2015 IL App (2d) 150035-U
No. 2-15-0035 & 2-15-0094 (cons.)
Order filed June 3, 2015

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re JESSIE D., JR.,	)	Appeal from the Circuit Court
	)	of Lake County.
a Minor	)	
	)	
	)	No. 13-JA-172
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Sharon H.,	)	Valerie B. Ceckowski,
Respondent-Appellant).	)	Judge, Presiding.

In re J.J.D., JR.,	)	Appeal from the Circuit Court
	)	of Lake County.
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(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Jessie D., Sr.,	)	Valerie B. Ceckowski,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found respondents unfit and terminated their parental rights.

¶ 2 Respondents, Sharon H., and her former paramour, Jessie D. Sr., are the biological parents of the minor, Jessie D., Jr. The trial court found respondents unfit and terminated their parental rights. Respondents appealed. Both argue that the trial court's determinations regarding their unfitness and the minor's best interests were against the manifest weight of the evidence. On the court's own motion we consolidated the cases for decision, and affirm.

¶ 3 I. BACKGROUND

¶ 4 Initially, we note that the record on appeal does not include documents or transcripts from the neglect or permanency proceedings. These deficiencies do not substantially hinder our review, in part because the State introduced a number of critical documents—*e.g.*, the neglect petition, service plans from the permanency phase, prior court orders—as exhibits during the unfitness hearing. To the extent the record is incomplete, any doubts arising from its incompleteness will be construed against the appellants. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984).

¶ 5 The minor was born in June 2010. Jessie Sr. was not acknowledged as the minor's father on the minor's birth certificate. In February 2012, the minor's 16-year-old half-brother, Justin, was admitted to Children's Memorial Hospital in a state of septic shock and organ failure due to an acute staph infection. Hospital personnel alerted the Illinois Department of Children and Family Services (DCFS) that Sharon had been using heroin along with Justin prior to Justin's hospitalization. At a shelter care hearing, the trial court found probable cause to believe that the minor was neglected and appointed a guardian *ad litem* (GAL) for the minor. DCFS took protective custody of the minor and placed him in a foster home.

¶ 6 The State filed a petition that alleged the minor was dependent and in need of care under section 2-4 of the Juvenile Court Act (705 ILCS 405/2-4 (West 2012)). At the time, Jessie Sr.,

who was later determined to be the minor's biological father, was incarcerated for an unrelated offense. The State's petition alleged that the minor was without proper care due to Jessie Sr.'s incarceration and Sharon's substance abuse. In November 2012, Sharon stipulated to the dependency allegation. The minor was adjudicated dependent and made a ward of the court.

¶ 7 In November 2013, the State filed a petition that alleged Sharon and Jessie Sr. were unfit and sought to terminate their parental rights. The petition alleged that both Sharon and Jessie Sr. were unfit under section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and sought the appointment of a guardian with the power to consent to the minor's adoption.

¶ 8 We summarize the relevant testimony and evidence from the unfitness hearing. Caseworker Emily Husseini testified that she helped prepare service plans following individual and family integrated assessments. The integrated assessment indicated that Sharon required services for substance abuse (crack, heroin, and cocaine, as well as prescription painkillers, methadone, and benzodiazepine), domestic violence, individual therapy, "parent coaching," housing and income assistance, and services for learning disabilities. The assessment for Jessie Sr. indicated the same services were needed in addition to "a recidivism program." Both Sharon and Jessie Sr. were required to address their issues with substance abuse and domestic violence counseling prior to engaging in other services. Husseini made the appropriate referrals and she provided Sharon and Jessie Sr. with information on assistance to pay for those services. In addition, Husseini referred both Sharon and Jessie Sr. to counseling following shelter care because both parents stated that they were depressed about the minor's removal and Husseini wanted them to have extra support.

