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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re ABEL S., a Minor) Appeal from the Circuit Court
) of Winnebago County.
)
) No. 11-JA-59
)
(The People of the State of Illinois,) Honorable
Petitioner-Appellee, v. Corey L.,) Mary Linn Green,
Respondent-Appellant.) Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that clear and convincing evidence established respondent's unfitness on the ground of depravity was not against the manifest weight of the evidence. Because parental rights may be terminated upon proof, by clear and convincing evidence, of a single ground for unfitness (*In re D.L.*, 191 Ill. 2d 1, 8 (2000)), we need not consider here whether respondent also was unfit on other grounds. Respondent's due process arguments are meritless since the depravity finding of unfitness was not based on an assessment of respondent's compliance with dispositional orders. Affirmed.

¶ 2 Respondent, Corey L., appeals from the judgment of the circuit court of Winnebago County finding him unfit on three counts (see 750 ILCS 50/1(D)(b), (i), (m)(i) (West 2010)), and finding that it was in the best interest of his son, Abel S., to terminate respondent's parental rights. Respondent contends that (1) the trial court's determination that the State proved three grounds for termination by clear and convincing evidence was against the manifest weight of the

evidence; (2) he was not provided proper notice of the neglect proceedings; and (3) he was not properly admonished of his rights under the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-1 *et seq.* (West 2010)) at any time prior to the State's motion to terminate his parental rights. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The minor was born on February 15, 2011. This case was brought to the attention of the Illinois Department of Children and Family Services (DCFS) following a report that both the minor and the minor's biological mother tested positive for opiates. The mother admitted daily heroin usage. On March 8, 2011, DCFS took protective custody of the minor and he was placed in a foster home.

¶ 5 On March 10, 2011, the State filed a neglect petition. The mother advised the court that Jordan S., deceased, was the minor's father. DCFS suspected that the minor's father was respondent, and therefore the court ordered paternity testing.

¶ 6 On July 20, 2011, the mother stipulated to one count of the neglect petition and the minor was adjudicated neglected and made a ward of the court. The court awarded guardianship and custody of the minor to DCFS.

¶ 7 On August 18, 2011, the State advised the court that respondent was the minor's father. The State also advised the court that respondent was being held in the Illinois Department of Corrections, that he had served some time for the involuntary manslaughter of his two-month-old daughter, and that he currently was serving a five-year sentence for attempt child abduction.

¶ 8 At the first permanency hearing held on January 17, 2012, respondent was not present in court. Amanda Morelock of the Youth Service Bureau testified that she had sent “letters” to respondent in which she requested respondent to complete services. No testimony was presented concerning any particular requests made of respondent other than completing the paternity test. The court found respondent to have failed to make reasonable efforts toward the return home goal.

¶ 9 Respondent was not present at the second permanency hearing held on August 21, 2012. Morelock testified that she had contact with respondent during the review period *via* mail. The court found respondent to have made reasonable efforts but not reasonable progress. The court changed the goal from return home to substitute care pending the court’s determination of termination of parental rights.

¶ 10 On December 14, 2012, the State filed a motion for termination of parental rights and power to consent to adoption against the mother and respondent. The mother signed a final and irrevocable consent for adoption. The four counts against respondent alleged, respectively: (1) respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor’s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from him within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) respondent failed to make reasonable progress toward the return of the minor to him within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) respondent was deprived (750 ILCS 50/1(D)(i) (West 2012)).

¶ 11 On January 9, 2013, respondent appeared in court for the first time since the case had been filed. On that date, respondent was adjudicated the minor's father and was appointed counsel. Respondent's counsel also filed a motion to vacate the adjudication of neglect. Argument on the motion was held on March 13, 2013, which was subsequently denied.

