

2015 IL App (2d) 141270-U
No. 2-14-1270
Order filed May 22, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> LAWRENCE L., III, a Minor,)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 14-JA-158
)	
(The People of the State of Illinois,)	Honorable
Petitioner-Appellee, v. Rebecca Lynn Burrow,)	Mary Linn Green,
Respondent-Appellant.))	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's findings that mother was unfit and that termination of her parental rights was in the best interests of the child were not against the manifest weight of the evidence.

¶ 2 The respondent, Rebecca Lynn Burrow, appeals from the termination of her parental rights with respect to her son, Lawrence L., III. We affirm.

¶ 3 BACKGROUND

¶ 4 Lawrence was born on April 17, 2014. His mother is Rebecca Lynn Burrow, and his father is Lawrence L., Jr. Only Rebecca's appeal is before us now; we affirmed the termination of the father's parental rights in appeal no. 2-15-1198 (2015 IL App (2d) 151198-U, filed April 29, 2015).

¶ 5 Lawrence was removed from his mother's home and placed in foster care three days after his birth, on April 20, 2014. Rebecca had previously had six children removed from her care. On April 22, 2014, at a court hearing regarding shelter care, Rebecca agreed to grant guardianship and temporary custody of Lawrence to the Department of Children and Family Services (DCFS). At that time, the trial court advised Rebecca that she would have nine months to correct the problems that caused Lawrence's removal from her care.

¶ 6 Rebecca went into an inpatient drug treatment facility. However, on May 30, 2014, she left the facility. She was discharged by the facility as "unsuccessful" and did not re-engage in drug treatment. On June 8, 2014, Rebecca and the child's father were involved in an altercation to which the police were called. Rebecca, who told the police that she had been drinking, was arrested and charged with domestic battery. On June 23, 2014, Rebecca and the child's father were arrested for possession of burglary tools.

¶ 7 On July 3, 2014, the trial court held a dispositional hearing, after which it found that Lawrence was neglected and placed him in the custody of DCFS.

¶ 8 On July 23, 2014, not long after her release from jail, Rebecca was arrested again, for giving a false name and date of birth to a police officer. She pled guilty to this charge and was sentenced to 180 days in jail, with all but 28 days stayed pending successful completion of the terms of probation.

¶ 9 On August 1, 2014, the State filed a motion to terminate parental rights. Count I of the motion alleged that Rebecca failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of Lawrence. 750 ILCS 50/1(D)(b) (West 2012). Count II alleged that Rebecca was depraved within the legal meaning of that term. 750 ILCS 50/1(D)(i) (West 2012).

¶ 10 On September 6, 2014, Rebecca was again arrested and was charged with prostitution. She spent three weeks in jail and pled guilty to the charge, receiving a suspended sentence of 90 days.

¶ 11 On December 1, 2014, the trial court conducted a hearing on the State's petition. Among other things, the State submitted certified copies of Rebecca's criminal charges and convictions. In addition to her arrests after Lawrence's removal, Rebecca had other criminal convictions. Rebecca and the child's father had been arrested on July 2, 2012, and charged with retail theft of a pair of sneakers. Rebecca pled guilty to this charge. Rebecca was charged with retail theft again in June 2013, and again pled guilty. On August 23, 2013, Rebecca stole ladders from a construction site and she was charged with theft, to which she pled guilty.

¶ 12 The State also produced evidence that, in April 2013 (about a year before Lawrence's birth), Rebecca had given birth to a drug-exposed infant. She had been ordered to remain drug-free during her pregnancy and had been found in contempt of court for failing to do so. After Lawrence was removed, Rebecca attended only 10 out of 27 scheduled visits with him. She cancelled two visits for rainy weather and illness. Although she was incarcerated for some of the time since her son had been born, that accounted for only five of the missed visits. Rebecca asserted that she missed visits because she did not have transportation or bus passes, but she conceded that the caseworker had offered her single-use bus passes, and she had not told the caseworker that she was having trouble getting to visits until November 2014, one month before the hearing. Although Rebecca knew that Lawrence was born with a condition that affected his throat and head, she did not attend any of his doctor's appointments.

¶ 13 The DCFS caseworker, Rachel Leon, testified that Rebecca had not completed drug treatment or domestic violence counseling. Rebecca told Leon that she attended Alcoholics Anonymous meetings four times per week, but she was inconsistent in producing documentation

of this. Rebecca was homeless after she was arrested on June 8, 2014, and had been staying with a friend when she was not in jail.