¶ 9 Husseini made each parent a calendar for visitation and services to assist them. Although visitation was weekly, Husseini testified that she supervised the minor's visitation with

his parents roughly twice a month. At one point, Sharon and Jessie Sr. were evicted from their apartment and no longer had consistent access to a vehicle. As a result they both, sometimes separately and sometimes together, “moved around a lot.” To assist with transportation, Husseini provided Sharon and Jessie Sr. with bus passes and gas cards. Husseini acknowledged difficulty in scheduling visitation and services with Sharon and Jessie Sr. due to their frequent incarceration, residency issues, and difficulties with transportation. Husseini also noted that Sharon and Jessie Sr. frequently tested positive for illegal drugs or refused testing, which was treated as a positive test.

¶ 10 As noted, both Sharon and Jessie Sr. were required to complete substance abuse treatment and domestic violence counseling prior to engaging in other services. Both Sharon and Jessie Sr. made minimal progress in those services and were discharged unsuccessfully due to lack of attendance.

¶ 11 The State introduced service plans for Sharon and Jessie Sr. from August 2012, February 2013, and August 2013. Sharon and Jessie Sr. were rated satisfactory for maintaining visitation with the minor. In nearly all other respects, they were rated unsatisfactory. The reports attached to the plans indicate that Sharon consistently fed the minor junk food and that both Sharon and Jessie Sr. would often “nod off” during service appointments and visitation with the minor. The State called additional caseworkers and supervisors, whose testimony was substantially the same as Husseini’s.

¶ 12 Over objections, the State introduced evidence of Jessie Sr.’s criminal history, which included nine felony convictions. In 1992, Jessie Sr. was convicted of unlawful possession of a controlled substance (UPCS) and sentenced to four years in prison. In 1995, he was convicted of three counts of burglary and sentenced to an eight-year aggregate term. In 2002, he was

convicted of violating an order of protection and sentenced to 18 months in prison. In 2003, he was convicted of DUI and sentenced to two years in prison. In 2004, he was convicted of domestic battery (the State failed to mention his sentence). In 2005, he was convicted of felony theft and sentenced to two years in prison. In 2010, he was convicted of criminal trespass to residence (the State failed to mention his sentence). Finally, in 2012, Jessie Sr. was convicted of driving on a suspended license and sentenced to 18 months' imprisonment.

¶ 13 Sharon's criminal history includes four felonies. In 2004, Sharon was convicted of UPCS and sentenced to two years in prison. In 2005, she was convicted of theft and sentenced to two years in prison. In 2008, she was convicted of UPCS and sentenced to 18 months in prison. In 2011, she was convicted of retail theft (no sentence mentioned). Finally, in 2013, Sharon was convicted of UPCS (no sentence mentioned), for which she was still incarcerated at the time of the hearing. The State rested. Sharon and Jessie Sr. each rested without presenting evidence.

¶ 14 The trial court found Jessie Sr. unfit on grounds that he (1) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) failed to make reasonable progress during a nine-month period (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) was depraved (750 ILCS 50/1(D)(i) (West 2012)). The trial court made the same findings with respect to Sharon, and further found Sharon unfit on the ground that she failed to protect the minor from an injurious environment (750 ILCS 50/1(D)(g) (West 2012)). The trial court noted that both respondents offered "excuse after excuse" for failing to participate in court-ordered services and presented no evidence to rebut the presumption of depravity. In its ruling, the trial court lamented that the parties were "no closer to 'return home' today than *** on the day that temporary custody was taken."

¶ 15 At the best-interests hearing, the parties presented the following evidence. Youmna El Sabaa, a court-appointed special advocate, testified that the minor was almost two years old when protective custody was taken. The minor was overweight but undernourished when he initially came into foster care. The minor stayed in his first foster home during the initial six months following protective custody and, during that time, his fitness and nutrition levels significantly improved. The minor manifested developmental delays and his initial foster mother indicated that his level of need was beyond what she "could fully provide." The minor was placed in a second foster home with a traditional foster family, where he remained throughout the case.

