounds alleged in the petition. The court also found Sharon unfit, on grounds not related to this appeal.

¶ 13 In the next phase of the termination hearing, which focused on B.P.'s best interests, another caseworker described B.P.'s life with his foster family. In the caseworker's opinion, termination of Bruce's and Sharon's parental rights would benefit B.P. because Bruce and Sharon had not consistently participated in B.P.'s upbringing, while Debbie B. had nurtured

B.P. The trial court found that termination of Bruce's and Sharon's parental rights would serve B.P.'s best interests. Accordingly, the court terminated Bruce's and Sharon's parental rights and gave DCFS the power to consent to B.P.'s adoption. Bruce now appeals.

¶ 14 ANALYSIS

¶ 15 Standard of Review

¶ 16 In this appeal, Bruce does not challenge any of the trial court's factual findings or rulings during the trial. Instead, he argues (1) denial of Bruce's request for a jury trial violated his right to equal protection of the law and the seventh amendment to the United States Constitution; (2) the State's termination petition violated Bruce's rights to due process and equal protection because it did not notify Bruce of the particular facts supporting the allegations of unfitness; and (3) the Adoption Act violated Bruce's right to substantive due process because the legislature did not narrowly tailor the Adoption Act to serve a compelling state interest. We review these constitutional issues *de novo* because they present questions of law. See *In re D.W.*, 214 Ill. 2d 289, 309 (2005).

¶ 17 Jury Trial

¶ 18 Bruce claims he has a right to a jury trial on the charges of unfitness under the seventh amendment (U.S. Const., amend. VII), and that denial of his request for a jury trial deprived him of equal protection of the law. The seventh amendment applies only to federal courts. *In re K.J.*, 381 Ill. App. 3d 349, 352-53 (2008) (citing *Osborn v. Haley*, 549 U.S. 225 (2007)). Following *K.J.*, we reject the contention that the seventh amendment gave Bruce the right to a jury trial in this termination of parental rights case.

¶ 19 For his equal protection argument, Bruce compares the class of parents on trial for alleged unfitness with the class of persons subject to civil commitment. A statute permits jury trials for civil commitments (405 ILCS 5/3-802 (West 2008)); no statute permits jury trials for proceedings to terminate parental rights. Parents on trial for unfitness do not form a suspect classification. See *City of Cleburne v. Cleburne Living Center Inc.*, 473 U.S. 432, 440 (1985). Bruce has a fundamental right to raise his child, and termination proceedings impinge on that right, so he has a fundamental right to a fair trial on the charges of unfitness. *People v. R. G.*, 131 Ill. 2d 328, 342-43 (1989). However, he does not have a fundamental right to a jury trial on the charges of unfitness. *K.J.*, 381 Ill. App. 3d at 352; see *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971).

¶ 20 The Illinois Constitution of 1970 establishes that litigants have a right to a jury trial in all the kinds of cases for which the common law of Illinois, as of 1970, provided for jury trials. Ill. Const. of 1970, art. I, sec. 13. The constitution does not require jury trials in statutory proceedings unknown to the common law. *K.J.*, 381 Ill. App. 3d at 352; *In re Weinstein*, 68 Ill. App. 3d 883, 886 (1979). The common law knew no proceedings for termination of parental rights, and the Adoption Act created a legally enforceable right, unknown to the common law, for a child to have adequate parenting. 750 ILCS 50/1 *et seq.* (West 2008).

¶ 21 Because the Adoption Act, which makes no provision for jury trials in parental termination proceedings, does not involve a suspect classification and it does not deny litigants a fundamental right, the State only needs to show a rational basis for distinguishing the rights of persons subject to civil commitment from the rights of parents facing termination of their

parental rights. See *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 322-23 (1996).

