

2014 IL App (2d) 140024-U
Nos. 2-14-0024 & 2-14-0025 cons.
Order filed April 30, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARISSA H., a Minor and THOMAS H., a Minor)	Appeal from the Circuit Court of Lee County.
)	
)	No. 2008-JA-22
)	No. 2008-JA-23
)	
(The People of the State of Illinois, Petitioner-Appellee, v. Amber H., Respondent-Appellant).)	Honorable Daniel A. Fish, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Hudson 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.

¶ 2 Respondent, Amber H., the natural mother of the minors, Marissa H. and Thomas H., appeals from the order of the circuit court of Lee County terminating her parental rights to the minors, after finding respondent was unfit on the grounds of depravity.¹ We affirm.

¶ 3 I. BACKGROUND

¹ The trial court also terminated the parental rights of the minors' father. However, he is not a party to this appeal.

¶ 4 Our recitation of the facts contains only those facts relevant to this appeal. This appeal involves two minors, Thomas H., born August 19, 2005; and Marissa H., born February 3, 2007. Respondent is their biological mother. On May 20, 2008, a petition for adjudication of wardship was filed against respondent, alleging that both minors were neglected in that their environment was injurious to their welfare pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3(1)(b)(West 2014); specifically that “police were called regarding a one-year-old child walking down the street with no adult in sight.” The petition further alleged that, pursuant to section 2-3(1)(a) of the Act, “Thomas H. had serious medical ailments and was in need of dental work.” On August 7, 2008, the trial court placed the minors in the temporary custody of the Department of Children and Family Services (DCFS). On September 29, 2008, both respondent and the minors’ father stipulated to the allegations in the petition. On October 7, 2008, the trial court ordered that the minors were wards of the court and awarded guardianship to the DCFS.

¶ 5 Three permanency review hearings followed, each of which set a goal of returning the minors home within 12 months. On March 30 and September 28, 2009, the trial court found that respondent had not made reasonable progress. On March 15, 2010, the trial court found that respondent had made reasonable progress, and the goal continued to be that the minors would return home within 12 months.

¶ 6 After the August 8, 2010, permanency hearing, the trial court reserved its finding regarding respondent’s efforts and also reserved its determination regarding a change in goal. The trial court set the matter for September 20, 2010. On that date, the trial court found that respondent had not made reasonable efforts for the return home of the minors and the goal was changed to substitute care pending termination of parental rights. The DCFS service plan

indicated that respondent had been released from prison on June 9, 2010, but that she had violated her parole and was incarcerated again on July 24, 2010.

¶ 7 In July 2013, the State filed motions for termination of parental rights alleging, *inter alia*, depravity (750 ILCS 50/1(D)(i) (West 2014).

¶ 8 The unfitness hearing was held on October 3, 2013. During the unfitness hearing, the State presented certified copies of respondent's convictions for the following: (1) forgery, a class 3 felony, entered in Lee County on August 10, 2007, sentenced to probation; (2) forgery, a class 3 felony, entered in Ogle County on December 8, 2008, probation revoked and sentenced to three years' imprisonment; (3) residential arson, a class 1 felony, entered in Lee County on December 11, 2008, sentenced to five years' imprisonment; and (4) felony theft, entered in Whiteside County, on August 7, 2013, sentenced to probation. Respondent did not object to the certified copies and the trial court admitted the documents into evidence.

¶ 9 Respondent testified as follows. Respondent lives with her husband, Jeffrey H., who is her former father-in-law, and their daughter, Isabella H., who has disabilities. The minors at issue in the proceedings, now eight- and six- years old, had not lived with respondent since 2008 when they were taken into custody because respondent's probation was revoked for residential arson. At that time, respondent's mother began caring for the minors. While incarcerated, respondent participated in certain service plan requirements such as a mental health assessment, a healthy relationship class, and she completed two parenting classes. Respondent also attended school and regularly appeared for visits with Marissa and Thomas. Respondent was released from prison for the residential arson conviction in May of 2011. Respondent's attorney asked respondent the following questions and respondent provided the following answers.

“Q. While incarcerated again you were aware that the proceedings were taking place with DCFS with regard to your children; is that correct?”