¶ 16 In his second foster home, the minor has a foster mom, a foster dad, and two older foster siblings. The minor's foster mother is a special education teacher. After the minor's placement, his foster mother took a six-week maternity leave to care for him. Several months later, the family added another foster child, who was six months younger than the minor. El Sabaa testified that the minor's foster family was able to provide for the minor's physical and specialized educational needs. She described the home as "very loving" and stated that the minor was bonded to his foster family. The minor refers to his foster mother as "Mommy" and she is committed to the minor's permanence.

¶ 17 Caseworker Meg O'Keefe testified that the minor's physical wellbeing, speech, and behavior have dramatically improved in the care of his foster family. The minor is included in family activities such as church, holidays, and community activities. On cross-examination, O'Keefe acknowledged that the foster father had recently moved out of the home.

¶ 18 Following an acknowledgment that both Sharon and Jessie Sr. were in the custody of the Department of Corrections at the time of the best-interests hearing, the State rested. Sharon

indicated that she did not wish to be present for further proceedings, and Jessie Sr. rested without presenting any testimony or evidence. After a thorough review of the case's history and the best-interests factors, the trial court terminated respondents' parental rights and appointed the minor a guardian with the power to consent to adoption. Subsequently, the minor's permanency goal was changed from substitute care to adoption.

¶ 19 Jessie Sr. timely appealed, and we permitted Sharon to file a late notice of appeal. The trial court appointed Loyola University's Civitas Child-Law Center to serve as the minor's GAL on appeal. We have consolidated the cases for our decision below.

¶ 20 II. ANALYSIS

¶ 21 The Juvenile Court Act provides a bifurcated mechanism to determine whether parental rights may be involuntarily terminated. The trial court must first find by clear and convincing evidence that the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29 (West 2012); *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. If the court so finds, it must further find by a preponderance of the evidence that termination of parental rights is in the best interest of the child. 705 ILCS 405/2-29; *In re A.F.*, 2012 IL App (2d) 111079, ¶ 45. A trial court's unfitness and best-interests findings are entitled to great deference and we will not disturb either finding unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶¶ 40, 45. A determination is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 22 We turn first to Sharon's and Jessie Sr.'s challenges to the trial court's finding of unfitness. We confine our analysis to the trial court's depravity finding as any one ground of unfitness is sufficient to declare a parent unfit. See *In re C.W.*, 199 Ill. 2d 198, 210 (2002).

¶ 23 Section 1(D) of the Adoption Act provides several grounds for unfitness, including that a

parent is "depraved" (750 ILCS 50/1(D)(i) (West 2012)). A parent's depravity may be demonstrated by a series of acts, or a course of conduct, which demonstrate an inability or an unwillingness to conform to accepted moral standards. *In re J'America B.*, 346 Ill. App. 3d 1034, 1046 (2004). The statute provides that a rebuttable presumption of depravity exists if the parent has been convicted of at least three felonies and one of the convictions happened within five years of the petition for termination of parental rights. 750 ILCS 50/1(D)(i). Because the presumption is rebuttable, a parent may still present evidence to show that he or she, convictions notwithstanding, is not depraved. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24. If, however, a parent offers no contrary proof, then the presumption prevails. *In re J.A.*, 316 Ill. App. 3d 553, 563 (2000).

¶ 24 Sharon does not directly challenge the trial court's depravity finding. Instead, she generally asserts that she "f[ell] through the cracks" and that service providers failed her. Nevertheless, the State's evidence showed that Sharon had five prior felony convictions, three of which were within the five-year period preceding the filing of the termination petition. Sharon failed to offer evidence to counter the State's evidence. We reject Sharon's assertion that she "cannot be responsible" for her failure in court-ordered services; the record shows service providers made reasonable efforts to assist her. And, to the extent Sharon acknowledges that she was "obviously self-medicating [*sic*]" her acknowledgement does not warrant a relaxation of the trial court's depravity finding. See *In re Adoption of Baby Girl Casale*, 266 Ill. App. 3d 656, 663 (1994) (stating that a parent's substance abuse is behavior that may be "properly characterized as depraved"). Accordingly, the trial court's finding that Sharon was depraved and, therefore, unfit, was not against the manifest weight of the evidence.