¶ 12 The termination proceedings began on April 24, 2013. At the hearing, the State presented two exhibits. Exhibit 1 is a certified copy of respondent's conviction for the involuntary manslaughter of his two-month-old daughter that occurred on January 21, 2005. Exhibit 2 is a certified copy of respondent's conviction for one count of child abduction that occurred on March 14, 2011. Two additional counts alleged that respondent also committed this offense against two other children.

¶ 13 Morelock testified that respondent never had visitation with the minor due to a no-contact order. She stated that the agency required respondent to complete an anger management program, a sex offender assessment, sex offender treatment if necessary, substance abuse treatment, and sign releases of information. Morelock acknowledged that she never asked respondent to sign releases of information because she received the necessary information from respondent.

¶ 14 The State elicited evidence that respondent had not sent any cards, letters, or gifts to the minor after the confirmation of the no-contact order. Respondent had completed a fatherhood program while incarcerated, but Morelock did not know whether that program met the requirements of the parenting classes as requested by the agency. She also did not know what

programs were available while respondent was incarcerated. Several certificates of completion for respondent's services appear in the record.

¶ 15 On August 19, 2013, the court found the State proved by clear and convincing evidence that respondent was an unfit parent as to counts I, III, and IV. Following the best interest hearing, the court found it in the best interest of the minor to terminate respondent's parental rights. The court ordered that the minor be placed under the legal guardianship and custody of DCFS with the power to consent to adoption. This timely appeal follows.

¶ 16

II. ANALYSIS

¶ 17 Respondent contends that the trial court's finding of unfitness on the grounds of depravity, his failure to maintain a reasonable degree of interest, care, concern, or responsibility for the minor's welfare, and his failure to make reasonable progress to correct conditions that led to removal of the minor within nine months of the adjudication of neglect was against the manifest weight of the evidence. We first address respondent's depravity argument.

¶ 18 A parent's right to raise his or her biological child is a fundamental liberty interest, which is protected by due process. *In re M.H.*, 196 Ill. 2d 356, 362 (2001). Proceedings to terminate parental rights are governed principally by the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2010)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). Generally, under the Juvenile Court Act, where a child is adjudicated abused, neglected, or dependent and the State seeks to free the child for adoption, unless the parent consents, the State must first establish that the parent is "unfit" under one or more of the grounds set forth in the Adoption Act. 705 ILCS 405/2-29(2) (West 2012); 750 ILCS 50/1(D) (West 2010). The State must prove the

allegation of unfitness by clear and convincing evidence. *M.H.*, 196 Ill. 2d at 365. If the trial court finds the parent to be unfit, the court then determines whether it is in the best interests of the minor that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2010). The burden of proof is upon the State to show by a preponderance of the evidence that termination is in the minor's best interests. *In re Tiffany M.*, 353 Ill. App. 3d 883, 891 (2004).

¶ 19 Section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2010)) lists various grounds under which a parent may be found unfit, any one of which standing alone may support such a finding. See *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000); see also *In re C.L.T.*, 302 Ill. App. 3d 770, 772 (1999) (“a finding of parental unfitness may be based on evidence sufficient to support any *one* statutory ground, even if the evidence is not sufficient to support other grounds alleged” (emphasis in original)). We defer to the trial court's factual findings and will not reverse the trial court's decision unless the findings are against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001).

¶ 20 Depravity has been defined as an inherent deficiency of moral sense and rectitude. *In re Abdullah*, 85 Ill. 2d 300, 305 (1981). Depravity may be established by a course of conduct of sufficient duration and repetition to indicate a deficiency in moral sense and showing either an inability or an unwillingness to conform to accepted morality. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). A rebuttable presumption exists that a parent is depraved if he or she has been convicted of any *three* felonies if one of the convictions took place within five years of filing the termination petition. 750 ILCS 50/1(D)(i) (West 2010).

¶ 21 Respondent argues that, since he had two felony convictions, no presumption of depravity arose, and the State did not meet its burden to show why the mere facts of the two offenses constituted his depravity as “an inherent deficiency of moral sense and rectitude,” the standard required by the *Abdullah* court.

