

2012 IL App (2d) 120061-U
No. 2-12-0061
Order filed MAY 22, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> DURAN J., Jr., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 11-JA-280
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Duran J., Respondent-)	Mary Linn Green,
Appellant.))	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The trial court's determination to terminate respondent's parental rights was not against the manifest weight of the evidence where the factual basis, namely, respondent's involvement in and responsibility for the death of the child, was proved by clear and convincing evidence. Additionally, respondent's rights against self-incrimination were not violated where the trial court made no order or undertook no action requiring respondent to admit his guilt in the death of the child by threatening to terminate respondent's parental rights. Likewise, the fact that the unfitness and termination proceedings were held during the pendency of criminal case against respondent did not violate respondent's constitutional rights.

¶ 1 Respondent, Duran J., appeals the judgment of the circuit court of Winnebago County terminating his parental rights to his son. Respondent argues that the trial court's judgment, that it was in the minor's best interest to terminate respondent's parental rights, was against the manifest

weight of the evidence. Further, defendant argues that his rights to due process were violated where he had to choose between testifying in the unfitness and termination hearings or exercising his right to remain silent for his ongoing criminal proceedings. We affirm.

¶ 2 This matter involves the termination of respondent's parental rights. We first summarize the horror that initiated these proceedings.

¶ 3 Melanie G. was the mother of three children, K. (age 11), T. (age 5), and Kaitlyn (age 3). K.'s biological father is Derrick I., and T.'s and Kaitlyn's biological father is Eugene H. Respondent was Melanie's live-in boyfriend for about a year before the incident. Melanie was pregnant with the minor child, Duran J., Jr. at the time of the events herein described, and the child was born after the events and is currently under one year of age as of the time of this order. This appeal concerns only respondent and his parental rights to Duran J., Jr.

¶ 4 On March 18, 2011, the police were summoned to respondent's and Melanie's small apartment where they found that Kaitlyn, a three-year-old child, had died. Testimony revealed that the residence was so small that any occupant would be aware of the goings-on in another room. Police interviews of respondent, Melanie, K., and T., (all of which were admitted in the unfitness hearing pursuant to stipulation) showed that Melanie, with respondent's cooperation and assistance, frequently "disciplined" the children by placing them "on punishment." For T. and Kaitlyn, punishments arose because they would wet their beds, and Kaitlyn would urinate on herself, all of which respondent and Melanie interpreted as willful and disobedient actions.

¶ 5 The punishments included limitations on food choices and quantities, such as feeding the children only noodles (apparently a ramen-type of noodle), as well as limiting the intake of fluids during the evenings (although that also may have been a strategy to help prevent bed-wetting). K.

related that frequently, she ate breakfast at school, received no snacks after arriving home from school, and was fed supper consisting only of noodles.

¶ 6 Punishments also included activities Melanie and respondent called “stretching it out,” meaning that the children would be required to assume a push-up position with heavy books bound to their backs. The child was expected to maintain the position for a half-hour; if the child tired and fell out of the position, Melanie would add 30 minutes more for each infraction. In addition, Melanie and respondent would “massage” the children, apparently by painfully squeezing their stomachs or legs under the guise of easing muscular cramps and fatigue, so the children could continue with their punishment.

¶ 7 In addition to “stretching it out,” there was also a “walking-it-out” punishment, in which the child was required to pace about the apartment without stopping while holding a heavy book above her head. If the child tired and allowed the book to rest upon her head, she was reprimanded (apparently, on occasion, by being whacked on the head with the offending book) and another 30-minute increment would be added to the punishment.

¶ 8 Finally, “whoopings” were also administered, but no one indicated what would trigger a “whooping” as opposed to the other forms of punishment. In administering a “whooping,” Melanie would take respondent’s leather belt, fold it once or twice, and beat the children with the leather part of the belt. Respondent also admitted that he occasionally would strike the children with the belt. Regarding the incidents that led to Kaitlyn’s death, respondent admitted that he struck Kaitlyn on the hands, legs, and bottom with a belt; respondent also admitted to squeezing Kaitlyn’s legs and feet, presumably in an effort to keep her from falling asleep or losing consciousness; Melanie

admitted that she administered a 15-minute “whooping” to Kaitlyn immediately preceding Kaitlyn’s death.

¶ 9 A further component of punishments administered in the household forbade the children from watching television. The areas in which they were punished often had them sitting behind the television, so they could hear, but not see, the program being watched. Respondent was fairly vague about the length of time that a session of stretching it out or walking it out lasted; Melanie admitted that such sessions could last three or four hours; K. told police that a session could last from the time she returned from school until she went to bed, from about 3 p.m. to 9 p.m.

