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2014 IL App (3d) 130941-U

Order filed April 24, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
A.D., 2014

<i>In re</i> Jo.P. and Ja.P.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Minors,)	Rock Island County, Illinois,
)	
(Jessica A. K.,)	
)	Appeal No. 3-13-0941
Petitioner-Appellee,)	Circuit Nos. 13-MR-376
)	(consolidated with 10-J-160 and 161)
v.)	
)	
Derek P.,)	Honorable
)	Peter W. Church,
Respondent-Appellant).)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The court’s finding that father was unfit based on depravity was proved by clear and convincing evidence. The court’s finding that is was in the best interests of the children to terminate father’s parental rights was not against the manifest weight of the evidence.

¶ 2 On August 20, 2010, the State filed neglect and abuse petitions on behalf of Jo.P. and Ja.P. alleging Ja.P. was abused based on physical abuse and both minors were neglected based

on an environment injurious to their welfare because eight-month old Ja.P. suffered a skull fracture, on July 12, 2010, while in the sole care of respondent father, Derek P., while petitioner mother, Jessica A. K., was at work. The court named the Department of Children and Family Services (DCFS) as the temporary guardian of the minors.¹ Father filed an acknowledgment of paternity regarding both minors in this juvenile case. On October 22, 2010, after a stipulation of facts at the adjudicatory hearing, the court found Jo.P. was neglected and Ja.P. was abused. At the subsequent dispositional hearing, the court continued the case under 12-month court supervision, named mother the guardian of the minors, and ordered the family to cooperate with DCFS recommendations during the court supervision.² On May 13, 2011, mother satisfactorily completed her portion of the service plan, including maintaining an order of protection against father. Consequently, the court closed the juvenile case at the recommendation of DCFS. Thereafter, in the related criminal case, the court found father guilty of the related aggravated battery of a child charge regarding this incident. The court sentenced father to serve six years imprisonment in the Illinois Department of Corrections (DOC), on June 20, 2012. His proposed release date is in 2017.

¶ 3 On April 6, 2013, mother filed an independent petition, through a private attorney, to terminate father's parental rights asking the court to find father unfit on grounds of depravity. The court consolidated mother's petition with the prior related juvenile cases. Father, with counsel, appeared throughout these proceedings.

¹ The State also filed Class X felony criminal charges against father for aggravated battery of a child.

² At the time of the adjudicatory hearing, father was in custody for the related criminal charges.

¶ 4 The court first held the unfitness hearing, in the termination proceedings, and found mother proved father depraved by clear and convincing evidence. Subsequently, the court held the best interests hearing and determined it was in the minors' best interests to terminate father's parental rights. Father appeals both the trial court's unfitness finding and the best interests finding terminating his parental rights. We affirm.

BACKGROUND

¶ 5 On July, 12, 2010, seven-month old Ja.P. suffered a skull fracture. Based on this injury, the State filed criminal charges against Derek P, Ja.P's biological father, for aggravated battery to Ja.P. Following father's conviction for this offense, the court sentenced father to serve six years' imprisonment, on June 20, 2012.

¶ 6 In addition to the criminal proceedings, on August 20, 2010, the State filed neglect and abuse petitions on behalf of Jo.P. and Ja.P. alleging Ja.P. was physically abused and both children were neglected due to living in an environment injurious to their welfare, wherein father filed acknowledged paternity. The court adjudicated the minors abused and neglected and, at the subsequent dispositional hearing, named mother the guardian of the minors and placed the family on court supervision for 12 months to comply with DCFS recommendations. On May 13, 2011, mother satisfactorily completed her portion of the service plan and the court closed the juvenile case at the recommendation of DCFS.

¶ 7 I. Mother's Petition to Terminate Father's Parental Rights

¶ 8 On April 6, 2013, mother filed an independent petition through a private attorney, in Rock Island County case No. 13-MR-376, to terminate father's parental rights and asked the court to find father an unfit person on grounds of depravity, under section 50/1(D)(i) of the

Adoption Act (750 ILCS 50/1(D)(i) (West 2012)).³ Father appeared throughout these proceedings with counsel. After reassigning the case to a juvenile court judge, the judge scheduled the hearing on mother’s petition to terminate father’s parental rights for December 2, 2013.