¶ 22 The Illinois legislature has emphasized the needs of children for stable environments, and therefore, when the State must intervene to help a child find a stable, nurturing home, as when drug-addicted parents prove incapable of providing the kind of care the child needs, the legislature requires the State to stabilize the child's environment as quickly as possible. See 705 ILCS 405/1-2 (West 2008). Jury trials may introduce delay into proceedings designed to protect the child's rights. See *McKeiver*, 403 U.S. at 550. Also, the legislature has restricted public access to proceedings involving juveniles to help protect their privacy. See 705 ILCS 405/1-5(6) (West 2008). Jury trials encourage publicity and increase the difficulty of protecting the child's privacy. See *McKeiver*, 403 U.S. at 550. We find that the need for quick resolution of child custody cases, along with the need for privacy during such proceedings, provides a rational basis for having only bench trials, and no jury trials, in cases brought to protect a child's right to adequate parenting when his parents appear incapable of such parenting.

¶ 23 Notice

¶ 24 Before the State may terminate a father's right to custody of his child, the due process clause requires notice to the father of the specific charges or factual allegations against him so that he has an adequate opportunity to rebut the charges. *In re Gault*, 387 U.S. 1, 33-34 (1967). The petition to terminate parental rights here informed Bruce that the State accused him of unfitness as a parent because Bruce (1) failed to maintain a reasonable degree of interest in B.P.'s welfare, (2) had behaved in a depraved manner, within the meaning of a statute that

provided that convictions for three felonies created a rebuttable presumption of depravity, and (3) failed to make reasonable progress towards the goal of returning B.P. to his custody during a nine-month period that started after the adjudication of neglect. The proceedings that led up to the petition for termination of parental rights included the filing of pleadings with specific factual allegations and orders with findings of grounds to remove B.P. from his mother's custody, a schedule of visits between Bruce and B.P., and a specific plan for Bruce to engage in services designed to help him overcome his drug addiction so that he could competently raise B.P.

¶ 25 Bruce does not deny that he received timely notice of the statutory sections on which the State relied for proof of his unfitness as a parent. He also received timely notice of the schedule for his visits with B.P. and he had notice of the service plans DCFS approved for him to gain parenting competency. In effect, he challenges the statute as unconstitutionally vague.

¶ 26 Our supreme court laid out the controlling principles:

> "A legislative act which is so vague, indefinite and uncertain that the courts are unable, by accepted rules of construction, to determine with any reasonable degree of certainty what the legislature intended will be declared to be void. [Citation.] However, an act is not unconstitutionally vague merely because one can conjure up a hypothetical which brings the meaning of some terms into question.
>
> ***

> It is an established rule that ' " ' "[v]agueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand." ' " ' " *In re R.C.*, 195 Ill. 2d 291, 298-99 (2001), quoting *Russell v. Department of Natural Resources,* 183 Ill.2d 434, 442 (1998) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 495 n. 7 (1982), quoting *United States v. Mazurie,* 419 U.S. 544, 550 (1975)).

¶ 27 Because this case does not involve the first amendment, we must determine only whether the facts in Bruce's case clearly fall within the purview of the statute. *In re R.C.*, 195 Ill. 2d at 299. The State informed Bruce that he had not shown sufficient concern for B.P., and he had not made reasonable progress towards gaining custody of B.P., and therefore the State sought to terminate Bruce's parental rights. In the context of this case, where the State specifically informed Bruce of its reasons for assuming custody of B.P. and of the steps Bruce needed to take to show he could take care of B.P., the statutory citation sufficiently informed Bruce of the specific charge he faced. We agree with the holding of *In re Dominique W.*, 347 Ill. App. 3d 557, 565 (2004), and we apply it here:

> "The essential test of the sufficiency of a State's petition for termination is whether it reasonably informs a respondent of a valid claim against her. [Citation.] It is well-settled that the requirement of pleading with specificity does not require more than setting forth the

specific statutory ground of unfitness."

