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2012 IL App (4th) 110990-U

Filed 3/23/12

NO. 4-11-0990

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| In re: I.H., a Minor,                | ) | Appeal from        |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of   |
| Petitioner-Appellee,                 | ) | Vermilion County   |
| v.                                   | ) | No. 08JA63         |
| IZAAK HUBBARD,                       | ) |                    |
| Respondent-Appellant.                | ) | Honorable          |
|                                      | ) | Craig H. DeArmond, |
|                                      | ) | Judge Presiding.   |

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JUSTICE KNECHT delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court properly found respondent father had not rebutted the presumption of depravity and determined him to be an unfit parent.

(2) The trial court properly concluded termination of respondent father's parental rights was in the minor's best interests.

¶ 2 Respondent father, Izaak Hubbard, appeals the orders finding him an unfit parent of I.H. (born April 21, 2004) and terminating his parental rights. Hubbard argues the trial court improperly determined he did not rebut the presumption of depravity and the decision terminating his parental rights is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2008, the State filed a petition for adjudication of wardship on behalf of I.H., alleging I.H. was neglected in that he resided in an environment injurious to his welfare due

to his residing in a home where cocaine trafficking occurred and cocaine was present (705 ILCS 405/2-3(1)(b) (West 2008)). At a July 2008 hearing, Hubbard testified he believed he was not I.H.'s father. Hubbard testified a DNA test had been done three years earlier while he was imprisoned, but he did not learn the results of that test. When the trial court stated it would appoint a lawyer for Hubbard just in case the test confirmed his status as I.H.'s father, Hubbard replied, "I don't want no part of the child, so it don't make no difference."

¶ 5 In August 2008, after the adjudicatory hearing, the trial court found I.H. neglected because cocaine was present in the home. The court found the neglect was inflicted by Harold Solomon, the father of one of I.H.'s half-siblings. Hubbard was incarcerated at that time.

¶ 6 For the September 2008 dispositional hearing, the Department of Children and Family Services (DCFS) submitted a report. According to the report, I.H. is one of respondent mother's six children involved with DCFS. Respondent mother is not a party to this appeal. In August 2008, when police executed a search warrant at Solomon's residence, the police found cocaine cooking on the stove and alleged drug paraphernalia. I.H. and his mother's five other children were in the back room and had been told their mother had gone to the store. At that time, Hubbard was incarcerated awaiting an October 2008 trial for possession of a controlled substance and cannabis. Hubbard had "never been actively involved with [I.H.] and ha[d] not provided any source of support to him." After the hearing, the trial court granted custody and guardianship of I.H. to DCFS.

¶ 7 In June 2011, the State filed its petition to terminate Hubbard's and the mother's parental rights to I.H. The State alleged Hubbard was an unfit parent on a number of grounds, including he was depraved (750 ILCS 50/1(D)(i) (West 2010)) and he failed to demonstrate a

reasonable degree of interest, concern, or responsibility for I.H.'s welfare (750 ILCS 50/1(D)(b) (West 2010)).

¶ 8 At a fitness hearing held in September 2011, Timothy Revello, a foster-care caseworker with Catholic Charities, testified he had been the caseworker on Hubbard's case since March 2010. Revello testified Hubbard was sentenced to seven years in the Illinois Department of Corrections (DOC) for possession of cocaine over 15 grams. Hubbard's anticipated release date was July 2012. Revello testified the children came into DCFS's care due, in part, to environmental neglect and chronic homelessness. Until March 2010, I.H. and his half-siblings resided with their mother. They were removed to foster care when their mother had no legal means of income and was residing with an individual who had a substance-abuse history.

¶ 9 Revello testified he developed a client service plan for Hubbard. Hubbard was to maintain contact with Revello, telling him of any classes completed and "anything that would just help him to promote possible return of [I.H.] if he were released early." That was the only service required of Hubbard. Because of Hubbard's incarceration, visits were not offered to him. A copy of the plan was mailed to Hubbard.

¶ 10 Revello's last contact with Hubbard was at a court hearing in March or April 2011. Hubbard had not maintained contact with I.H. Hubbard had not contacted Revello in that time. Revello planned to meet with Hubbard on his release to see what services would be provided. Revello believed Hubbard had not seen I.H. since 2007. Revello testified he received one letter from Hubbard related to I.H., but Hubbard did not ask how I.H. was doing. The letter was sent in May or June 2010. Revello testified he wanted Hubbard to obtain substance-abuse treatment because of his history with selling or using drugs.

¶ 11 On cross-examination, Revello testified Hubbard agreed to attend all available Alcoholics Anonymous and Narcotics Anonymous meetings. Revello testified his progress was rated unsatisfactory because Hubbard gave him no documentation to show he was participating in those services. Hubbard had not notified him of the name of his correctional counselor, or informed him of his release date, as required. Revello had to obtain it from the Internet.