¶ 9 II. Adjudicatory Hearing on Petition to Terminate

¶ 10 The juvenile court judge held the bifurcated unfitness hearing and separate best interests hearing on the petition to terminate father’s rights, both on December 2, 2013. Pursuant to court order, a guardian *ad litem* (GAL) was present to represent the minors’ best interests. During the adjudicatory hearing, the parties tendered a “Stipulation of Facts” stipulating that father was convicted of two felony charges for manufacture or delivery of cocaine in Rock Island County case No. 08-CF-1114, and father was convicted of “Class X Aggravated Battery of a Child, with the child victim being [Ja.P.],” in Rock Island County case No. 10-CF-684.

¶ 11 At the time of the termination hearing, mother testified she resided in Moline, Illinois, with Jo.P., Ja.P, her fiancé, Patrick, and her twin children fathered by Patrick. During the trial, mother related her account of the events that resulted in Ja.P.’s skull fracture while in father’s care, on July 12, 2010. According to mother, father had not paid any child support, or contacted the children by telephone, letter, gifts, cards, or by any other means since the date of father’s arrest and subsequent conviction for aggravated battery to Ja.P. Mother admitted she obtained an order of protection, after Ja.P. was hospitalized with the skull fracture, barring father from having contact with her or the children consistent with the DCFS service plan for her court-ordered supervision.

¶ 12 Mother stated she received public assistance for the children at times when she did not

³ Mother did not file a separate petition for adoption at any time during these proceedings.

live with father. Mother clarified that, for a short period, father worked for an electrical union and she received some court-ordered child support taken from father's paycheck, due to wage withholding orders. Mother testified that the children no longer loved their biological father. Additionally, mother testified, when she and father lived together and mother worked night shifts, she would regularly leave the children with her mother, to provide overnight care for the children, rather than leave them with father.

¶ 13 She said she and Patrick were planning to marry during the summer of 2014, and Patrick planned to adopt the older children upon termination of father's parental rights. Mother said the paternal grandparents had no contact with the children because they did not want to see the children. Mother explained that father's mother had visited with the children on occasion, but the minors were not close to the paternal grandparents.

¶ 14 Father testified he was opposed to the termination of his parental rights and was trying to better himself, while incarcerated, so he could be a better father after release from custody in 2017. The court admitted father's "Group Exhibit 1," which included certificates of programs he voluntarily completed while in DOC, including: "Inside/Out Dad's Program," completed on June 25, 2012; "Anger Management from the Christian Perspective," completed on September 5, 2012; and "The Fatherhood Initiative," completed on December 12, 2012. Father claimed he had no contact with the children because of the outstanding order of protection. Father testified he loved his children and, other than the incident regarding Ja.P.'s skull fracture, no other violence occurred between father and the children.

¶ 15 Father indicated he was currently incarcerated at Robinson Correctional Center, but the appeal remained pending concerning his aggravated battery conviction involving Ja.P. Father said he paid child support when he was working because the union automatically deducts that

money from his paycheck. When mother was employed, father said either mother's parents, a daycare facility, or father provided care for the children. Father stated he was caring for the children while mother was at work the day Ja.P. suffered a skull fracture.

¶ 16 During cross-examination, father testified his criminal history consisted of the two 2008 felony drug convictions and the 2010 aggravated battery to a child conviction and, other than that, he had some "pretty petty stuff" on his record concerning drinking-related incidents and a theft. Father denied having a drinking or controlled substance problem at the time the aggravated battery incident occurred. However, father said he previously had a drug problem when he was charged with the manufacture or delivery of cocaine in 2008, but he subsequently completed treatment.

¶ 17 The GAL asked father whether he received a letter from the GAL, dated November 11, 2013, asking him to contact the GAL. Father said he had not received that letter. Father's attorney then rested father's case-in-chief, and the court heard argument solely on the issue of father's fitness.

¶ 18 In its ruling, the court noted that the order of protection prevented father from contacting the children and his commitment to DOC made it difficult for father to provide child support. However, the court noted that the legislature enacted grounds for unfitness to include depravity, which created a rebuttable presumption that father is unfit if he has committed aggravated battery of a child, in this case father's own child, or if he has three felony convictions from 2008 and 2010. The court determined father did not rebut these presumptions and found father unfit based on depravity. The court then recessed and allowed the parties to prepare for the best interests phase of the hearing, as agreed by the parties.