¶ 14 At the conclusion of the fitness hearing, the trial court found Rebecca unfit under both counts of the motion to terminate parental rights. The trial court then proceeded to hearing on whether termination of Rebecca's parental rights would be in Lawrence's best interests. During this portion of the hearing, Leon testified that Lawrence had been in his current foster care placement for his entire life and was well-bonded to the family. The foster parent was Rebecca's cousin, and Lawrence's sister resided in the same home. Lawrence had been diagnosed with laryngomalacia, a condition that made it difficult for him to breathe, and mobility problems involving his head. The foster parent took him to therapy for these conditions and ensured that he did physical therapy exercises to treat the conditions. The foster parent wished to adopt both Lawrence and his sister. Following the close of evidence, the trial court found that it was in the best interest of Lawrence that Rebecca's parental rights be terminated. Rebecca appeals this determination.

¶ 15 ANALYSIS

¶ 16 In her appeal, Rebecca argues that the trial court's findings of unfitness on the two grounds alleged by the State were against the manifest weight of the evidence, as was the finding that the termination of Rebecca's parental rights was in Lawrence's best interest. Rebecca also complains that the trial court incorrectly admonished her that she would have nine months to correct the problems that led to Lawrence's removal from her care, but the trial took place only seven months after that admonishment. We address this latter complaint first.

¶ 17 At the April 22, 2014, shelter-care hearing, the trial court advised Rebecca and Lawrence's father that, to get Lawrence back, they would have to do three things:

“First, you have to work with the caseworker you’re assigned; second, you have to get any services that they have down on a service plan for each of you individually; and the third thing you have to do is cure or correct whatever conditions caused your child to be brought into care in the first place, and you’ll be given the next nine months to make those efforts.”

The trial court made other references as well to a nine-month period, stating that the parties “would be given a period of time, from today going forward, of nine months to make reasonable efforts to try to correct whatever conditions caused him to be brought into care,” and cautioning the parties that, if “after nine months” they had not made reasonable efforts, the State could “come in and file a motion that seeks to terminate your rights as a parent, so—but for this case that would not happen until you’ve been given that time to make reasonable efforts.”

¶ 18 On appeal, Rebecca asserts that she “certainly relied” on these statements and that “[n]o one knows what she would have accomplished” if she had had a full nine months between the shelter-care hearing and the hearing on the State’s petition to terminate her parental rights, as the trial court stated. As an initial matter, Rebecca forfeited this issue, because she did not raise any objection before the trial court to proceeding before the nine months was up. See *In re Kenneth J.*, 352 Ill. App. 3d 967, 976 (2004). Further, she does not point to any actual prejudice that she sustained from the trial court’s remarks about the length of time she would have to correct the conditions that led to Lawrence’s removal. Thus, any error in the trial court’s admonishments did not require reversal of its finding that she was unfit. See *In re J’America B.*, 346 Ill. App. 3d 1034, 1049 (2004). As it turned out, the State’s motion to terminate did not raise any of the statutory grounds that require the passage of a nine-month window of time. Rather, it alleged that Rebecca failed to maintain a reasonable degree of interest and that she was deprived. It is difficult to see how either of these grounds, which the trial court held were proven by the seven-

month mark, could be cured through the passage of another two months. Rebecca does not point to any evidence that, when the trial occurred, she was in the midst of an effort to turn her life around, get clean, stop committing crimes, or demonstrate greater concern about Lawrence's welfare. Thus, her argument that "no one knows what she would have accomplished" in another two months is simply speculation. In the absence of any identifiable prejudice to her ability to present her case, any error by the trial court in its remarks was harmless. See *In re Kenneth F.*, 332 Ill. App. 3d 674, 679 (2002). Accordingly, we turn to the issue of whether the trial court's decision to terminate Rebecca's parental rights was against the manifest weight of the evidence.

¶ 19 Termination of parental rights is a two-step process. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 1. First, the trial court must find, by clear and convincing evidence, that the parent is unfit. *Id.* ¶ 63. Second, the court must determine, by a preponderance of the evidence, whether termination of parental rights is in the child's best interests. *Id.* We analyze each step separately.

¶ 20 Because the termination of parental rights constitutes a complete severance of the relationship between the parent and child, proof of parental unfitness must be clear and convincing. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 88. The trial court is in the best position to assess the credibility of witnesses, and a reviewing court may reverse a trial court's finding of unfitness only where it is against the manifest weight of the evidence. *Id.* ¶ 89. A decision regarding parental unfitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). Each case concerning parental unfitness is *sui generis*, meaning that factual comparisons to other cases by reviewing courts are of little value. *Id.*

¶ 21 In this case, the trial court found Rebecca unfit on two grounds. Although section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) sets forth several grounds under which a

parent may be deemed unfit, any one ground, properly proven, is sufficient to sustain a finding of unfitness. *In re Shauntae P.*, 2012 IL App (1st) 112280, ¶ 89. Thus, we will sustain the trial court's finding of unfitness if either of the two grounds is supported by the record.

