

2013 IL App (2d) 130783-U
No. 2-13-0783
Order filed December 23, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|---|---|-------------------------------|
| <i>In re</i> ANIAH P., a Minor |) | Appeal from the Circuit Court |
| |) | of Lee County. |
| |) | |
| |) | No. 2010-JA-01 |
| |) | |
| |) | Honorable |
| (The People of the State of Illinois, Petitioner- |) | Daniel Fish |
| Appellee, v. RYAN P., Respondent-Appellant). |) | Judge, Presiding. |

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's order finding respondent unfit on the ground of depravity was not against the manifest weight of the evidence when the State introduced evidence of respondent's five felony convictions, three of those convictions had occurred within five years of the State filing the motion to terminate his parental rights, and respondent did not rebut the presumption of depravity. Also, trial court order's terminating respondent's parental rights was not against the manifest weight of the evidence when the evidence at the best interest hearing showed that the child was thriving with her foster parents who wished to adopt her.

¶ 2 Respondent, Ryan P., appeals from orders of the trial court finding him to be an unfit parent and subsequently terminating his parental rights. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On January 7, 2010, 13-month-old Aniah P. (Aniah) was placed into protective custody after her mother, Megin Steeb, left Aniah with a caretaker and later telephoned the caretaker and stated that she could no longer care for the child. On January 8, 2010, a petition for adjudication of wardship and a petition for shelter care were filed by the State. In the petitions, the State alleged that Aniah was neglected because she was not receiving the care necessary for her well being and that her environment was injurious to her welfare since Steeb allowed Aniah to stay with a relative who was a registered sex offender. See 705 ILCS 405/2-3(1)(a),(b) (West 2010). Respondent, who was incarcerated at the Dixon Correctional Center, was alleged to be Aniah's father.

¶ 5 On January 11, 2010, a temporary custody hearing was held. At the conclusion of the hearing the trial court found probable cause that Aniah was neglected and that it was a matter of immediate and urgent necessity to remove her from her mother's care. Temporary custody of Aniah was granted to the Guardianship Administrator of the Department of Children and Family Services (DCFS). After a DNA test, respondent was declared to be Aniah's biological father. On July 12, 2010, respondent appeared in court and stipulated to the factual basis in the petition.

¶ 6 On October 18, 2010, a dispositional hearing was held. At the conclusion of the hearing, the court found that respondent was unfit to care for Aniah. The child was adjudicated a ward of the court, and DCFS was appointed as Aniah's guardian. After a permanency review on January 25, 2011, a permanency goal of return home in 12 months was set. The same goal was set at the next permanency review on August 29, 2011. The permanency goal was changed to substitute care pending termination of parental rights on February 6, 2012. In its order changing the goal, the trial court noted that respondent did not participate in any services, and that he has stated that he does not

feel he should have to do any services since it was not his fault the minor came into the care of DCFS. The court also noted that although respondent did participate in visitation with Aniah once a month at the correctional center, he had very little interaction with her. It found that respondent's efforts were unsatisfactory as to reasonable progress to have Aniah return home.

¶ 7 On March 14, 2012, the State filed a motion for termination of parental rights. In the motion, the State alleged six counts of parental unfitness as to respondent: (1) (count I) he failed to maintain a reasonable degree of interest, concern or responsibility as to Aniah's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) (count II) he failed to protect Aniah from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2012)); (3) (count III) he was depraved (750 ILCS 50/1(D)(i) (West 2012)); (4) (count IV) he failed to make reasonable efforts to correct the conditions that were the basis for the removal of Aniah from him within nine months (750 ILCS 50/1(D)(m)(i) (West 2012)); (5) (count V) he failed to make reasonable progress toward the return of Aniah to him during any nine month period after an adjudication of abuse or neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (6) (count VI) he failed to make reasonable progress toward the return of Aniah to him during any nine month period after the end of the initial nine month period following the adjudication of abuse or neglect (750 ILCS 50/1(D)(m)(iii) (West 2012)). On March 19, 2012, Aniah's mother surrendered her parental rights.

¶ 8 On October 1, 2012, a fitness hearing was held. At that time, Aniah was three years old. At the hearing, State's exhibits 3 through 14 were admitted into evidence as proof of respondent's prior convictions. In 2010, respondent was convicted of unlawful delivery of a controlled substance within 1,000 feet of a church, a class X felony. 720 ILCS 570/407 (West 2008). He was sentenced to nine years in prison. In 2008, he was convicted of harassing a witness, a class 2 felony. 720 ILCS

5/32-4 (West 2006). He was sentenced to 15 years' imprisonment for that offense. Also in 2008, respondent was convicted of aggravated driving under the influence (625 ILCS 5/11-501(d) (West 2008)), a class 4 felony, for which he received a term of probation. In 2003, respondent was convicted of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2002)), a class 1 felony. He sentenced to five years' imprisonment for that offense. In 2002, he was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2000)), a class 2 felony. He was sentenced to three years' imprisonment. In addition to these felonies, the State also introduced evidence of multiple other misdemeanor convictions.

¶ 9 Dawn Bliefnick, a DCFS caseworker, testified about the service plans that were created for this case. The recommended services for respondent were parenting classes, substance abuse services, and to maintain contact with Aniah by writing letters to her and acknowledging her birthday with a card or a gift. He did not take any parenting classes or avail himself of any substance abuse services. Bliefnick acknowledged that respondent could not take parenting classes because he was ineligible for them since he was not within two years of release from prison.