¶ 10 In this environment, Kaitlyn’s final hours were played out. On Tuesday or Wednesday, March 15 or 16, 2011, Kaitlyn apparently wet herself. She was punished, being ordered to stretch it out. During the stretching-it-out session, she became weak and fell out of the position. Respondent and Melanie both admitted that they picked Kaitlyn up bodily by her ears, and she was ordered to walk it out. During this phase, Kaitlyn fell repeatedly. At some point, Kaitlyn was “whooped” by Melanie for a lengthy period of time. Kaitlyn was then ordered to resume walking. At some point, it became clear that she was too weak to continue. In Melanie’s statement to police, it appears that Kaitlyn lapsed into a coma or died at this point, because she was placed on her feet four or five times and fell over without attempting to protect herself from the fall.

¶ 11 Melanie stated that she did not tell respondent that Kaitlyn had died; respondent consistently maintained that, through Thursday, March 17, Kaitlyn continued to breathe, even though she began “sleeping” on Wednesday and continued “sleeping” until the police were called on Friday. On Thursday, Melanie apparently could not to admit to herself that Kaitlyn was dead, wrapping her in blankets and placing her above a heating grate to keep some warmth in her body and attempting to

administer Pedialyte to Kaitlyn. Respondent told police that he believed that Kaitlyn still lived because Melanie was giving her the Pedialyte, but apparently he did not observe that it simply ran out of her mouth and nose. Respondent and Melanie told police that they finally called for emergency assistance when they noticed that Kaitlyn's stomach was turning green. K. apparently asked Melanie if Kaitlyn was dead, but was told not even to think that. Heartbreakingly, K. later related to police that Kaitlyn had been sleeping for three straight days and appeared to believe that she was only injured and not dead.

¶ 12 The autopsy of Kaitlyn revealed that she had been severely beaten and succumbed to the excessive beating. The report indicated that Kaitlyn was literally beaten from head to toe; pictures of Kaitlyn's body graphically depict her manifold and torturous injuries.

¶ 13 On March 18, 2011, respondent and Melanie were both charged with, among other things, first degree murder (720 ILCS 5/9-1(a) (West 2010)). Abuse and neglect cases were opened for K. and T. At the time of Kaitlyn's death, Melanie was pregnant with the minor, Duran J., Jr., who was later born on September 8, 2011. (Testing demonstrated that respondent is the minor's biological father.)

¶ 14 On September 13, 2011, the State filed a petition alleging that the minor was neglected, initiating this case. Also on September 13, 2011, the State filed an amended petition alleging that both respondent and Melanie were unfit to be parents of the minor and seeking an expedited termination of their parental rights. The State alleged that the minor's environment was injurious to his welfare based on anticipatory neglect in that Melanie and respondent "used excessive corporal punishment", "torture[d]" the minor's siblings, and caused Kaitlyn's death. Regarding unfitness, the State alleged that respondent (along with Melanie) engaged in substantial neglect of a continuous

and repeated nature resulting in Kaitlyn's death (count I), respondent and Melanie were deprived (count II), and respondent and Melanie were *per se* unfit based on a finding of physical child abuse resulting in Kaitlyn's death (count III).

¶ 15 On November 23, 2011, Melanie surrendered her parental rights to all of the children, K., T., and the minor. The matter proceeded to a hearing on respondent's unfitness. Before calling any witnesses, the parties stipulated that the recordings and transcripts of the police interviews with Melanie, respondent, K., and T. would be admitted. Additionally, Kaitlyn's autopsy report was also included in the stipulation. Steve Jackson, an investigator with the Department of Children and Family Services (DCFS), testified that, on March 18, 2011, he investigated the abuse and neglect of K. and T., as well as Kaitlyn's death. At the time of the investigation, Melanie was pregnant. Next, Detective Brian Shimaitis of the Rockford police department testified that, on March 18, 2011, he was assigned to investigate a homicide at respondent's address in Rockford. Shimaitis testified that, at the residence, he found Kaitlyn's body. Shimaitis also identified a number of photos of Kaitlyn's body taken during her autopsy. The State then rested.