¶ 12 Revello testified he had not met Hubbard outside of court hearings, but they did talk at hearings. Revello and Hubbard talked for three to five minutes after a review hearing in May 2010. Revello told him the services he could participate in. Revello stated he would mail Hubbard copies of the service plan, and he asked Hubbard to notify him of anything he was doing related to the case. In June 2010, after another hearing, Revello talked with Hubbard, because Hubbard wanted to have I.H. placed with relatives. Revello did not investigate moving I.H. to one of Hubbard's relatives, because I.H. was already in a stable foster home and "doing pretty well." In January 2011, the two talked about visitation issues and the reason for I.H.'s placement. Revello agreed the entire amount of face-to-face contact with Hubbard was approximately 30 minutes.

¶ 13 Revello testified he mailed the three service plans to Hubbard in the DOC. Revello had no evidence Hubbard received them. Revello did not know what programs were available to Hubbard in the DOC, but Revello stated he had asked Hubbard to provide the name of Hubbard's counselor so Revello could talk to the counselor on Hubbard's behalf.

¶ 14 Revello testified he told Hubbard if he wanted to write to I.H. or the foster parents to send Revello the letters and Revello would forward them. Revello did not recall reviewing permanency reports showing Hubbard and I.H. visited at the jail in December 2008.

¶ 15 On re-direct examination, Revello testified Hubbard did not, in general, inquire about I.H.'s well-being when they met. Hubbard just wanted to talk about having his son placed in a relative foster home.

¶ 16 Hubbard testified on his own behalf. Hubbard had been imprisoned at Galesburg Hill Correctional Center (Hill) since 2008. Hubbard testified, in the year or two preceding his January 2008 arrest, he owned a car detail shop. Hubbard testified he had not had any contact with his son before the case began.

¶ 17 Hubbard testified he did not participate in any drug-treatment programs at Hill. Hubbard explained he was going back and forth to Danville Correctional Center to appear in court in this case, so he doubted he could get into the program if Hill had one. Hubbard testified Hill did not have a drug-treatment program since he had been there, but did not know if they had one at that time.

¶ 18 Hubbard testified he tried to call Revello collect. He attempted to call Revello 10 times once and "they pushed number 9 to stop the calls from coming." The first time he tried to call collect, "[s]ome lady picked up and hung up." Hubbard testified he was unable to call anyone at Catholic Charities. Hubbard testified, when he saw Revello at court hearings, Revello would say "a couple [of] words every time."

¶ 19 Upon his release from prison, Hubbard wanted to reestablish his business. He intended to marry his fiancée, who was his girlfriend when he was arrested, and have I.H. with him and his other children. Hubbard stated he had not written I.H. since he was imprisoned. Hubbard did not know where to send the letters.

¶ 20 On cross-examination, Hubbard testified he asked Revello about I.H. Hubbard

asked why I.H. could not be placed with his fiancée or family members. Revello told him it was because they had planned on returning the children to respondent mother. Hubbard did not ask how I.H. was doing in the home.

¶ 21 Hubbard testified he had not seen the client service plans until that day. He remembered the plans being discussed at hearings. Hubbard's first attorney said he would send him copies of them, but Hubbard did not receive them. Hubbard did not ask Revello for copies, because they "never talked about this." Hubbard testified he did not write additional letters because Revello did not respond to the first one he wrote. Hubbard testified, when he asked Revello about it, Revello said nothing.

¶ 22 Hubbard testified, before he was incarcerated in January 2008, he saw his son once or twice each week. He stated, "I was on the streets." Hubbard testified he did not provide child support for him.

¶ 23 At the close of the testimony, the trial court found Hubbard depraved. The court observed the State presented three certified copies of convictions that created a *prima facie* case of depravity. The court concluded Hubbard did not present sufficient evidence to rebut the depravity presumption. The court highlighted Hubbard made no effort to communicate with I.H. The court noted it was "not uncommon for respondent fathers who are in custody of the [DOC] to send letters, cards, gifts, something indicating some continued interest in the child." In six permanency review hearings spanning almost two years, Hubbard did not ask about his child's well-being. The court found Hubbard's testimony he did not receive the case service plans not credible.

¶ 24 The trial court also found Hubbard failed to demonstrate a reasonable degree of

interest or concern for I.H. The court highlighted testimony Hubbard did not seek to communicate with his child or inquire about his care or health. The court also found the State had not proved I.H.'s mother unfit.

¶ 25 At a best-interests hearing in October 2011, DCFS submitted a best-interests report. According to the report, I.H. resided in a traditional foster home in Danville since May 2010. I.H. was "doing very well" and had settled into a routine. I.H. had been diagnosed with attention deficit hyperactivity disorder and was taking Concerta. Because I.H. had been getting into fights in school, he began seeing a counselor at Catholic Charities. He was successfully discharged from counseling in August 2011, and his behavior "greatly improved." DCFS recommended termination of Hubbard's parental rights to I.H. The recommended goal for I.H. was to return home to the respondent mother within 12 months.

