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2013 IL App (3d) 130654-U

Order filed December 17, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

In re W.W. and B.W., Minors,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Mercer County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0654
v.	)	Circuit No. 11-JA-5
	)	
WILLIAM R. W., Jr.,	)	Honorable
	)	Greg G. Chickris,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: A circuit court's decision with regard to unfitness and termination of a parental rights will not be disturbed unless found to be against the manifest weight of the evidence.

¶ 2 Following a hearing, the circuit court found respondent, William White, to be an unfit parent to his children, W.W. and B.W. (collectively refereed to herein as the minors), based on depravity. At a subsequent hearing, the court held it was in the best interest of the minors to

terminate respondent's parental rights. Respondent appeals arguing both findings are against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 The State filed a petition to terminate respondent's parental rights on the basis of depravity. At the fitness hearing, the State moved to have entered into evidence certified copies of respondent's felony and misdemeanor convictions. Respondent did not object. The State noted that respondent had around 90 convictions in his life, but for the purposes of establishing the presumption of depravity, the State was only introducing the respondent's felonies (nine), and the most recent misdemeanors (seven). The circuit court took judicial notice that respondent was currently incarcerated in the Illinois Department of Corrections (IDOC). The State then rested.

¶ 5 Respondent called his uncle, Tom White. Tom stated that there was "affection" between respondent and the minors. The minors liked having respondent around. W.W. was "especially" attached to respondent. On cross-examination, Tom acknowledged that he had a contentious relationship with respondent for "maybe five years" because Tom did not agree with respondent's lifestyle. Their relationship had been better the last three years, as respondent had obtained a job.

¶ 6 Respondent called another uncle, Steve White. Steve stated that respondent loved the minors and they loved him in return. The minors would cry when respondent would have to leave them. Steve testified that there was "[a] real strong bond" between respondent and the minors.

¶ 7 Respondent called another uncle, Donald White. Donald testified he was aware of the order of protection that had been in place between respondent and Melissa, defendant's now-deceased wife. Donald supervised visits in 2011 during that order of protection. There was

nothing but "total affection" between respondent and the minors. It was very hard for the minors to leave respondent after the visits.

¶ 8 Respondent called his aunt, Cindy Cummings. Cindy testified that respondent cared very much for the minors and the minors adored respondent. When respondent and Melissa lived together, respondent worked full-time and provided for the family. Cindy acknowledged on cross-examination that there had been an order of protection involving respondent and Melissa.

¶ 9 Respondent testified that his current incarceration began on January 24, 2012, and resulted from driving on a revoked license. Respondent stated he was driving a lawnmower. Respondent had been incarcerated around 13 months at the time of the unfitness hearing. He had been trying to participate in substance abuse and parenting programs while in prison, but he had been turned away.

¶ 10 Respondent had not spoken with the minors since September 2011, but had written them and "sent them things." He sent the minors cards, letters, and pictures, letting them know he loved them. Respondent stated he had not been working in the few months prior to his current incarceration. He did obtain employment shortly after his release from prison in 2010. Respondent stated he loved the minors. When respondent would get off work at 5:00 a.m., he would stay up until W.W. woke up and respondent would get him breakfast and spend time with him. Respondent stated if he was not working he, was with the minors. Respondent would "give his life for them."

¶ 11 On cross-examination, respondent admitted that he used cocaine near the end of 2011. He also stated that on three different instances he had spent one day in jail for violating orders of protection. Respondent acknowledged felony convictions for driving while license revoked (four

times), aggravated battery, DUI, possession of cannabis, and improper use of a credit card, in addition to many misdemeanor convictions. The State noted that many offenses occurred after respondent's 2010 release from prison. Respondent also admitted to telling his previous attorney that he was going to "break his fucking nose."

¶ 12 Upon review, the circuit court found that the State established a rebuttable presumption of depravity. The court found that the evidence presented by respondent failed to overcome this presumption. Thus, the court held respondent to be unfit.