¶ 16 Defendant also rested without presenting evidence at the unfitness hearing. The parties proceeded to argue, with the State contending that the evidence of abuse to the three girls (as set forth in the recordings and transcripts of the police interviews), along with the fact that Melanie beat Kaitlyn to death with respondent's knowledge, showed that respondent was unfit. The guardian *ad litem* for the children argued that respondent was unfit and that the evidence showed that the children suffered through a "very horrific" time at the hands of Melanie and respondent. Respondent argued that the statements of the children were inconsistent and did not show that he had participated in the abuse of the children, only that Melanie had.

¶ 17 On December 14, 2011, the parties were again before the court. The trial court announced that it found the minor was neglected and the minor was adjudicated a ward of the court. The trial court also held that the State had proved that respondent was unfit by clear and convincing evidence on all three counts of the amended petition (*i.e.*, holding that respondent participated in the physical abuse of the children, was deprived, and participated in causing Kaitlyn’s death). The trial court expressly stated:

¶ 18 “I will only comment on the fact that after reviewing the evidence I—it’s very hard to shock me, and I certainly was [shocked], and I was sickened. I’m not going to say any more than that. I think the people in here that were involved in this [case] know exactly what I mean. It defies explanation how a little girl could be put through so much.”¹

¶ 19 The matter then proceeded to the best interest hearing regarding all of the children and all of the fathers. Initially, at the State’s request and without objection, the trial court took judicial notice of the evidence and testimony presented at respondent’s unfitness hearing.

¶ 20 Gary Dunn, a case manager with the Rockford office of the DCFS, testified that he was the caseworker for K., T., and the minor. Dunn noted that both K. and T. were living in Chicago with the sister of K.’s biological father, and they were receiving weekly counseling. In addition to therapy for the issues related to Kaitlyn’s death, both children were being treated for sexual abuse, which they experienced at the hands of T.’s and Kaitlyn’s biological father. Dunn opined that it was in the best interests of K. and T. to remain together and not to be separated.

¹Dry words and the cold record are simply inadequate to convey the unbearably horrific final days of Kaitlyn’s life.

¶ 21 Dunn testified that he was aware that respondent was awaiting trial on the charges filed after Kaitlyn's death. Dunn testified that it was not in the minor's best interest to wait for respondent's criminal case to be resolved. Dunn testified that he generally was aware of the potential penalties respondent faced if he were convicted. Dunn testified that, in addition to prison time, respondent would have to participate in services for a substantial amount of time before he would be deemed safe to visit with the minor. Dunn opined that, due to the extensive nature of the services respondent would need to complete (even if he were not also incarcerated) it would not be possible to place the minor with respondent at any time in the near future.

¶ 22 Dunn testified that the minor had been placed under the care of Melanie's father since the minor's birth, and that the minor was bonding with his grandfather. In addition, the minor's grandfather was also facilitating visitation between the minor and his sisters, K. and T. Dunn testified that the minor's grandfather was providing a safe and stable home environment, was more than meeting the minor's basic needs, and was committed to the minor and a permanent placement with him. Dunn further submitted a report to the court discussing that the minor's grandfather had taken paternity leave from his employment to bond with and care for the minor. Last, Dunn opined that it was in the minor's best interest to terminate respondent's parental rights.

¶ 23 On cross-examination, Dunn conceded that he was unaware of the status of respondent's criminal case, but that it could take two or three years to resolve. Dunn also testified that there were DCFS-recommended services that were available to respondent while he was in jail, but that respondent's primary needs as Dunn saw them, namely, respondent's "limited capacity for empathy and [for] expressing car[e]", could not be solved simply by taking a class. Dunn acknowledged that respondent had participated in the paternity testing for the minor. Dunn was not aware whether

respondent was participating in any substance abuse treatment programs while he was in jail. Dunn also noted that, even if respondent's criminal case were resolved with respondent's acquittal, he would expect that only minimal bonding between respondent and the minor could be accomplished. Dunn opined and reiterated that it was in the minor's best interest to terminate respondent's parental rights. The State rested, and defendant rested without presenting any evidence.

¶ 24 The State argued in closing arguments that it was not in the minor's best interests to "wait" for respondent to be deemed fit to parent him. The minor's guardian *ad litem* agreed, noting that the extensive services respondent needed to regain his parental fitness simply did not exist. Respondent argued that, until respondent's criminal case had been resolved, it was premature to terminate his parental rights. Respondent further noted that, while it was unclear whether respondent was currently participating in substance abuse counseling, respondent nevertheless willingly and promptly complied with the paternity testing for the minor. In rebuttal closing argument, the State contended that, even if respondent were acquitted in the criminal case, the trial court had already made the finding that the State had proved by clear and convincing evidence that respondent had participated in the events ending Kaitlyn's life and that respondent was unfit. The State further argued that the minor deserved "a better life than waiting for [respondent] to sort out his criminal case ***."

