2015 IL App (2d) 150295-U
No. 2-15-0295
Order filed July 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re KYLE T.,	)	Appeal from the Circuit Court
	)	of De Kalb County.
a Minor	)	
	)	
	)	No. 10-JA-49
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Mark T.,	)	Ronald G. Matekaitis,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly found respondent depraved and terminated his parental rights.

¶ 2 Respondent, Mark T., and his wife, Cynthia T., are the biological parents of the minor, Kyle T. The trial court found Mark unfit and terminated his parental rights. He appeals and for the reasons that follow we affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2010 the State filed a petition alleging that the minor was neglected due to an injurious environment. The basis for the State's allegation was as follows. In 2009, Mark and

Cynthia lived together periodically, along with the minor (age 8) and Cynthia's two children: her daughter, K.R. (age 13), and her son, Khalen R. (age 10). K.R. became pregnant and alleged that Mark had impregnated her; paternity testing later confirmed her allegation. Mark was arrested and charged with multiple sex offenses. The Illinois Department of Children and Family Services (DCFS) took custody of Cynthia's children and placed the minor in a separate foster home. With respect to the State's petition, the minor was adjudicated neglected and made a ward of the court.

¶ 5 Subsequent to adjudication, DCFS created a service plan for Mark that required him to seek counseling and undergo a sex-offender-risk evaluation. In addition, with respect to the sex offenses involving K.R., a jury found Mark guilty of one count of aggravated criminal sexual assault, six counts of criminal sexual assault, and seven counts of aggravated criminal sexual abuse. The trial court sentenced Mark to an aggregate 30-year term. We affirmed Mark's convictions and sentence on direct appeal.

¶ 6 In August 2014 the State filed a petition alleging that Mark and Cynthia were unfit parents with respect to the minor. The petition sought the termination of their parental rights and the appointment of a guardian with the power to consent to adoption. The following month, Cynthia executed specific consents, which surrendered her parental rights over the minor to the minor's foster parents, Kim and Sean W.

¶ 7 The parties proceeded to a hearing on the State's petition in February 2015. At the hearing, the State presented certified copies of Mark's 14 convictions of the sex offenses he perpetrated on K.R.

¶ 8 DCFS caseworker Tracy Goodman testified that a service plan was created for Mark in February 2013. During the pendency of the minor's wardship, Mark was incarcerated. Mark's service plan called for him to complete an integrated assessment, a sex-offender evaluation, and

a substance abuse evaluation, and to undertake any recommended services following those evaluations. In the two years the service plan had been in place, Mark failed to complete those evaluations or engage in treatment; his efforts were rated as unsatisfactory.

¶ 9 On cross-examination, Goodman testified that when the case came into care, Mark had stated that he was drinking up to "12 beers a day ***." Goodman further testified that in October 2014, the minor's brother Khalen made an outcry that he had been sexually abused by Mark. Following an investigation, DCFS determined that abuse was indicated. On redirect, Goodman testified that Mark's earliest projected parole date was in 2038. The State rested.

¶ 10 Mark testified that he received copies of the service plans but was told by "three of [his counselors" that it wasn't "a necessity" that he take a substance abuse evaluation or engage in substance abuse treatment. Mark testified that he was willing to engage in treatment, but noted that he had appealed his service plans and felt as though caseworker Goodman had not appropriately filled out certain forms. On cross-examination, Mark testified that he did not complete a sex-offender evaluation because he did not want to "admit guilt ***." Mark also testified that he sent the minor one letter during the two years of the minor's wardship. Mark rested.

¶ 11 Following argument, the trial court found Mark unfit on grounds that he (1) was depraved (750 ILCS 50/1(D)(i) (West 2012)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility with respect to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (3) 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)); and (4) was currently and had been repeatedly incarcerated such that he could not discharge his parental responsibilities (750 ILCS 50/1(D)(s) (West 2012)).

¶ 12 At a best interest hearing, Goodman testified that the minor had lived with his foster family for nearly three years. The minor was "very bonded" with his foster parents, whom he referred to as "Mom" and "Dad." Both of the minor's foster parents had signed commitments to adopt the minor if possible. Goodman also testified that the minor was integrated into his foster family: The minor had an older foster brother, with whom he had bonded, and the entire foster family went on vacations together. The minor was doing very well in school and was active in lacrosse and football. On cross-examination, Goodman testified that the minor relied on his foster parents for emotional support. In response to questioning by the trial court, Goodman testified that the minor's foster parents provided for the minor's medical needs.