¶ 13 At the best interest hearing, Jessica Sabel of Lutheran Social Services testified she was the minors' caseworker. She prepared a best interest report. The minors were living with Helen Johnson, their maternal grandmother. The home is safe, the minors have food, their own rooms, clothing, and adequate health care. The minors have a "very good bond" with Johnson.

¶ 14 Sabel testified that W.W. was seven years old and is "thriving" in Johnson's home. W.W. informed Sabel he is happy in his current home, and he wishes to live with Johnson. W.W. last saw respondent approximately 20 months ago. When Sabel mentions respondent to W.W., the minor "usually disengages." Specifically, "[h]e will walk away from me and not want to talk to me anymore." W.W. had been a protected party in an order of protection against respondent. W.W. did mention wanting to contact respondent one time, after watching a television show that had people in jail.

¶ 15 B.W. was five years old at the time of the hearing and also feels safe with Johnson. B.W. appears very happy living with Johnson. Sabel testified that when respondent is mentioned to B.W., the child "often just changes the subject," wishing to talk about something else.

¶ 16 Sabel opined that it is in the minors' best interest that respondent's parental rights be

terminated. Sabel's opinion was based on the fact that the minors have lived with Johnson the last 20 months and that they are bonded, safe, happy and healthy there. Sabel stated that Johnson indicated she would adopt the minors if respondent's parental rights were terminated. Sabel added that even if respondent were released from prison, he would still need to complete the services necessary to regain custody of the minors, which would take time to complete.

¶ 17 Helen Johnson testified that she is the maternal grandmother of the minors. Johnson has always been a big part of the minors' lives and they had been living with her even prior to their mother's death. Respondent and Melissa were unable to provide a home of their own for the minors, so they moved in and out of Johnson's home. Respondent told the minors that respondent was in prison because he broke the law and drank too much beer. Johnson will not let respondent return to her home after he is released from prison.

¶ 18 Johnson testified she is willing and able to adopt the minors. The minors tell her they love her. Johnson is in the process of obtaining her foster home license. Johnson provides the minors with their own bedrooms, adequate clothing and healthcare. She gets them to school on time and they are active in after-school activities. The minors are currently protected by an order of protection petitioned for by Melissa prior to her death. The State rested after Johnson's testimony.

¶ 19 Respondent called his uncle, Donald White. Donald oversaw visitation between respondent and the minors when respondent had visitation rights. Donald described respondent's interaction with the minors as "nothing but affections" and that the children would be upset when they had to leave the visits. Donald opined that respondent loved the minors, and they loved him. Donald acknowledged it was "good" the minors were living with their grandmother. When

questioned by the court, Donald admitted he knows respondent has an alcohol problem and legal problems and Donald "would never say that -- that at this moment, that he (respondent) should be a custodial parent."

¶ 20 Respondent testified that he sent "15 to 20" cards and letters to the minors while in prison. Respondent was told that the cards and letters he sent would not be given to the minors unless they asked for them. Before going to prison, respondent was employed and had appropriate housing. Respondent stated "I can change," and admitted that "it's going to take some time to -- to build myself up again." He said he loved his children and was with them all the time when not at work. Respondent admitted not being perfect and continuing to have problems with drugs after a prior release from prison. He testified he was glad the minors were with Johnson.

¶ 21 On cross-examination, respondent stated that after being released from prison in around 2009 he was trying to change, but he still admitted to driving on a revoked license on a lawnmower, leading to his current incarceration. Respondent discussed the prison stays he has had since the minors were born, stating he had been in prison since January 2012 until the present day, was in prison for four months in 2009, had served five-and-a-half months in prison in another case, and served a "couple of months here or there for driving."

¶ 22 Upon review, the circuit court held it was in the minors' best interest to terminate respondent's parental rights. Respondent now appeals both the fitness and termination findings.