¶ 25 The trial court ruled orally, stating that it had considered the evidence presented and the best-interest factors. The trial court terminated respondent's parental rights to the minor and ordered that respondent have no visitation with K. or T. Pursuant to the State's request, the trial court set the minor's permanency goal at adoption, and it appointed the DCFS as the minor's guardian with the power to consent to adoption.

¶ 26 On December 21, 2011, the trial court subsequently issued a written order setting forth its findings regarding the evidence against respondent. The court held:

“[Respondent] had personally struck all of the minors with a belt before the final incident with Kaitlyn.

[Respondent] personally participated in repeated physical abuse of Kaitlyn over the course of the day and evening, including—but not limited to—hitting her hands, feet, and buttocks with a belt and lifting her up by her ears numerous times.

[Respondent] was present in the small apartment all day and evening and observed the mother repeatedly physically abusing Kaitlyn, and did not intervene to stop or prevent the abuse.

[Respondent] observed that Kaitlyn appeared badly beaten up, and was most likely severely injured and ignored it.

[Respondent] did not make any attempts to call anyone to obtain help for Kaitlyn, nor did he make any attempts to take her for medical attention.”

Respondent timely appeals.

¶ 27 On appeal, respondent raises two contentions. First, respondent argues that the trial court’s judgment regarding the minor’s best interest was against the manifest weight of the evidence. Second, respondent contends that his due process rights were violated because he had to choose whether to testify in the unfitness and termination proceedings thereby risking that his testimony would be used against him in his pending criminal case, or he had to exercise his constitutional right

to silence and forego offering testimony in the unfitness and termination proceedings, thereby jeopardizing his parental rights. We consider each contention in turn.

¶ 28 The Juvenile Court Act of 1987 (Juvenile Court Act) provides a two-step process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). First, the State must prove the parent is unfit by clear and convincing evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Then the State must prove that the minor's best interest is served by terminating the parent's parental rights. *Tiffany M.*, 353 Ill. App. 3d at 889. The child's best interest is determined by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004).

¶ 29 The determination of unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *Tiffany M.*, 353 Ill. App. 3d at 889-90. As a result, we defer to the trial court and will not disturb its decision unless it is against the manifest weight of the evidence, meaning that the opposite conclusion must be apparent. *Tiffany M.*, 353 Ill. App. 3d at 890. Similarly, we will reverse the trial court's best-interest determination if it is against the manifest weight of the evidence. *Tiffany M.*, 353 Ill. App. 3d at 891-92.

¶ 30 Respondent initially contends that the trial court's best-interest judgment, that it was in the minor's best interest to terminate respondent's parental rights to him, was against the manifest weight of the evidence. Respondent complains that the trial court dispensed with the presumption of innocence regarding the criminal case and, instead, treated him more like a convicted criminal. Additionally, respondent argues that there was no need to treat the termination of his parental rights in an expedited fashion, reasoning that, because the minor was successfully placed with his maternal grandfather and thus in a stable environment, there would be no harm in postponing the unfitness and termination proceedings until after his criminal case was resolved because there was no danger

that the minor would interact with respondent before respondent's parental fitness had been restored and culminating in two possible outcomes: that permanence for the minor would be established (1) because the minor would remain in the stable environment created by his maternal grandfather, or (2) because respondent would have received sufficient services to restore his parental fitness and the minor would be permanently reunited with his biological father. In short, respondent urges that there really was no compelling reason to conduct the unfitness and termination proceedings now—realistically, the minor was with his maternal grandfather in a stable environment in the short- and medium term, and, if respondent were to be acquitted and successfully complete the necessary services to restore his full parental rights, then it would be reasonable to reunite the minor and respondent. Respondent further notes that if he were to be convicted, then nothing would be lost, because the minor would simply remain with his maternal grandfather and nothing in the minor's life would be disturbed. While respondent's argument is not without appeal, we nevertheless believe it to be flawed and disagree.