A. Yes.

Q. And were you doing anything else other than [*sic*] what you’ve already stated to work toward your release and getting the children back?

A. Not that I’m aware of.”

¶ 10 After respondent’s release from prison in May 2011, she spoke with her children on the phone and had supervised visits as little as once a month for an hour and as often as twice a month for two hours. She did not believe that she was deprived because the convictions were in her past and “That don’t make me who I am today.” Respondent testified that “I have been working on service plans and correcting myself and making changes so I can better parent those other two children.” Respondent continued to try to become a better parent by going to counseling and taking sign language classes; she is now a “certified baby sign language instructor.” Respondent became a certified sign language instructor because her youngest daughter has a hearing loss and does not speak very well. Respondent also helps other children learn sign language in signing classes. Respondent has learned general parenting skills from the signing classes such as how to help “lower temper tantrums.”

¶ 11 Respondent submitted the following exhibits that were identified by respondent: a certificate for completion of the “Parenting Piece By Piece workshop”; a certificate for parenting classes completed while incarcerated; a certificate for baby sign language instruction; a certificate for an education career seminar completed while incarcerated; a certificate for a retreat for mothers with special needs children; and a document indicating participation in a sign language workshop. The trial court admitted respondent’s exhibits into evidence. Regarding the

retreat, respondent testified that she learned parenting skills that would apply to Marissa and Thomas. Further, the classes and the retreat helped her moral character. Respondent testified that “[learning sign language] put me on the right track to things knowing that there is something better there that I could be doing.” Sign language made respondent realize that, “there is a potential and I have that.” Respondent testified,

“It’s taken me some falls and some bad things in the past to realize that that’s not who I am. I’ve messed up in the past but this has given me a chance to realize—a special needs daughter brought, did have a lot to do with that there’s more I can be doing then [sic] what I was doing.”

Regarding respondent’s most recent 2013 felony theft conviction, respondent explained that she was appealing the case.

¶ 12 During cross examination, respondent testified as follows. In 2011, when she was released from prison for her conviction for residential arson, respondent said she was going to do the best she could. When the neglect petition was filed in 2008, respondent was at home with her children; she was not in prison. But at the hearing on the petition in August 2008, respondent was in prison.

¶ 13 On re-direct examination, respondent testified that in 2010 she chose to remain in prison rather than being paroled because:

“parole could be violated at any time and I could go back to the Department of Corrections, that I would be more than likely not gain custody of my children back until my parole was completed. So when that option came up not thinking that I didn’t want to be out for my kids, I knew I would still get to see them, I could make phone calls, I could still contact them, I was thinking in the best interest that it would just be my best interest

to stay, max out, leave with no parole, then I wouldn't be, then, there was nothing to violate. *** then I could just work on the service plan and work on the goal of return home in 12 months without them.”

After being released from prison in May 2011, respondent was charged with felony theft and convicted of that offense in August 2013.

¶ 14 Respondent also submitted the transcript of the trial court's statements during sentencing on her felony theft conviction wherein the trial court sentenced respondent to probation. The sentencing court stated, in part:

“Mitigating factors include not only has the victim been compensated but, arguably, the victim doesn't care, and, when I say the victim doesn't care to such an extent that the victim comes to court *** and I'm not going to say lies *** but changes her story, minimizes her story all in an effort to help the defendant. We're not talking about a violent crime. We're talking about a theft of money off a link card.

* * *

We never know where life takes us. We never know when we decide that, oh, this is where I need to start shaping up. We know that it happened with the maternal grandmother, otherwise the grandchildren wouldn't have been placed with her. I have to give [respondent] another chance.”

¶ 15 After argument by counsel, the trial court found respondent unfit. The trial court began its ruling by citing the statutory basis of the State's petition for termination, section 1(D)(1) of the Act, depravity. The trial court stated that the section creates

“a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of a least three felonies under the laws of this state and at least one of those

convictions took place within five years of the filing of the petition or motion seeking to terminate parental rights.”