¶ 19 III. Best Interests Hearing

¶ 20 During the best interests hearing, mother testified she lived with her fiancé, Patrick, Jo.P., Ja.P., and hers and Patrick's one-year-old twin sons. Mother said she was employed as a full-time manager for a Denny's restaurant, working first shift on weekends, but third shift on week days. Patrick usually cared for all of the children while mother was at work. Mother testified Patrick was a full-time union carpenter and worked the day shift and, their combined income was sufficient to meet the needs of the family.

¶ 21 Mother said she and Patrick, and the children, lived in a five-bedroom house with sufficient room for all of the family members, and they had been living in Moline for two years. Jo.P. attended third grade and was doing well, both physically and academically. Ja.P. and the twins were attending a daycare program, part-time, while mother slept. Mother said Jo.P. and Ja.P. had lots of friends in the neighborhood, and mother also had lots of extended family living nearby.

¶ 22 Mother testified Patrick had been in their lives for approximately 2 1/2 years and both Jo.P. and Ja.P. loved Patrick, who treated them as his own children. Mother said, these two older boys were currently insured through a public assistance medical card but, after they married and Patrick adopted the boys, they could get medical benefits through Patrick's employment. During cross-examination, mother said Jo.P. and Ja.P. both previously loved their biological father "[u]ntil [Jo.P.] watched him beat his baby brother." Mother said Jo.P. told mother about what happened during the incident resulting in Ja.P.'s skull fracture.

¶ 23 Next, Patrick testified he and mother were engaged and planned to marry the summer of 2014, and he "absolutely" planned to adopt Jo.P. and Ja.P. Patrick said he was employed full time and his usual work hours were from 7 a.m. to 3:30 p.m. Patrick stated he cared for the children when mother was at work and, if both parents were unavailable, the kids would go to

the babysitter. Patrick said he loved the children and described his relationship with Jo.P. and Ja.P. as “awesome,” saying, “We get along great. We are a very loving family.” Patrick said the children referred to him as “Dad.”

¶ 24 Patrick testified his criminal history consisted of one arrest for felony “DUI,” but he completed drug court satisfactorily and his charge was “acquitted,” without a conviction. Patrick said he had been sober for 14 months and remained committed to staying sober. Patrick said he presently had a valid driver’s license.

¶ 25 Next, the court admitted the GAL report, prepared by Clayton Lee, in lieu of his testimony, without objection. In the report, the GAL stated he personally met with mother and Jo.P. and Ja.P., on November 8, 2013. According to the report, mother and Patrick had ample resources to provide for all of the children, and the five-bedroom house had ample room for the family. Jo.P. and Ja.P. told the GAL they both liked school (daycare for Ja.P.) and they had lots of friends in the neighborhood. Jo.P. was also doing well in school. The family had multiple friends and family living in the immediate neighborhood who helped mother and Patrick when needed. The family also had a dog and two cats, and both boys seemed to love their pets.

¶ 26 In the report, the GAL noted that father had no contact with the children for a long time, and both children told the GAL that Patrick was their father. Ja.P. had no memory of his biological father at all. When asked if he knew father, Jo.P. said, “He was my previous dad.” The GAL reported that Patrick intended to adopt the two children once father’s rights were terminated and he and mother were married. The boys were in very good health, according to the GAL, and were presently covered by a public assistance medical card. However, mother told the GAL, if Patrick is allowed to adopt the boys, he could provide medical insurance coverage for them through his carpenter union benefits.

¶ 27 The GAL stated he attempted to contact father via traditional mail, on November 13, 2013, at the Robinson Correctional Center, asking father to contact his office in writing or by phone. The GAL also sent a copy of this letter to father's attorney at the same time. As of November 26, 2013, father had no contact with the GAL.

¶ 28 Based on all of the information obtained by the GAL, it was the GAL's opinion that it would be in the minors' best interests to terminate father's parental rights and allow Patrick to adopt the boys. The GAL felt the children now considered Patrick their father. The children were happy and doing well, and were living in a loving and nurturing home. The home life for the children, at the time of the report, was far more stable than when mother and biological father previously resided together. The GAL expressed concerns that, if father's rights were not terminated and he tried to again get involved in the minors' lives after he was released from prison, it could disrupt the current dynamics of the children's healthy, happy home.

