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2013 IL App (3d) 130138-U

Order filed June 27, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2013

<i>In re</i> S.B.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minor,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-13-0138
Petitioner-Appellee,)	Circuit Nos. 10-JA-97
)	
v.)	
)	
Steven B.,)	Honorable
)	Chris Frederickson,
Respondent-Appellant).)	Judge Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The court’s finding that the State proved by clear and convincing evidence that father was unfit was not against the manifest weight of the evidence.

¶ 2 On June 19, 2012, the State filed a “Petition for Termination of Parental Rights” on behalf of S.B., alleging father was an unfit parent due to his failure to make reasonable progress

during a nine-month period after the adjudication of neglect, specifically between August 30, 2011, and May 30, 2012, and also alleging father was depraved, having been convicted of three felony convictions occurring in 2005, 2010, and 2011. On December 12, 2012, after the unfitness hearing, the court found the State proved both counts against father by clear and convincing evidence. At a subsequent hearing, the court found that it was in the best interests of the minor child to terminate father's parental rights and allow S.B. to be placed for adoption with his foster parents. Father appeals the court's decision finding father was an unfit parent, but does not challenge the best interest findings. We affirm.

¶ 3

BACKGROUND

¶ 4 Respondent Steven B. (father) is the biological father of S.B., born April 4, 2010. Four days after S.B.'s birth, the State filed a neglect petition alleging the minor's environment was injurious to his welfare based on allegations against both S.B.'s father and mother. On April 8, 2010, father appeared in court, the court appointed an attorney to represent father, and placed the minor in temporary shelter care while the neglect proceedings were pending. After a stipulation of the facts contained in the petition at the adjudication hearing, the court found the minor was neglected due to an environment that was injurious to his welfare. At the dispositional hearing, on May 27, 2010, the court found both mother and father dispositionally unfit to care for the minor, made the minor a ward of the court, and named the Department of Children and Family Services (DCFS) the minor's guardian.

¶ 5 The dispositional order, entered on May 27, 2010, listed court-ordered tasks father had to complete to correct the conditions that resulted in the court placing the minor outside of father's care. These tasks required father to: cooperate fully and completely with DCFS or its designee;

obtain a drug and alcohol assessment arranged by DCFS and cooperate with and successfully complete any recommended treatment; perform random supervised drug drops (urinalysis tests) two times per month; successfully complete a parenting course specified by DCFS; successfully complete a domestic violence course or classes specified by DCFS; obtain and maintain stable housing; and provide the assigned caseworker any change in address and/or phone number within three days.

¶ 6 DCFS designated Lutheran Social Services of Illinois (LSSI) to provide a caseworker for the family. The caseworker prepared various progress reports preceding each scheduled permanency review hearing. The record contains progress reports filed with the court on November 10, 2010; May 18, 2011; November 30, 2011; and May 30, 2012. Following the permanency review hearing conducted by the court on May 30, 2012, the State filed a three-count “Petition for Termination of Parental Rights” on behalf of S.B, on June 19, 2012. Count I contained allegations against mother. Count II alleged father was unfit, pursuant to section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) (West 2010)), because he failed to make reasonable progress toward placement of the minor in father’s care during any nine-month period beginning nine months after the adjudication of neglect, specifically between August 30, 2011, through May 30, 2012. Count III alleged father was depraved, pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2010)), in that he was convicted of three felonies and one misdemeanor between 2005 and 2011.¹

¶ 7 The court held the unfitness hearing on the petition to terminate parental rights on

¹ Father was incarcerated at the Shawnee Correctional Center (Shawnee) at the time of the filing of the petition to terminate his parental rights and the court issued a writ to have father present in court for proceedings on this petition.

December 12, 2012. At this hearing, the court admitted the State's exhibits consisting of certified copies of father's criminal convictions into evidence, which included felony convictions for burglary in Champaign County in 2005, mob action in Peoria County in 2010, and felony possession of marijuana in Sangamon County in 2011, as well as a misdemeanor conviction in Peoria County in 2009 for criminal trespass to property.² The court also admitted State's Exhibit No. 7 into evidence, which consisted of the transcript from the permanency review hearing held on May 30, 2012, including testimony from father. Additionally, the State asked the court to take judicial notice of the file, in the instant case, and all of the petitions and orders in the file.