¶ 31 In the first instance, we note a fatal disconnect between respondent's purported legal argument, namely, the trial court's decision was against the manifest weight of the evidence, and the terms of his reasoning, namely, that haste in completing the unfitness and termination proceedings was not necessary because the minor is safely placed in a permanent situation (unless respondent at some future point interrupts that permanency). In other words, respondent's actual argument has very little to do with his ostensible legal contention that the trial court's judgment was against the manifest weight of the evidence. Conspicuously missing is an analysis of the evidence adduced in the trial court to demonstrate that the opposite conclusion (in this case, that termination of respondent's parental rights was not in the minor's best interest) was clearly evident. See *In re*

Arthur H., 212 Ill. 2d 441, 464 (2004) (“[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident”). Based on this shortcoming, respondent’s argument is subject to forfeiture because it is devoid of citation to pertinent authority (Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008), as well as lacking in pertinent analysis.

¶ 32 The insufficiency of respondent’s argument notwithstanding, we also hold that the trial court’s judgment was not against the manifest weight of the evidence. The trial court’s determinations regarding respondent’s unfitness and the minor’s best interest are intertwined. See *D.T.*, 212 Ill. 2d at 366 (quoting *In re R.C.*, 195 Ill. 2d 291, 308 (2001)) (“ ‘once a court has found by clear and convincing evidence that a parent is unfit, the state’s interest in protecting the child is sufficiently compelling to allow the termination of parental rights’ ”). Thus, we examine first the trial court’s factual findings regarding respondent’s unfitness.

¶ 33 The trial court made several express factual findings that are important to its determination that respondent was unfit. The court found that respondent personally struck all three children with a belt; that respondent personally participated in the repeated physical abuse of Kaitlyn during the events that led to her death; that respondent was present in the apartment and aware that Melanie was physically abusing Kaitlyn but did not try to stop or prevent the abuse; that respondent ignored the fact that Kaitlyn was badly beaten and severely injured; and that respondent did not try to call in help for or take Kaitlyn to get medical attention. We have carefully reviewed the record and we hold that each of the court’s factual findings is amply supported in the record.

¶ 34 The State also charged that respondent was unfit on three grounds: first, that he engaged in neglect causing Kaitlyn’s death, second, that he was depraved, and third, that he physically abused Kaitlyn and the abuse resulted in her death. The evidence amply supports the trial court’s

determination that the State had proved its case for each of the grounds. For example, the trial court made the express finding that respondent participated in the beating of Kaitlyn that led to her death. The evidence we detailed above fully supports this finding. Respondent admitted that he struck Kaitlyn with the belt (albeit he limited his admission to striking only her hands, legs, feet, and bottom); Melanie's statement involved respondent more directly, by physically holding Kaitlyn still while she whaled away. These statements fully support the trial court's conclusion that the State had proved by clear and convincing evidence that respondent engaged in physical abuse of Kaitlyn resulting in her death. Similarly, the evidence adduced supports the finding on the first count, that respondent neglected Kaitlyn causing her death. Respondent admitted that he was present in the apartment during all of the events that led to Kaitlyn's death. Additionally, respondent never mentioned that he tried to obtain help of any nature for Kaitlyn, despite her obviously brutalized appearance and his admission of being present while Melanie was beating Kaitlyn. We find that the trial court's conclusion regarding the third unfitness count was amply supported by the evidence.

¶ 35 Last, we turn to the depravity allegation of unfitness. "Depravity" is not defined statutorily (although there are conditions, which if fulfilled, will result in a finding of depravity). However, our supreme court has defined "depravity" to be "an inherent deficiency of moral sense and rectitude." *In re Donald A.G.*, 221 Ill. 2d 234, 240 (2006). Additionally, our supreme court has opined that "[f]ew acts could be more inherently deficient in moral sense or rectitude than the intentional and unjustified killing of a fellow human being." *In re Abdullah*, 85 Ill. 2d 300, 306-07 (1981). The trial court's factual finding that respondent participated in the abuse that led to Kaitlyn's death is supported by the evidence. Respondent then, was found by the trial court to have caused the death, or to have killed, Kaitlyn, and this qualifies for a finding that respondent is depraved under the

supreme court definitions in *Donald A.G.* and *Abdullah*. Thus, we hold that the trial court's determination that the State proved each ground of unfitness was not against the manifest weight of the evidence.

¶ 36 Respondent argues that the trial court's best-interest determination was flawed due to the State's inexplicable haste in conducting the termination proceedings. According to respondent, the only thing accomplished by rushing the termination proceedings was to make sure that, even if respondent were acquitted, he would not be reunited with his son. Respondent argues that he could be acquitted in the criminal proceedings and could have his parental fitness restored, allowing him to be reunited with the minor at some future time. While this was occurring, respondent's interests would be served by remaining in a stable and permanent setting with his maternal grandfather.