The trial court then noted that the State presented certified copies of respondent’s convictions for the following: forgery, entered on August 9, 2007; forgery, entered on December 8, 2008; arson, entered on December 11, 2008; and felony theft, on August 7, 2013. The trial court then found that a rebuttable presumption of depravity existed based on respondent’s convictions. The trial court continued, stating:

“We continued with the hearing. There was evidence with regards to whether or not the presumption was rebutted. The Court would note that in Illinois the Courts have defined depravity as an inherent deficiency of moral sense and rectitude and lack of moral uprightness. ***

Certainly there’s been evidence presented with regards to show that the rebuttable presumption has been overcome. ***

* * *

I do not find that the fact that [respondent] participated in sign language for her special needs child and the fact that she is caring for that child now to overcome the presumption of depravity.

* * *

I do not find that the present efforts of the mother are sufficient to overcome the presumption of depravity, and I find that the State has sustained its burden by clear and convincing evidence here to support a finding of unfitness on behalf of the mother.”

¶ 16 On October 18, 2013, the trial court held the best interest hearing. After hearing the evidence and argument by counsel the trial court found that it was in the best interest of the

minors to terminate the parental rights of respondent. On October 23, 2013, the trial court entered an order terminating respondent's parental rights with a goal of adoption. Respondent filed a motion to reconsider on November 15, 2013, that the trial court denied on December 10, 2013. On January 2, 2014, respondent filed a timely notice of appeal. The cases were consolidated on appeal.

¶ 17

II. ANALYSIS

¶ 18 On appeal, respondent argues that the trial court erred in misplacing the burden of proof. Respondent argues that the trial court determined that evidence had been presented to overcome the presumption, the burden of proof remained with the State, and the issue of depravity had to be determined on the basis of the evidence adduced; as if the presumption had never existed. Respondent also argues that the State failed to sustain its burden of proof and, therefore, the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 19 Section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2014)) outlines a bifurcated procedure to determine whether a parent's rights should be terminated. First, the court must determine whether the parent is unfit. See *In re D.T.*, 212 Ill. 2d 347, 352 (2004). If a court finds a parent unfit, it must then determine whether the termination of parental rights would serve the child's best interest. See *id.* at 352. The trial court must determine that the parent is unfit by clear and convincing evidence. *Id.* at 364. Following a determination of unfitness, the trial court must determine that termination of the parent's parental rights is in the best interests of the child by a preponderance of evidence. *Id.* at 365.

¶ 20 A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make. *In re A.B.*, 308 Ill. App. 3d 227, 240 (1999). A trial court's ruling on unfitness will not be disturbed on appeal unless it is against

the manifest weight of the evidence. *In re A.W.*, 232 Ill. 2d 92, 104 (2008). A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly evident. *Id.* Because parents have superior rights against all others to raise their children, the State must prove by clear and convincing evidence at least one ground of parental unfitness under section 1(D) of the Adoption Act before the trial court may terminate parental rights. *A.B.*, 308 Ill. App. 3d at 240.

¶ 21 Section 1(D) of the Adoption Act provides several grounds for unfitness, including a parent's depravity (750 ILCS 50/1(D)(i) (West 2014)). Our supreme court has defined depravity as an inherent deficiency of moral sense and rectitude. *In re Abdullah*, 85 Ill. 2d 300, 305 (1981). Depravity also concerns a respondent's conduct that is of sufficient duration and repetition to establish a deficiency in moral sense and either an inability or an unwillingness to conform to accepted morality. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent, to which a reviewing court will give deference. *In re Yasmine P.*, 328 Ill. App. 3d 1005, 1011 (2002).

¶ 22 Our legislature created "a rebuttable presumption that a parent is deprived if the parent has been criminally convicted of at least 3 felonies * * *; and at least one of these convictions took place within 5 years" of the filing of the motion to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2014). Because the presumption is rebuttable, a parent may present evidence that, despite her convictions, she is not deprived. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24.

¶ 23 Initially, we address respondent's misconception that the trial court found that respondent overcame the presumption of depravity. Respondent relies on the following statement by the

trial court: “Certainly there’s been evidence presented with regards to show that the rebuttable presumption has been overcome.” The trial court made this statement at the beginning of its lengthy review of the evidence presented by respondent. After careful consideration of such evidence, the trial court stated, “I do not find that the present efforts of the mother are sufficient to overcome the presumption of depravity.” Thus, the record clearly indicates that the trial court found that respondent failed to overcome the presumption of depravity.