¶ 28 Bruce also argues that the pleading in the termination petition deprived him of equal protection of the law because in other civil cases the plaintiffs must plead facts in their complaints, and they cannot merely paraphrase the statutory basis for the claims. *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 424 (1982). But parents receiving petitions for termination of parental rights do not form a class similar to the class of other defendants in civil proceedings. For defendants in other civil proceedings, the complaint provides their first legal notice of court proceedings against them. See 735 ILCS 5/2-602 (West 2008). Defendants in parental termination cases have already seen (1) the petition for a finding that the child is abused, neglected or dependent (705 ILCS 405/2-13(2) (West 2008)); (2) the court's findings concerning the need to protect the child (705 ILCS 405/2-10(2) (West 2008)); (3) service plans (705 ILCS 405/2-10(2) (West 2008)); and (4) several reports on their progress with their service plans 705 ILCS 405/2-28(2) (West 2008)). The defendants in parental termination cases have seen great factual detail about the allegations leading to the termination petitions – far more detail than defendants in other civil cases see in the complaints. Because Bruce has not shown that he received less notice than any similarly situated persons, we reject his equal protection challenge to the notice he received of the accusations of lack of concern and lack of progress that led to the petition for termination of his parental rights. See *People v. Whitfield*, 228 Ill. 2d 502, 512 (2007).

¶ 29 Bruce also claims he did not receive sufficient notice of the facts supporting the depravity charge. The statutory citation in the petition for termination of his parental rights directed

Bruce to the section of the Adoption Act that informed him that any three of his felony convictions created a rebuttable presumption of depravity because at least one of his convictions occurred less than five years before the State petitioned to terminate his parental rights. 750 ILCS 50/1 D(i) (West 2008). Bruce knew that he needed to rebut the presumption that the convictions proved him too depraved to guide his child to a moral life. Bruce had an adequate opportunity to respond to the charges, and he presented no evidence to rebut the presumption of depravity. He has not shown that the phrasing of the termination petition deprived him of due process. We also find no similarly situated persons who received better notice of the charges against them. We reject Bruce's due process and equal protection challenges to the notice provisions of the Adoption Act.

¶ 30 Substantive Due Process

¶ 31 A parent has a fundamental constitutional right to control the upbringing of his child. *R.C.*, 195 Ill. 2d at 303. Because the Adoption Act infringes on this right, we subject it to strict scrutiny. *R.C.*, 195 Ill. 2d at 303. However, Bruce challenges the Act only on its face, and not as applied. Our supreme court quoted the relevant principles:

> " 'A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized

> an "overbreadth" doctrine outside the limited context of the First Amendment.' " *In re C.E.,* 161 Ill. 2d 200, 210-11 (1994), quoting *United States v. Salerno,* 481 U.S. 739, 745 (1987).

¶ 32 If the parent fails to make reasonable progress in any nine month period following the adjudication of dependency, and has made no progress toward reunification with his child at the time of the hearing, the Act applies and gives the State a valid reason to consider the parent unfit. See *In re April C.*, 345 Ill. App. 3d 872, 890 (2004). We especially note that the Act provides one further level of protection, so that even if the court finds the parent unfit within the meaning of the Act, it will not terminate the parent's rights without a separate finding that such termination would serve the child's best interests. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). At the best interests hearing, the parent has the right to present any evidence bearing on the child's interests, including evidence that the parent has changed to the extent that he can adequately raise the child. *In re D.L.*, 191 Ill. 2d 1, 12-13 (2000). The statutory scheme, allowing the court to find a parent unfit based on any nine-month period in which the parent fails to make reasonable progress towards regaining custody of the child, comports on its face with the requirements of substantive due process.

¶ 33 Bruce also attacks the facial constitutionality of the subsections of the Adoption Act that permit a finding of unfitness based on lack of interest and based on depravity. Because we find the lack of progress towards return of the child justified the finding of unfitness here, we need not address the constitutionality of the sections concerning lack of interest and depravity. See *In re D.D.*, 196 Ill. 2d 405, 422 (2001).

¶ 34 CONCLUSION

¶ 35 The seventh amendment to the United States Constitution does not apply to these state court proceedings. The legislature had a reasonable basis for denying parents jury trials in proceedings concerning the child's right to adequate parenting, and the constitution does not require a jury trial in these proceedings on rights unknown at common law. The proceedings as a whole gave Bruce ample notice of the factual allegations supporting the State's petition for termination of Bruce's parental rights. Bruce failed to establish his claim concerning the facial unconstitutionality of the statutory provision for terminating the parental rights of parents who have lost custody of their children and who fail to make reasonable progress towards the return of the children to their custody. Accordingly, we affirm the trial court's judgment terminating Bruce's parental rights.

¶ 36 Affirmed.