¶ 37 As we initially noted, there is appeal to respondent's argument. However, respondent fails to cite to any cases dealing with the State's and the trial court's discretion to proceed to unfitness and termination proceedings before a respondent's pending criminal charges are resolved. In addition, even if we accepted respondent's argument fully, it does not address the specific findings of unfitness. These findings provide the basis to find that the child's best interest is served by terminating respondent's parental rights. See *R.C.*, 195 Ill. 2d at 308 ("once a court has found by clear and convincing evidence that a parent is unfit, the state's interest in protecting the child is sufficiently compelling to allow the termination of parental rights"). Effectively, then, by not addressing them, respondent concedes that the factual findings support the termination of his parental rights. Because the trial court's factual findings support the termination of respondent's parental rights, the court's order terminating respondent's parental rights was not against the manifest weight of the evidence. While respondent's argument provides a reason not to terminate

his parental rights, it does nothing to compel the trial court to ignore the factual findings supporting termination. Indeed, in light of the factual findings, if the trial court had adopted respondent's arguments and not terminated respondent's parental rights, we would be compelled to hold that the trial court's judgment was against the manifest weight of the evidence. Accordingly, we reject respondent's contention that the trial court's best-interest determination was against the manifest weight of the evidence.

¶ 38 Respondent next contends that his rights to due process under the United States Constitution were violated because he was subjected to the unfitness and termination proceedings while his criminal case related to the events surrounding Kaitlyn's death was still pending. Defendant argues that he was put to a constitutionally impermissible question, namely, whether to participate in the proceedings involving his parental rights to the minor child and risk making statements that could be used against him in the criminal case, or to claim his right to silence and avoid self-incrimination thereby allowing the termination proceeding to proceed as a one-sided affair likely to result in the loss of his parental rights. Respondent further frames the issue as if it were novel. It is not, and the answer to respondent's arguments is contained in at least four Illinois cases.

¶ 39 As a starting point, we first consider our standard of review. Whether a party has been deprived of constitutional rights presents a question of law. *In re A.W.*, 231 Ill. 2d 92, 106 (2008). We review this question *de novo*. *A.W.*, 231 Ill. 2d at 106.

¶ 40 *A.W.* also offers a succinct explanation of the legal rules governing respondent's contentions. The fifth amendment of the United States Constitution prohibits compelled self-incrimination in criminal cases (U.S. Const., amend. V), and the provision is made applicable to the states through the fourteenth amendment (U.S. Const., amend. XIV). *A.W.*, 231 Ill. 2d at 106. The fifth

amendment privilege against self-incrimination has been extended not only to criminal proceedings in which the party is the defendant, but also to any other civil or criminal proceeding in which the party's testimony may incriminate the party in future criminal proceedings. *A.W.*, 231 Ill. 2d at 106. Finally, our supreme court has adopted the reasoning of the United States Supreme Court, stating, “[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment ***.” *A.W.*, 231 Ill. 2d at 106 (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)). With these principles in mind, we review four cases that have considered whether a constitutional violation occurs when a respondent is participating in a termination proceeding arising out of the same events that led to criminal charges being filed against the respondent.

¶ 41 We begin with *In re D.P.*, 327 Ill. App. 3d 153 (2001), which is most closely on point with the circumstances presented in this case. In *D.P.*, the State alleged that the respondent had shaken and struck the minor child in the face. *D.P.*, 327 Ill. App. 3d at 154. The respondent filed two motions to continue the matter until after his criminal case had been finally adjudicated, arguing that he was being forced to choose between his right to participate in the unfitness proceeding or his privilege against self-incrimination, but the court denied each motion. *D.P.*, 327 Ill. App. 3d at 155. Testimony at the unfitness hearing revealed that respondent in fact shook the minor child and struck him in the side of the head, leading to severe and permanent injuries. *D.P.*, 327 Ill. App. 3d at 155-57. Before the termination proceeding, the respondent renewed his motion to continue the matter, again invoking the previous contention that he was being forced to choose between his fifth amendment rights and his right to participate in the termination hearing, and the trial court again denied the motion. *D.P.*, 327 Ill. App. 3d at 157. The trial court terminated the respondent's

parental rights based on its factual determination that the respondent had, in fact, shaken and hit the minor. *D.P.*, 327 Ill. App. 3d at 158.