¶ 24 Next, respondent argues that the trial court erred by misplacing the burden of proof. Respondent argues that, because she offered “some” evidence, she overcame the presumption and, therefore, the burden of proof remained with the State, as if the presumption had never existed. However, to overcome the presumption of depravity, a parent may have to do more than present some evidence in her favor. See *In re A.H.*, 359 Ill. App. 3d 173, 181 (2005) (holding that the presumption of depravity was not rebutted by the respondent’s testimony that he loved his child and had participated in services). The supreme court has explained:

“The amount of evidence that is required from an adversary to meet the presumption is not determined by any fixed rule. A party may simply have to respond with some evidence or may have to respond with substantial evidence. If a strong presumption arises, the weight of the evidence brought in to rebut it must be great.” *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983).

In this case, respondent had more than the number of felony convictions required for the statutory presumption of depravity. See 750 ILCS 50/1(D)(i) (West 2014). Therefore, it was not against the manifest weight of the evidence for the trial court to find that the presumption of depravity was strong and that respondent’s evidence not sufficiently strong enough to rebut the presumption.

¶ 25 Finally, respondent argues that the finding of depravity was against the manifest weight of the evidence. It is uncontroverted that the presumption of depravity applies because there were four felony convictions, all within the statutory time requirements. See 750 ILCS 50/1(D)(i) (West 2014), *A.M.*, 358 Ill. App. 3d at 253, 294 (stating that the State's evidence, including three certified copies of felony convictions, created a rebuttable presumption of the respondent's depravity). Therefore, the fundamental issue is whether the trial court's determination that the presumption was not overcome is against the manifest weight of the evidence.

¶ 26 The trial court found, and the record reveals, that respondent has been in and out of prison since the inception of this case. Further, the respondent's actions, behaviors and decisions demonstrate that she was unable to change or conform to the norms of society. The petition for adjudication and neglect was filed against respondent in May 2008. Respondent was then incarcerated from December 2008 through June 2010, and again from July 2010 through August 2011. When respondent had the opportunity in August 2010 to be released on parole, she declined and decided, instead, to remain in prison for another ten months. One year after being released from prison, respondent committed a fourth felony in five years.

¶ 27 As evidence that respondent was not depraved, she offered her certificates for completing baby sign language and parenting classes, and testimony that she attended counseling and became a certified baby sign language instructor and engaged in further baby sign language training. Respondent testified that she worked with her disabled daughter, and taught other children sign language. However, this was for the benefit of respondent's youngest daughter who was disabled and not for the benefit of the minors at issue here. Respondent testified that, although she tried to change her ways before but had reoffended, this time was different because

now she knows that “there is something better”; she can work and that she will be able to support her family. She also offered the transcript of the statements made by the trial court that sentenced her to probation for her most recent conviction.

¶ 28 Respondent argues that her decision to stay in prison rather than being paroled showed “an awareness of accepted morality” because she was attempting to satisfy both the State and the DCFS. Respondent also relies on statements made by the trial court that sentenced her to probation for her most recent felony conviction. Respondent argues that these comments indicate her rehabilitation potential.

¶ 29 Respondent has shown little evidence that she is no longer depraved. Completion of classes and counseling in prison, while commendable, does not show rehabilitation. See *also In re A.M.*, 358 Ill. App. 3d 247, 254 (2005). That can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003). Here, respondent could not show this because the four felonies which gave rise to the initial depravity presumption caused her to be repeatedly incarcerated for lengthy periods of time after the adjudication of neglect. This was due to respondent’s choices. Each time respondent left prison, she had the opportunity to choose differently. Further, the fact that the trial court may have believed that respondent had rehabilitative potential for sentencing purposes has nothing to do with whether respondent is no longer depraved. In addition, although respondent has shown that she is making efforts to care for her youngest disabled daughter, this does not show that she is no longer depraved regarding the minors at issue here. Thus, based on the record before us, we conclude that the trial court’s finding of unfitness based on depravity is not against the manifest weight of the evidence because the opposite conclusion is not clearly evident.

¶ 30 Because respondent does not contest the trial court's best-interests findings, we conclude that the court properly terminated respondent's parental rights.

¶ 31 **III. CONCLUSION**

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

¶ 33 Affirmed.