¶ 8 During the unfitness hearing, Sarah Shelley, the family caseworker, testified that, from August 30, 2011, through May 30, 2012, father did not contact her and she attempted to contact father by mailing a letter to him at the Peoria County jail on November 22, 2011, after ascertaining father was in custody in the jail at that time. She also subsequently completed a "diligent search" for him through DCFS computers on April 19, 2012, located one past-known address for father, and mailed a letter to that address but did not receive a response.

¶ 9 Between August 30, 2011, and May 30, 2012, Shelley said she did not receive verification of participation in or completion of any of the following programs or tasks regarding father: a drug/ alcohol assessment or attendance at classes, drug urinalysis tests, a parenting class, a domestic violence counseling program, proof of stable housing, or notification of his current address and phone number.

¶ 10 Father testified before the court during the unfitness hearing. Father said he was not

² Both the 2010 and 2011 felonies were committed by father after the State filed the underlying neglect petition on behalf of S.B. and father had appeared in court on the petition.

incarcerated the last two weeks of August 2011, but began a continuous period of incarceration beginning September 2011. He testified that he had been in Milwaukee County jail since September 2, 2011, until he was transferred to the Peoria County jail from October 20, 2011, through December 1, 2011. According to his testimony, on December 1, 2011, father was transferred from the Peoria County jail to the Department of Corrections, Shawnee.

¶ 11 Father admitted he had no contact with the caseworker from August 2011 through May 2012, but stated, although he knew his son was in DCFS custody, he did not know how to get in touch with DCFS or his son. During his incarceration at Shawnee, after December 1, 2011, father said he was in his cell 23-hours per day and was only allowed to use the library once a month which limited his ability to search for information regarding how to contact DCFS or his caseworker. Father said he was aware of his court-ordered tasks but, regarding the court-ordered service plan tasks, Shawnee did not provide counseling or any of the services required for him to comply with those court-ordered tasks. According to father, the only program available to him at Shawnee was a drug/alcohol class, which he attended in October 2012.³

¶ 12 Father admitted his most recent felony occurred after his child was placed with DCFS. During cross examination, father explained he fled to Wisconsin, knowing his child was in foster care in Illinois, because his “criminal history had caught up to [him].”

¶ 13 At the close of the unfitness hearing, as to count II, the court found that the State proved, by clear and convincing evidence, father did not make reasonable progress toward having the minor returned to his care during the specified period, from August 30, 2011, to May 30, 2012.

³ The court admitted into evidence a copy of father’s “Certificate of Participation” in an “AA NA Group - October 2012,” which occurred after the nine-month period in question.

The court found that father's own criminal activity caused him to be incarcerated during the time frame and contributed to his inability to complete certain tasks due to his incarceration. The court further found, in addition to the failure to complete any court-ordered services from August of 2011 through May of 2012, father did not make any effort to contact his caseworker, DCFS, or his child from jail, prison, or while attending court during this nine-month period.

¶ 14 Regarding count III, the court found that the State proved by clear and convincing evidence that father had been convicted of at least three felonies, with the last two occurring within five years of the filing of the petition to terminate father's parental rights, thereby raising the presumption of depravity. The court then addressed the possibility of rehabilitation, to rebut the presumption of depravity, and found that father had not completed any of his court-ordered tasks, other than participating in drug/alcohol classes while incarcerated at Shawnee, and made no effort to maintain any contact with his son, thereby showing no signs of rehabilitation.

¶ 15 On January 16, 2013, the court held the best interests hearing regarding the petition to terminate parental rights. At the close of this hearing, the court found S.B. lived in the same foster home since days after his birth, in April 2010, and had bonded with his foster family, who wanted to adopt the minor, and S.B. had not bonded with his father at the time of this best interests hearing. Therefore, the court found it was in the minor's best interests to terminate father's parental rights and allow DCFS to continue to act as guardian of the minor with the goal of adoption.

¶ 16 Father filed a timely notice of appeal challenging the trial court's finding that he was an unfit parent under both counts of the petition to terminate his parental rights.

¶ 17

ANALYSIS

¶ 18 Proceedings on a petition for termination of parental rights involve a two-step, bifurcated approach where the court first conducts an “unfitness hearing” (705 ILCS 405/2-29 (West 2010); 750 ILCS 50/1(D) (West 2010)) and, if the parent is found unfit, conducts a subsequent “best interests hearing.” 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352 (2004). In the instant case, father only challenges the court’s order finding that father was unfit, but does not challenge the court’s finding that it was in the best interests of the child to terminate father’s parental rights and allow DCFS to consent to adoption. The State contends that the court’s unfitness finding was not against the manifest weight of the evidence.