¶ 42 The court interpreted the respondent's argument to be that, because he had a criminal case pending, he was prevented from testifying in the juvenile proceeding. *D.P.*, 327 Ill. App. 3d at 159. The court recognized that it was constitutionally impermissible to order a parent to choose between keeping his or her parental rights and participating in the juvenile proceeding or waiving his or her privilege against self-incrimination. *D.P.*, 327 Ill. App. 3d at 159. There was, however, a fine distinction between taking steps to terminate a party's parental rights based specifically on a refusal to waive the party's right against self-incrimination versus terminating a party's parental rights based upon the party's failure to comply with an order to seek and undertake meaningful therapy. *D.P.*, 327 Ill. App. 3d at 159.

¶ 43 The court then noted that there was no indication in the record that the respondent was required to admit his guilt or otherwise incriminate himself in order to participate in the juvenile adjudication proceedings. *D.P.*, 327 Ill. App. 3d at 160. Responding to the respondent's contention that, had he testified, he might have made incriminating statements, the court rejected the argument, holding that, in the absence of actual testimony, the respondent's contention was speculative, and such speculation could not support a claim that the respondent's privilege against compelled self-incrimination had been violated. *D.P.*, 327 Ill. App. 3d at 160. Additionally, the court noted that the respondent had not been threatened with the termination of his parental rights if he did not admit his guilt for the abuse of the minor child, which served to distinguish the circumstances in that case from the general prohibition against making a party choose between competing rights. *D.P.*, 327 Ill. App. 3d at 161.

¶ 44 We find that *D.P.* is directly applicable to the circumstances of this case. Here, there is no indication that respondent was threatened with the termination of his parental rights if he did not admit his guilt in causing the death of Kaitlyn. In addition, respondent has also raised the argument that the pendency of the criminal case meant that, if he were to have testified, he could have given incriminating statements or other testimony that might have been usable against him in the criminal case. We note that *D.P.* rejected precisely the same argument, holding that, because the respondent did not testify, the argument was speculative, and that such “ ‘speculation [could] not support a claim of standing or establish [a] violation of the privilege against compulsory self-incrimination.’ ” *D.P.*, 327 Ill. App. 3d at 160 (quoting *People v. Becker*, 315 Ill. App. 3d 980, 1001 (2000)). We likewise hold that respondent’s contention is only speculative and that such speculation cannot support a claim that his right against compulsory self-incrimination was violated.

¶ 45 In similar fashion and as pertinent, *A.W.* focused on the argument that the trial court improperly demanded that the respondent admit his guilt of sexual abuse or else lose his parental rights. *A.W.*, 231 Ill. 2d at 105. The supreme court affirmed the general rule that the fifth amendment right against self-incrimination applied to the termination proceedings and that a court could not compel a parent to admit to a crime that could be used against him in a later criminal prosecution by threatening to terminate his parental rights. *A.W.*, 231 Ill. 2d at 107-08. The court found, however, that those rules were not applicable because the trial court had never ordered the respondent to participate in a particular therapeutic program that required the respondent to admit that he committed the crime of sexual abuse; rather, the court had ordered only that the respondent participate in a sexual abuse counseling program. *A.W.*, 231 Ill. 2d at 108-09.

¶ 46 *A.W.*'s applicability to the circumstances of this case is manifest. Here, respondent was not required to admit to anything. Instead, respondent argues only that the pendency of the criminal case during the unfitness and termination proceedings acted as a proxy for a court order requiring him to admit his guilt. *A.W.* flatly contradicts respondent's argument, holding that where there is no express judicial compulsion, there can be no deprivation of the constitutional right against self-incrimination. *A.W.*, 231 Ill. 2d at 109.

¶ 47 Next, *In re P.M.C.*, 387 Ill. App. 3d 1145, 1150-51 (2009) followed *A.W.* in acknowledging that the fifth amendment right against self-incrimination prevents a court from compelling a parent to admit to a crime that could be used against the parent in a later criminal proceeding by threatening to terminate the parent's parental rights. *P.M.C.* also noted the

“fine, but important, distinction between terminating parental rights based specifically upon a parent's refusal to admit that which he denies, thereby forcing him to waive the fifth amendment privilege against self-incrimination, and terminating parental rights based upon a parent's failure to comply with an order to undergo meaningful therapy or rehabilitation, because a parent's refusal to admit sexual abuse inhibits meaningful therapy.” *P.M.C.*, 387 Ill. App. 3d at 1151.

The court held that the “latter is constitutionally permissible, while the former is not.” *P.M.C.*, 387 Ill. App. 3d at 1151.