¶ 23 ANALYSIS

¶ 24 Respondent's first contention on appeal is that the trial court erred in finding him to be an unfit parent on depravity grounds. See 750 ILCS 50/1(D)(I) (West 2012). Defendant does not

contend that the State's evidence did not create a presumption of depravity. Instead, respondent argues that the evidence he presented at the unfitness hearing sufficiently rebutted this presumption. We disagree.

¶ 25 Depravity is defined as an inherent deficiency of moral sense and rectitude. *In re A.L.* 301 Ill. App. 3d 198, 202 (1998). "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 or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(I) (West 2012). On review, the circuit court's decision regarding the fitness of a parent should not be reversed unless it is contrary to the manifest weight of the evidence. *In re A.L.*, 301 Ill. App. 3d at 202.

¶ 26 The circuit court found there is nothing in the record which would suggest respondent "is willing or capable of conforming his conduct to the law or changing his lack of morality." The court noted respondent's consistent criminal history and "longstanding illegal drug and alcohol problem." The court also recited a portion of respondent's testimony from an order of protection proceeding in which respondent acknowledged that he has "never been an upstanding citizen. I've always been in trouble with the law. I never cared. You know, I could get arrested one day, bond out, and get arrested the next. *** I snubbed my nose at law enforcement. I didn't care." Respondent continued, "I agree a hundred percent, I have been such a horrible drug abuser, stole money from the house, and I do get angry. *** I've been a thug, drug addict, stabbed a guy in a tavern."

¶ 27 While testimony was presented that respondent does love his children, we hold the record

supports the court's finding that respondent failed to rebut the depravity presumption. The record establishes that defendant has a propensity for breaking the law, alcohol, drugs and abusive behavior. All these factors have been consistently present throughout respondent's life. Moreover, the court had the opportunity to hear and scrutinize the character and credibility of respondent. We defer to such finding. *In re Allen*, 172 Ill. App. 3d 950, 956 (1988).

¶ 28 Respondent also argues that the trial court erred in finding that termination of his parental rights was in the best interest of his children. We disagree.

¶ 29 Although parental rights and responsibilities are of deep human importance and will not be lightly terminated, the deference accorded to parental rights does not negate a court's responsibility to protect minors from neglect and abuse. *In re E.M.*, 295 Ill. App. 3d 220, 227 (1998). Therefore, once parental unfitness has been found, all of the parent's rights must yield to the best interests of the child. *In re T.G.*, 147 Ill. App. 3d 484, 488 (1986). A trial court's determination that it is in a child's best interest to terminate the rights of his or her parent is given great deference and will not be reversed on appeal unless it is contrary to the manifest weight of the evidence. *In re D.M.*, 298 Ill. App. 3d 575, 581 (1998).

¶ 30 The circuit court found that in the 19 months respondent has been imprisoned, the minors have adjusted and integrated into the home of their maternal grandmother, Helen Johnson. She provides for all their needs and they are thriving in her home. She is also "willing, able and capable of making the[ir] present situation permanent." The court held that the minors have adjusted to respondent's absence in their lives, as the minors avoid topics related to their father. The court also expressly held that the lives of the minors would be disrupted by respondent's emergence into their lives after his release from prison. Respondent "has demonstrated during

his entire life and more specifically during the lives of the children that he is morally depraved, is unable to stop violating the law, cannot stay away from illegal drugs and excessive consumption of alcohol." Finally, the court noted the previous home respondent provided for the minors was rife with domestic turmoil, abuse and violence.

¶ 31 While we again acknowledge the fact that testimony was presented that respondent does love his children, we hold the record supports the court's finding that termination of respondent's parental rights was in the best interest of his children. The minors' lives were consistently subject to instability and neglect when respondent was in their lives. Since respondent's present incarceration, the minors have acclimated to their new stable and nurturing environment. The testimony of the minors' caseworker, Jessica Sabel, supports this conclusion.

¶ 32 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 33 Affirmed.