¶ 25 Jessie Sr. concedes that the presumption of depravity applies: he has nine felony

convictions, two of which were within the applicable five-year period. He suggests, however, that the presumption should apply with less force because most of his convictions occurred a decade prior to the filing of the termination petition. We reject this suggestion. Jessie Sr.'s was first convicted of a felony in 1992 and he was convicted of eight felonies thereafter. This demonstrates that Jessie Sr.'s criminal behavior was of "sufficient duration and of sufficient repetition to establish a deficiency in moral sense and either an inability or an unwillingness to conform to accepted moral standards." *In re J'America B.*, 346 Ill. App. 3d at 1046. Moreover, if the legislature intended to exclude convictions from the prior decade, it clearly would have said so. *Cf.* 730 ILCS 5/5-5-3.2, 5-8-2 (West 2012) (providing, generally, that criminal convictions more than 10 years old do not trigger discretionary extended-term sentencing).

¶ 26 Citing *People v. Watts*, 181 Ill. 2d 133 (1998), Jessie Sr. also asserts that the trial court erroneously and unconstitutionally utilized section 1(D)(i) as a "mandatory presumption" that he was depraved. *Watts*, however, is inapplicable to termination proceedings. See *Watts*, 181 Ill. 2d at 147 (stating that, "*in the area of criminal law*, mandatory rebuttable presumptions *** are unconstitutional" (emphasis added)); *cf. In re R.C.*, 195 Ill. 2d 291, 299 (2001) (noting that involuntary termination proceedings are civil in nature). Moreover, in its unfitness ruling, the trial court specifically stated that "the statute creates a *rebuttable* presumption" of depravity. Thus, the record shows that the trial court properly applied section 1(D)(i) to Jessie Sr. when it found him depraved, and its finding was not against the manifest weight of the evidence.

¶ 27 Based on our review of the record, we conclude that the State presented clear and convincing evidence of respondent's unfitness. See *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40.

¶ 28 We next address respondents' challenges to the trial court's best-interests ruling. A best-interests determination is guided by a number of statutory factors including the child's health,

welfare, physical safety, development, sense of security and familiarity, community ties, and need for permanence. 705 ILCS 405/1-3(4.05) (West 2012). At a best-interests hearing, the full range of the parent's conduct can be considered. *In re C.W.*, 199 Ill. 2d 198, 217 (2002). Ultimately, "[t]he issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004).

¶ 29 Both Sharon and Jessie Sr. generally argue that the State's evidence was insufficient to warrant termination. Both respondents claim to have a strong bond with the minor, and point to their mostly consistent weekly visitation as evidence that guardianship should be maintained. Jessie Sr. also argues that the trial court's explanation of its best-interests decision was insufficient. We disagree with respondents.

¶ 30 Although the "trial court need not articulate any specific rationale for its [best-interests] decision (*In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004)), here, the trial court's explanation was sufficient. In its ruling, the court noted respondents' "complete lack of progress" with court-ordered services, were "in and out of incarceration," and had "continued substance[-]abuse issue[s]." While the court considered respondents' fairly consistent participation in weekly visitation, we note that neither respondent had progressed beyond supervised visitation. Both respondents point out that the minor's foster father had recently moved out of the foster home; however, the lack of an adoptive home with an intact two-parent family unit is not a bar to the termination of parental rights. See *In re D.M.*, 336 Ill. App. 3d 766, 770 (2002). At any rate, the record shows that the minor's foster home was a loving and stable environment, despite the foster father's relocation. In contrast, neither respondent has been able, during the pendency of this case, to maintain a fixed address or to meaningfully engage in basic treatment. The trial

court, therefore, correctly determined that termination of respondents' parental rights was in the minor's best interests. See *In re D.T.*, 212 Ill. 2d 347, 364 (2004) (stating that "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life").

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 33 No. 2-15-0035 Affirmed.

¶ 34 No. 2-15-0094 Affirmed