¶ 29 Next, father testified he planned to try to "get some joint custody or something" when he was released from prison in 2017, stating he planned to get some visitation rights or do anything to see the boys again. Father stated he loved the boys. Father said he was not sure, at this time, where he planned to live when he was released from prison. When asked whether his family interacted with the kids, father said, "They try to." On cross-examination, father said he wanted to try to resume his relationship with the children, after his release from prison, and pick up from where he left the relationship three and a half years ago.

¶ 30 The GAL asked father if he was able to receive legal mail and whether he had phone privileges in DOC, to which father answered in the affirmative. Father also said he was made aware of the GAL appointment, in this case, through legal mail he received from his own attorney. No other evidence was presented at the best interests portion of the hearing.

¶ 31 After closing arguments regarding the best interests hearing, the court noted it had to weigh certain statutory factors when deciding the children’s best interests. Although father was in the process of appealing his conviction for aggravated battery to a child, the court noted it was not required to wait for that final decision and it could take into consideration that a different judge found father guilty of that offense beyond a reasonable doubt. The court stated its job was not to relitigate the criminal case and, based on the conviction, the court found father had committed aggravated battery against Ja.P. that resulted in great bodily harm. Additionally, the court found that the children had no meaningful contact with father for the last three years, and there would be no means of meaningful contact between the children and father for at least another three and one half years. The court determined it was not in the children’s best interests to leave them “in a continued limbo.”

¶ 32 The court indicated it believed mother and Patrick would follow through on their plans for marriage, however, even if they did not marry, the court was not prohibited from finding that it was in the best interests of the children to terminate father’s parental rights. The court also found that the children’s identity with their community and family are factors to consider in deciding their best interests. Applying a preponderance of the evidence standard to the factors to be considered, the court found it was in the children’s best interests to terminate father’s parental rights. The court entered the written order, on December 2, 2013, finding father unfit and terminating his parental rights. Father filed a timely appeal.

¶ 33 ANALYSIS

¶ 34 Father raises two issues on appeal. First, father claims the trial court erred in finding he was an unfit parent based on depravity. Second, father contends the trial court erred in finding that it was in the children’s best interests to terminate his parental rights. Mother argues the trial

court's findings were not against the manifest weight of the evidence.

¶ 35 Based on their appellate brief arguments, the parties agree this case is governed by the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2012)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). An involuntary termination of parental rights involves a two-step, bifurcated approach where the court first conducts an “unfitness hearing” (705 ILCS 405/2-29(2) (West 2012); 750 ILCS 50/1(D) (West 2012)) and, if the parent is found unfit, conducts a subsequent “best interests hearing” (705 ILCS 405/2-29(2) (West 2012)).

¶ 36 I. Unfitness Hearing

¶ 37 During termination proceedings, the court must find that the State proved the parent's unfitness by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). 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.* at 498. 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 or the court's determination is unreasonable, arbitrary, or not based on the evidence presented. *Id.*; *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000).

¶ 38 The Adoption Act defines an “[u]nfit person” as any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption, and lists several various grounds that allow termination of parental rights. 750 ILCS 50/1(D) (West 2012). Here, mother's termination petition alleges father rights should be terminated on two separate grounds of depravity, under sections 50/1(D)(i) and 50/1(D)(i)(7) of the Adoption Act (750 ILCS 50/1(D)(i); (D)(i)(7) (West 2012)). Section 50/1(D)(i), the more general ground, provides:

“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).

Section 50/1(D)(i)(7) of the Adoption Act provides that a parent is deprived if he or she has been convicted of a single charge of aggravated battery of any child, in violation of the Criminal Code of 1961 or the Criminal Code of 2012. 720 ILCS 5/1-1 *et seq.* (West 2012).