¶ 13 Following argument, the trial court found that Mark's parental rights should be terminated in the minor's best interests. Mark timely appealed.

¶ 14 II. ANALYSIS

¶ 15 The Juvenile Court Act provides a bifurcated procedure 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.*

¶ 16 We turn first to Mark'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 uphold a finding that a parent is unfit. See *In re C.W.*, 199 Ill. 2d 198, 210 (2002).

¶ 17 Section 1(D) of the Adoption Act provides several grounds for a finding of parental 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 a parent has been convicted of, *inter alia*, any one of several offenses against a child (defined as a person under the age of 13) including murder, predatory criminal sexual assault, or aggravated battery. 750 ILCS 50/1(D)(i)(2)-(7) (West 2012).

¶ 18 Initially, invoking this portion of the statute, Mark contends that, because he was convicted of aggravated criminal sexual assault and not predatory criminal sexual assault of a child, a rebuttable presumption of his depravity did not apply. The gist of Mark's argument is that because K.R. was 13 years of age at the time he sexually assaulted her, and not *under* the age of 13 so as to support a charge of predatory criminal sexual assault (see 720 ILCS 5/11-1.40 (West 2012) (victim under 13 years of age)), Mark should not be considered presumptively depraved. The State does not directly respond to Mark's argument; instead it argues that the trial evidence was generally sufficient to show that Mark was depraved without resorting to a statutory presumption.

¶ 19 We note that we may affirm a finding of parental unfitness on any basis established by the record. *In re Brianna B.*, 334 Ill. App. 3d 651, 655 (2002). Neither the State nor Mark have addressed the applicability of section 1(D)(i)'s "three felonies" provision, which 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). Our supreme court has held that a parent's recent criminal conviction may be used to support a depravity finding, even if the direct appeal concerning that conviction has not been completed by the time of the unfitness hearing. *In re Abdullah*, 85 Ill. 2d 300, 310 (1981). Applying the holding in *In re Abdullah* to the facts before us, we readily conclude that Mark's 14 recent convictions for felony sex offenses against K.R. triggers the three felonies provision in section 1(D)(i). The effect of this conclusion is that a rebuttable presumption of Mark's depravity applied. See, *e.g.*, *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24 (mother's three criminal convictions, which all related to criminal conduct that occurred on the same day, created a rebuttable presumption of her depravity).

¶ 20 Because this 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). In the trial court, Mark offered no proof to counter the evidence of his depravity; thus, the presumption prevails. Based on our review of the record, the trial court's order finding respondent depraved, and thus unfit, was not against the manifest weight of the evidence.

¶ 21 We next address Mark's challenge to the trial court's best interest ruling. A best interest 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). The goal of these proceedings is to determine

whether termination of parental rights and even adoption will best serve the child's needs. *In re M.M.*, 156 Ill. 2d 53, 61 (1993). 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).

¶ 22 Mark first contends that the trial court did not indicate which best-interests factors it relied on in terminating his parental rights. We adhere to our holding that, although a specific statement by the trial court is preferable, it is not required. See *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004) (stating that the "trial court need not articulate any specific rationale for its [best interest] decision"). Our primary concern is not whether the trial court's decision was sufficiently specific, but whether it was against the manifest weight of the evidence. *Id*.

¶ 23 Here, the State proved by a preponderance of the evidence that the termination of Mark's parental rights was in the minor's best interest. At the time of the best interest hearing, the minor had lived with his foster family for three years; the minor was bonded to his foster parents and foster sibling; the minor was thriving in school and at home; and the minor's foster parents were committed to his adoption. In short, the record shows that the minor's foster home was a loving and stable environment. 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").

¶ 24 In contrast, when the minor was in the custody of Mark and Cynthia, he suffered from episodically severe depression due to his neglect and required psychiatric hospitalization. In addition, Mark's commission of multiple sex crimes against the minor's then-13-year-old step-sister, and Mark's 30-year prison sentence, indicate that he is incapable of appropriately parenting the minor. During the minor's wardship, Mark made little effort to engage in sex-

offender treatment, substance abuse treatment, or to maintain a relationship with the minor, to whom he sent only a single letter in three years. See *In re C.W.*, 199 Ill. 2d at 217 (stating that at a best interest hearing, "the full range of the parent's conduct can be considered"). In light of the foregoing, the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of De Kalb County.

¶ 27 Affirmed.