¶ 10 Bliefnick testified that respondent visited with Aniah when she came to see him in prison. However, he did not write her any letters or acknowledge her birthday with a card or gift. Respondent would often question the reason for the service plan, and say that he did not think he should have to do any services because it was not his fault that Aniah came into care. Respondent was given an unsatisfactory rating for the service plans.

¶ 11 Following the fitness hearing the trial court ruled that the State had proven that respondent was unfit under counts I, III, IV, V and VI. However, it ruled that the State failed to prove that

respondent was unfit under count II, the failure to protect Aniah from conditions within her environment injurious to her welfare. 750 ILCS 50/1(D)(g) (West 2012).

¶ 12 On January 7, 2013, a best interest hearing was conducted. Bliefnick again testified, and said that she had met with Aniah approximately once a month over the last three years. She noted that Aniah had been in the same foster care for almost two years and she had a very strong connection to that home. Since being placed with her current foster family her sexualized and aggressive behaviors that she had exhibited previously had decreased. The foster parents take Aniah to counseling every other week. Aniah sees her foster parents as her mother and father, and the foster family was committed to adopting Aniah if the opportunity became available. In Bliefnick's opinion, it was in Aniah's best interest that respondent's parental rights be terminated and that Aniah be made available for adoption.

¶ 13 At the conclusion of the hearing the trial court found that it was clear that Aniah had established a bond with her foster parents over the past three years. It also found that there had been little contact between Aniah and respondent, and that even if he was able to be a proper parent, he would not be able to do so until at least 2016, when he was released from prison. Accordingly, the trial court concluded that it was in Aniah's best interest that respondent's parental rights be terminated.

¶ 14

I. ANALYSIS

¶ 15 On appeal, respondent argues that both the trial court's determination of unfitness and its determination that it was in Aniah's best interest that his parental rights be terminated was against the manifest weight of the evidence.

¶ 16

A. Unfitness

¶ 17 Respondent first argues that the trial court erred in determining that he was an unfit parent pursuant to counts I, III, IV, V and VI of the State's petition.

¶ 18 Section 1(D)(i) of the Adoption Act provides that there is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least three felonies and at least one of those convictions occurred within five years of the filing of a motion or petition seeking the termination of parental rights. 750 ILCS 50/1(D)(i) (West 2012). A parent may rebut this presumption, however, by presenting evidence that despite his convictions, he is not depraved. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005). Once such evidence is offered, the presumption of depravity ceases to exist and the State must prove by clear and convincing evidence that respondent was unfit because of depravity. *Id.* at 253-54.

¶ 19 The State has the burden of proving a parent's unfitness by clear and convincing evidence, and a trial court's determination of a parent's fitness will not be reversed unless it is contrary to the manifest weight of the evidence. *In re Brianna B.*, 334 Ill. App. 3d 651, 655. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.* at 656.

¶ 20 Here, the State presented evidence that respondent had been convicted of five felonies, three of which had occurred within five years of the State filing a motion for termination of parental rights. These felonies created a rebuttable presumption of depravity. Therefore, it was incumbent upon respondent to rebut this presumption, and he did not attempt to do so. Accordingly, the presumption was not overcome, and the trial court's determination of unfitness based on depravity was not against the manifest weight of the evidence. Since we have found that the trial court did not err in finding respondent unfit on this ground, we need not review the other grounds of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 103 (reviewing court need not review additional findings of

unfitness after it determines that one ground of unfitness was not against the manifest weight of the evidence).

¶ 21 B. Termination of Parental Rights

¶ 22 Next, respondent contends that the trial court's determination that it was in Aniah's best interest to terminate his parental rights was against the manifest weight of the evidence.

¶ 23 Following a finding of unfitness, the focus shifts to the child. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated. *Id.* At a best interest hearing, the parent's interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home life. *Id.* In determining the best interest of a minor, several factors that a trial court should consider in making its determination include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence; (8) the uniqueness of every family and child; (9) the risks attendant to entering into and being in substitute care; and (10) the preference of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 24 The State bears the burden of proving by a preponderance of the evidence that termination is in the best interest of the minor. *In re D.T.*, 212 Ill. 2d at 366. A trial court's best interest finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Deandre D.*, 405 Ill. App. 3d 945, 953 (2010). Again, a decision is against the manifest weight of

the evidence only if an opposite conclusion is clearly apparent. *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (2002).

¶ 25 We have reviewed the record, along with the relevant statutory factors used to determine the best interest of a child, and hold that the trial court's determination that it was in Aniah's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence. The evidence at the best interest hearing showed that since Aniah had been placed with her current foster family her inappropriate behaviors have decreased. She has spent almost the past two years of her young life with her current foster family, she has bonded with them, and they want to adopt her. At the same time, there was very little contact between respondent and Aniah. Further, as the trial court noted, even if respondent could be a proper parent, which seems highly unlikely, he would not even be able to parent Aniah until his release from prison in 2016. For all these reasons, the trial court properly terminated respondent's parental rights.

¶ 26 The judgment of the circuit court of Lee County is affirmed.

¶ 27 Affirmed.