¶ 39 Depravity has been defined as “an inherent deficiency of moral sense and rectitude.” *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005) (citing *Stalder v. Stone*, 412 Ill. 488, 498 (1952)); *In re Abdullah*, 85 Ill. 2d 300 (1981). Further, where the presumption of depravity is rebuttable and mother proved facts to support that presumption, father is still able to present evidence showing that, despite his convictions, he is not deprived. *A.M.*, 358 Ill. App. 3d at 253 (citing *J.A.*, 316 Ill. App. 3d at 562). Accordingly, the “only effect of the rebuttable presumption is to create the necessity of evidence to meet the *prima facie* case created thereby, and which, if no proof to the contrary is offered, will prevail. [Citation.]” *Id.* (quoting *J.A.*, 316 Ill.App.3d at 563).

¶ 40 In the case at bar, it is undisputed father had been convicted of two separate felony convictions for manufacture or delivery of cocaine in 2008 and the Class X felony conviction for aggravated battery of a child, in 2010, for which father was convicted of fracturing the skull of Ja.P. These three convictions, taken together, or the aggravated battery of a child conviction taken alone, raise two separate alternate grounds that a rebuttable presumption exists that father is deprived pursuant to the Adoption Act. 750 ILCS 50/1(D)(i); (D)(i)(7) (West 2012).

¶ 41 We note that father’s only argument on appeal, regarding his finding of unfitness based on depravity, is that his appeal was still pending for his conviction of aggravated battery of a

child (Ja.P.), and, if reversed, neither ground for depravity can be proven by clear and convincing evidence. Therefore, father argues the trial court should have postponed the determination of unfitness until father had exhausted all of attempts to set aside this third felony conviction, before it could apply as part of the grounds for depravity.

¶ 42 Father's argument is without merit. It is well-established that the Adoption Act does not require trial courts to reserve ruling on findings of unfitness, which are related to criminal matters, until the appellate process in the underlying criminal action has been exhausted. *In re Donald A.G.*, 221 Ill. 2d 234, 254 (2006). Father raises no other argument regarding any other evidence he offered at the fitness hearing to rebut the presumption that he is depraved. For the foregoing reasons, we hold that the trial court's decision, finding father unfit based on depravity, was not against the manifest weight of the evidence.

¶ 43 **II. Best Interests Hearing**

¶ 44 Next, father argues the trial court erred in finding it was in the best interests of the children to terminate his parental rights. At the best interests stage, the petitioner is required to prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights. *In re B.B.*, 386 Ill. App. 3d 686, 699 (2008) (citing *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004)).

¶ 45 It is well-settled that the best interests hearing shifts the scrutiny of the court to the best interests of the child to live in a loving, stable and safe home environment. *In re D.T.*, 212 Ill. 2d 347, 363-364 (2004). When reviewing a trial court's determination that it is in a child's best interests to terminate parental rights, the appropriate standard of review is whether the court's decision was against the manifest weight of the evidence. *R.L.*, 352 Ill. App. 3d at 1001; *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998). A determination will be found to be against the manifest

weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *D.F.*, 201 Ill. 2d at 498. A trial court's best interests determination is given great deference and the reviewing court must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Id.* at 498-99.

¶ 46 At the best interests hearing, section 1-3(4.05) of the Juvenile Court Act requires the trial court to consider several factors within the context of the child's age and developmental needs. 705 ILCS 405/1-3(4.05) (West 2012). However, a trial court is not required to articulate any specific rationale for its decision, and a reviewing court need not rely on any bases used by the trial court in affirming its decision. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004).

¶ 47 Here, the trial judge clearly stated it weighed the statutory factors when deciding the outcome that would be in the children's best interests. The court noted it did not have to wait for father's appeal rights to be exhausted before considering father's conviction for aggravated battery against Ja.P. that resulted in great bodily harm. The court found the children had no meaningful contact with father for the last three years, father's incarceration would preclude meaningful contact for another three and one half years, and this situation would leave these children in a continued limbo that would not be in their best interests.

¶ 48 Additionally, the court indicated that the children's identity with their community and family are factors to consider in deciding their best interests. Applying the evidence to the factors to be considered, the trial court found it was in the children's best interests to terminate father's parental rights. After careful review of the record, we conclude the court's decision was not against the manifest weight of the evidence.

¶ 49 CONCLUSION

¶ 50 For the foregoing reasons, we affirm the ruling of the circuit court of Rock Island County finding father unfit and terminating father's parental rights.

¶ 51 Affirmed.