¶ 22 Here, we find that both grounds are supported by the record, but we choose to discuss only the second ground, depravity. 750 ILCS 50/1(D)(i) (West 2012). Depravity is “ ‘an inherent deficiency of moral sense and rectitude.’ ” *In re Abdullah*, 85 Ill. 2d 300, 305 (1981) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Section 50/1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)) establishes a presumption of depravity that may arise when a parent has been convicted of certain serious crimes, but a court may also base a finding of depravity on the general definition given above. See, e.g., *In re Donald A.G.*, 221 Ill. 2d 234, 253 (2006) (noting that trial court had not applied the statutory presumptions but rather had found the child's father depraved under the general definition of depravity). “Depravity of a parent may be shown by a series of acts or a course of conduct that indicates a moral deficiency and an inability to conform to accepted morality.” *In re Dawn H.*, 281 Ill. App. 3d 746, 757 (1996).

¶ 23 Here, the evidence presented by the State showed a course of conduct that supported the trial court's finding of depravity. Rebecca engaged in a continuing course of theft: before Lawrence was born, she was arrested for stealing three times in 14 months and pled guilty each time. Within a few months of his birth, she was arrested again for possession of burglary tools, indicating that she was contemplating the more serious offense of breaking and entering. Rebecca committed these offenses despite the fact that she was under scrutiny by the court, which was weighing the termination of her parental rights as to both Lawrence and his sister who was born in April 2013. Rebecca also got into an altercation with Lawrence's father that was so serious that she was arrested and charged with domestic battery. Despite this (and despite the

fact that her drug addiction appeared to be contributing to her criminal conduct), she refused to engage in domestic violence counseling or drug treatment. Finally, during the next two months, she was charged with (and pled guilty to) obstructing identification and prostitution. The trial court did not err in determining that Rebecca's course of conduct over the last few years before the trial indicated "a moral deficiency and an inability to conform to accepted morality." *Id.*

¶ 24 Rebecca argues that her conduct was not as serious as another case in which the supreme court affirmed a trial court's finding of depravity because the father had murdered the child's mother. See *Abdullah*, 85 Ill. 2d at 307. However, each case involving parental unfitness is *sui generis*, and thus we will not make factual comparisons between such cases. *In re J'America B.*, 346 Ill. App. 3d 1034, 1046 (2004). In order to make a finding a depravity, a trial court must "closely scrutinize the character and credibility of the parent," and that court is in a superior position to do so based upon its observations of the parent at trial and over time. *Id.* Here, the trial court's determination was supported by the record and was not against the manifest weight of the evidence. Accordingly, we affirm its determination that Rebecca was unfit based upon her continuing conduct.

¶ 25 We next review the trial court's finding that termination of Rebecca's parental rights was in Lawrence's best interests. Under the Juvenile Court Act of 1987, the best interests of the child is the paramount consideration to which no other takes precedence. *In re I.H.*, 238 Ill. 2d 430, 445 (2010). In other words, a child's best interest is not to be balanced against any other interest; it must remain inviolate and impregnable from all other factors. *In re Austin W.*, 214 Ill. 2d 31, 49 (2005). Even the superior right of a natural parent must yield unless it is in accord with the best interests of the child involved. *Id.* at 50.

¶ 26 The Juvenile Court Act sets forth the factors to be considered whenever a best-interests determination is required, all of which are to be considered in the context of a child's age and

developmental needs: the physical safety and welfare of the child; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the "risks attendant to entering and being in substitute care"; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 27 Rebecca asserts that, because the trial was held fewer than nine months after the shelter-care hearing, she was not given the time she was promised to form a bond with Lawrence. However, Rebecca did have over seven months, and during that time, she missed over half of her scheduled visits. In addition, as of the time of the trial, Rebecca was homeless and could not provide for Lawrence. By contrast, Lawrence has spent his entire life with his foster mother, who has been providing excellent care for him, including seeing to his medical condition, and who wishes to adopt both Lawrence and his sister. As Rebecca notes, the foster mother testified that she favors a continuing relationship between Rebecca and Lawrence. In light of this evidence, we find no error in the trial court's determination that it was in the best interests of Lawrence to terminate Rebecca's parental rights and make Lawrence available for adoption.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 30 Affirmed.