¶ 22 The State did not argue that there was a rebuttable presumption that respondent was depraved. Rather, the State introduced certified copies of respondent’s two felony convictions involving children to demonstrate that respondent was depraved and unfit to care for the minor. The State first presented evidence that respondent had been convicted of the involuntary manslaughter of his two-month-old daughter in 2005. Attached to the exhibit is respondent’s plea of guilty and includes a statement of facts regarding the conviction, which provides, in relevant part:

“On January 21, 2005, the defendant was the care provider for two month old [B.L.], his baby girl. During the morning [B.L.] was crying and the defendant was watching a movie. He could not get her to stop crying and became angry with the baby. He then squeezed her tummy really hard and she spit up and then he shook her really hard while holding her at the waist. *** The baby went unconscious and never woke back up. *** The baby was examined by the doctors and immediately assessed that she had been shaken. [B.L.] suffered trauma to the brain and eyes. She had bleeding on the brain and bruises on her body consistent with having been shook very hard. She died at the hospital several days later.”

¶ 23 The State also presented evidence of respondent’s 2011 conviction for child abduction for which he was serving a five-year sentence. The exhibit includes a bill of indictment, which states that “defendant intentionally attempted to lure D.D. (D.O.B. 9-24-98), a child under the

age of 16 years, into a motor vehicle without the consent of a parent of D.D. for other than a lawful purpose.” The two additional counts allege respondent also committed child abduction against A.L (D.O.B. 1-15-00) and E.B. (D.O.B. 6-26-99).

¶ 24 The conviction of three felonies is not a requirement to find a person depraved; it only raises a presumption of depravity. See *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 207. As stated, “ ‘[d]epravity may be shown by a series of acts or a course of conduct which indicates a deficiency in a moral sense and shows either an inability or an unwillingness to conform to accepted morality.’ ” *In re Adoption of Baby Girl Casale*, 266 Ill.App.3d 656, 663 (1994) (quoting *In re M.B.C.*, 125 Ill.App.3d 512, 514 (1984)); *In re Marriage of T.H.*, 255 Ill.App.3d 247, 255 (1993).

¶ 25 While there was no rebuttable presumption of depravity presented in this case, since the State only presented two felony convictions, clearly respondent’s conviction of manslaughter of his two-month-old child and his conviction for child abduction are serious crimes against children that establish a deficiency in moral sense and either an inability or an unwillingness to conform to accepted morality, and support the trial court’s finding of depravity. We do not find that decision to be against the manifest weight of the evidence. Accordingly, we affirm the trial court’s finding of unfitness based on depravity.

¶ 26 Having determined that the finding of unfitness based on depravity is not against the manifest weight of the evidence, we have no need to consider the alternate grounds of unfitness. Moreover, because respondent does not contest the best interest determination, we affirm the trial court’s finding that it was in the best interest of his son to terminate respondent’s parental rights.

¶ 27 We further determine respondent's due process arguments that he was not provided proper notice of the neglect proceedings and that he was not properly admonished of his rights at any time prior to the State's motion to terminate his parental rights are meritless in light of the finding of unfitness on the basis of depravity. Respondent was found to be deprived in proceedings unrelated to the neglect proceedings and thus, was not based on an assessment of respondent's compliance with the dispositional orders. See *In re T.A.*, 359 Ill. App. 3d 953, 958 (2005). Accordingly, any defect in service (see *T.A.* at 957-58) or admonishment (see *In re J'America B.*, 346 Ill. App. 3d 1034, 1049 (2004)) has no effect on the termination of respondent's parental rights.

¶ 28 We note that respondent was properly served with the termination petition. He also was present at the termination proceedings, was appointed counsel, fully participated in those proceedings, and was properly admonished by the court. Respondent was not denied due process where he had notice and opportunity to be heard at the termination proceedings.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 31 Affirmed.