¶ 19 During termination proceedings, the court must find that the State proved the parent’s unfitness by clear and convincing evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). On review, the trial court’s decision that a parent is unfit will not be reversed unless it is against the manifest weight of the evidence. *Id.* A trial court’s decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 20 Here, count II of the State’s petition alleged that father was unfit, under the Adoption Act, because he failed to make reasonable progress, during the nine-month period from August 30, 2011, through May 30, 2012, toward correcting the conditions that were the basis of S.B.’s placement outside of father’s custody. 750 ILCS 50/1(D)(m)(iii) (West 2010). Whether a parent makes reasonable progress toward the child's return to or placement with his or her parent is measured objectively by the amount of movement toward the goal of reunification. *In re D.J.S.*, 308 Ill. App. 3d 291, 294-95 (1999).

¶ 21 Our supreme court has held that the benchmark for measuring a parent's progress toward

the return of the child, under section 1(D)(m) of the Adoption Act, encompasses the parent's compliance with the service plans and the court's directives, in light of the conditions which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from placing the child in a parent's care and custody. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). In the case at bar, the court entered an order, following the dispositional hearing on May 27, 2010, listing several tasks father needed to complete before S.B. could be placed in his care. At the time the State filed the petition to terminate father's parental rights, on June 19, 2012, father had not attempted to begin any of these court-ordered tasks, thereby making no progress toward completing of those tasks.

¶ 22 Father contends he was unable to complete those tasks due to his incarceration throughout most of period from August 30, 2011, through May 30, 2012, and those programs were not available to him during his incarceration. Our supreme court has held that a parent's incarceration, during any nine-month period alleged in a petition to terminate parental rights, does not excuse a parent's failure to make reasonable progress toward completion of his or her court-ordered tasks, nor does time spent in prison toll the nine-month period during which the parent must show reasonable progress. *In re J.L.*, 236 Ill. 2d 329, 343 (2010).

¶ 23 In the instant case, the evidence shows that father did not attempt to contact the caseworker or his son when father was not in custody and had access to telephones. Additionally, father voluntarily fled to Wisconsin to avoid consequences for his own criminal behavior. Further, the court found father had appeared in Peoria County court, during the nine-month period at issue, and did not attempt to communicate with his caseworker or arrange visits with his son while he was housed in Peoria County jail or returned from Shawnee to attend court

proceedings.

¶ 24 The record also shows, during this period, father did not participate in any programs after his incarceration began in December 1, 2011. Based on the evidence, father made no progress toward the completion of his court ordered tasks from August 30, 2011, to May 30, 2012. Consequently, the trial court's finding that the State proved father was unfit on this ground, by clear and convincing evidence, was not against the manifest weight of the evidence.

¶ 25 In addition, the State also alleged father was depraved, according to statute. The State introduced undisputed evidence, during the unfitness hearing, consisting of certified copies of father's felony convictions for burglary in Champaign County in 2005, mob action in Peoria County in 2010, and felony possession of marijuana in Sangamon County in 2011, as well as a certified copy of a misdemeanor conviction in Peoria County in 2009 for criminal trespass to property.

¶ 26 Under the Adoption Act, there is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State and at least one of these convictions took place within 5 years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2010). The court found that father had not completed any of his court-ordered tasks, other than participating in drug/alcohol classes while incarcerated at Shawnee, and made no effort to maintain any contact with his son and, accordingly, father's evidence did not rebut the presumption of depravity. See *In re A.M.*, 358 Ill. App. 3d 247 (2005); *In re J.A.*, 316 Ill. App. 3d 553 (2000); *In re Shanna W.*, 343 Ill. App. 3d 1155 (2003). On appeal, father does not contest these findings or allege he rebutted this presumption during the hearing, but argues only that father's incarceration impeded his efforts at rehabilitation.

Based on the evidence, we conclude the trial court's findings as to unfitness on the ground of depravity was not against the manifest weight of the evidence.

¶ 27 It is well-established that, when more than one claim of unfitness has been alleged, a finding that the State proved any one of those allegations by clear and convincing evidence is sufficient to declare a parent unfit. *D.J.S.*, 308 Ill. App. 3d at 295. Having concluded the State's evidence was sufficient on either count, we affirm the trial court's ruling finding father unfit under the definitions alleged in the petition to terminate father's parental rights.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, we affirm the trial court's decision finding father unfit and terminating father's parental rights.

¶ 30 Affirmed.