¶ 48 In that case, the trial court had terminated the respondent's parental rights because he had not meaningfully participated in therapy because he refused to admit to sexually abusing the minor. The court held that there was no evidence concerning how respondent's refusal to admit to sexual abuse inhibited his therapy and reversed the trial court. *P.M.C.*, 387 Ill. App. 3d at 1152. The court

reasoned that, when the trial court determined that respondent was unfit based on his refusal to admit to committing sexual abuse, the trial court effectively required the respondent to incriminate himself in order to retain (or at least not lose) his parental rights. *P.M.C.*, 387 Ill. App. 3d at 1152.

¶ 49 Here, there is no evidence that the trial court ordered or required respondent to do anything in connection with the criminal case against him. The court did not require respondent to admit his guilt in causing Kaitlyn's death as a precondition to retaining or not losing his parental rights. Thus, the rationale of *P.M.C.* is applicable here. Because there is no court involvement (aside from providing a forum for the various proceedings) in compelling respondent to admit his guilt, there is no violation of respondent's constitutional rights against self-incrimination. Thus, *P.M.C.* supports our view that respondent's argument fails.

¶ 50 Last, we consider *In re L.F.*, 306 Ill. App. 3d 748 (1999), a case that appears to support respondent's contention. There, the respondent argued that the trial court violated her right against self-incrimination when it changed the permanency goal from return home to termination of parental rights because she would not admit that she was responsible for the death of another child in her care. *L.F.*, 306 Ill. App. 3d at 749. The trial court expressly held that the respondent needed to admit her guilt in the death of the other child in order to avoid termination of her parental rights. *L.F.*, 306 Ill. App. 3d at 754. The appellate court determined that the trial court had violated the respondent's constitutional rights by punitively changing the permanency goal when the respondent would not waive her rights against self-incrimination. *L.F.*, 306 Ill. App. 3d at 754.

¶ 51 At first blush, the result, a reversal of the termination of the respondent's parental rights, seems to support respondent's contention that he is improperly being required to choose between the exercise of competing rights. Interestingly, respondent does not cite to this case in his initial

argument. Further, the case is distinguishable, because the trial court in *L.F.* refused to allow the respondent to deny her involvement in the death of the child without losing her parental rights to her other children. *L.F.*, 306 Ill. App. 3d at 754. In other words, there was an express action by the trial court that required the respondent to sacrifice one of her rights, either her parental rights or her right against self-incrimination. *L.F.*, 306 Ill. App. 3d at 754. Here, by contrast, the trial court made no such demand on respondent. The trial court did not condition the possibility of respondent retaining his parental rights on any admission of criminal liability by respondent. Thus, despite the favorable result, *L.F.* still requires that the court undertake direct action to deprive a respondent of his constitutional rights, action that here, was not taken by the trial court. Accordingly, the rationale of *L.F.* supports our holding that respondent was not deprived of his constitutional rights.

¶ 52 The four cases, *D.P.*, *A.W.*, *P.M.C.*, and *L.F.* all answer respondent's question whether a court may make a party choose between the exercise of fundamental rights. The general rule is it may not. Further, here, the trial court did not impose a choice on respondent. Instead, respondent faced a situation in which the unfitness and termination proceedings were simultaneously pending with the criminal proceedings. The trial court did not threaten respondent with the loss of his parental rights unless he admitted guilt thereby waiving his constitutional right against self-incrimination. Thus, we perceive no constitutional infraction committed by the trial court when it only presided over the unfitness and termination proceedings while the criminal case was pending and unresolved. Accordingly, we reject respondent's contention.

¶ 53 Respondent also cites to several Supreme Court cases in support of his contention (but no Illinois cases). The Supreme Court cases support the general rule that a court may not force a party to choose between his right against self-incrimination and his parental rights, and they do not conflict

with the Illinois cases. Additionally they offer no applicability to this case, other than broad and nonspecific rules. In short, they are inapposite. Further, because there is no court-imposed choice here, the Supreme Court cases do not conflict with our own holding and resolution.

¶ 54 We also note that respondent raises an interesting contention that the Juvenile Court Act limits a party's candor to the court because, in a case where there is a pending criminal matter, the party will be reluctant to testify and risk self-incrimination. Respondent suggests that we reverse the trial court's determination based on the hindrance to the truth-seeking function of the court caused by concurrent proceedings under the Juvenile Court Act and the criminal statutes. We decline respondent's invitation. In our view, this issue is within the purview of the legislature, not the judiciary, and respondent must seek relief from the General Assembly in modifying the law, not from the courts in, effectively, creating new law under the guise of interpretation. Accordingly, we hold that respondent's constitutional rights were not violated in this case.

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

¶ 55 Affirmed.