¶ 26 At the hearing, Revello testified I.H. did not have any contact with Hubbard. Hubbard had not written letters to I.H. or tried to call him. Hubbard's contact with I.H. was very minimal before I.H. entered foster care. Revello believed there was no bond between I.H. and Hubbard.

¶ 27 The trial court found it to be in I.H.'s best interests to terminate Hubbard's parental rights. The court thus granted the State's motions to terminate Hubbard's parental rights to I.H.

¶ 28 This appeal followed.

¶ 29 **II. ANALYSIS**

¶ 30 Hubbard's first challenge on appeal is to the trial court's finding he is an unfit person. A parent is an unfit person if the State proves, by clear and convincing evidence, any one or more of the grounds listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West

2010)). See *In re A.P.*, 277 Ill. App. 3d 593, 598, 660 N.E.2d 1006, 1010 (1996). The trial court found the State clearly and convincingly proved Hubbard an unfit person on three grounds listed in section 1(D): (1) Hubbard was deprived (750 ILCS 50/1(D)(i) (West 2010)), (2) Hubbard failed to demonstrate a reasonable degree of interest as to I.H.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); and (3) Hubbard failed to demonstrate a reasonable degree of concern as to I.H.'s welfare (750 ILCS 50/1(D)(b) (West 2010)). On appeal from a finding of unfitness, this court will affirm unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 31 We begin with Hubbard's contention the trial court erroneously found him deprived. Hubbard concedes "[t]he State presented the baseline requisites for depravity under Illinois law" but maintains he sufficiently rebutted the presumption he was deprived. In support of his argument, Hubbard emphasizes the testimony showing he operated a car detailing business before his last conviction and he intended to return to it. Hubbard further emphasizes his intention to marry his fiancée after his release from prison and to have I.H. be "with [his] other kids."

¶ 32 Section 1(D)(i) creates a rebuttable presumption a parent is deprived if that parent was criminally convicted of three or more felonies and at least one of those conviction occurred within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2010). The case law establishes an individual is deprived for purposes of section 1(D)(i) if he or she possesses an inherent deficiency of moral sense and rectitude. *In re J.B.*, 298 Ill. App. 3d 250, 254, 698 N.E.2d 550, 552 (1998).

¶ 33 Hubbard admits the State proved he had three felony convictions within the relevant time period and thus admits the presumption of depravity is proved. This presumption is rebuttable and Hubbard had the opportunity to present evidence to establish he was not depraved. See *In re Shanna W.*, 343 Ill. App. 3d 1155, 799 N.E.2d 843 (2003). The only evidence Hubbard submitted at trial to rebut the depravity presumption is his testimony he intended to open a car detailing shop like the one he owned at the time of his arrest; he intended to marry his fiancée whom he was dating at the time of his arrest; and he wanted I.H. to be with his other children. Hubbard, while trying to prove he is not depraved, plans to return to essentially the same life he had when he chose to commit one of the offenses that removed him from his children and led to the presumption he is depraved. His car detailing business is speculative. His proposed marriage is speculative. No evidence was presented to show respondent had rehabilitated himself, received any services, or changed his approach to life. The trial court's decision Hubbard is depraved is not against the manifest weight of the evidence.

¶ 34 Having affirmed the court's decision on this ground, we need not consider the appropriateness of the other grounds supporting the court's fitness determination. See *Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006) (stating only one statutory ground need be proved to established parental unfitness).

¶ 35 Hubbard next contends the trial court erred in finding it in I.H.'s best interests to terminate his parental rights. Hubbard maintains he did what he could to maintain a relationship with I.H. He maintains no one explained the client service plans to him and he could not reach DCFS or Catholic Charities by telephone.

¶ 36 Hubbard's argument is misguided. Hubbard improperly focuses his argument on

his own efforts and not on I.H.'s interests. After a trial court finds a parent unfit, that court's focus shifts to the child's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). A "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227.

¶ 37 The real question is if the trial court, considering I.H.'s best interests, properly terminated Hubbard's parental rights to I.H. Parental rights may be terminated if the State proves by a preponderance of the evidence it is in the child's best interests those rights are terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. This court will not overturn a decision terminating parental rights unless we find it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d at 961, 835 N.E.2d at 914.

¶ 38 The decision to terminate Hubbard's parental rights is not against the manifest weight of the evidence. I.H. resided in the same foster home he resided in since May 2010. He was doing very well. While in the foster parents' care, I.H. was able to see a counselor at Catholic Charities, resulting in "greatly improved" behavior at school. In contrast, the evidence shows I.H. had no bond with Hubbard, or even a minimal connection. Hubbard had not sent letters to I.H. or tried to call him. Hubbard was in prison, serving time for, at a minimum, his third felony conviction and had not seen I.H. since 2007.

¶ 39 III. CONCLUSION

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

¶ 41 Affirmed.