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2015 IL App (3d) 140622-U

Order filed January 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> W.T., N.T. and C.W.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,	)	Appeal Nos. 3-14-0622, 3-14-0623 and
	)	3-14-0624
v.	)	Circuit Nos. 12-JA-64, 12-JA-65 and
	)	12-JA-144
Jenifer T.,)	
	)	The Honorable
Respondent-Appellant).	)	Albert L. Purham, Jr.,
	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding that respondent mother was an unfit parent due to depravity was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Jenifer T., appeals from the judgments of the circuit court finding her to be an unfit parent as to her minor children, W.T., N.T. and C.W., and terminating her parental

rights. On appeal, respondent maintains that the trial court's finding that she was unfit based on depravity was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

In March of 2012, the State filed petitions as to W.T., born on September 9, 2005, and N.T., born on May 7, 2011, alleging that they were neglected due to an injurious environment. At the shelter care hearing, the children were found to be neglected and were remanded to the temporary custody and guardianship of the Department of Children and Family Services (DCFS).

¶ 5

W.T. and N.T. were adjudicated neglected on May 23, 2012. Two months later, a dispositional order was entered finding respondent unfit. The order instructed respondent to (1) cooperate with DCFS, (2) obtain a drug and alcohol assessment and successfully complete any course of treatment recommended, (3) participate in and successfully complete counseling, (4) obtain and maintain stable housing; (5) successfully complete an anger management program, and (6) use best efforts to obtain and maintain a legal source of income.

¶ 6

On June 27, 2012, respondent gave birth to C.W. At a subsequent dispositional hearing, the trial court found that respondent was unfit as to C.W. and remained unfit as to W.T. and N.T.

¶ 7

In July of 2013, the State filed a petition seeking to terminate the respondent's parental rights. The petition alleged that respondent was a depraved person due to multiple criminal convictions that occurred between 2006 and 2013.

¶ 8

At the fitness hearing held on April 16, 2014, the State tendered certified copies of nine convictions dating back to 2006, including convictions for unlawful acquisition of a controlled substance, deceptive practice, theft, retail theft and forgery. Four of the convictions were for felonies offenses that respondent committed between 2009 and 2013.

¶ 9 Respondent testified that much of her prior criminal behavior was due to substance abuse. She stated that she was incarcerated in May of 2013 and was released from prison on March 19, 2014. She has not been reincarcerated and is in compliance with all the conditions of her parole. Respondent testified that while incarcerated she participated in and completed a substance abuse treatment program. She also took mediation classes to help with her coping skills. She testified that she did not use any illegal substances during the time she was incarcerated nor has she used any since her release from prison. She further testified that she was assigned a paid job working with mental health patients while she was in prison. She helped patients get dressed and assisted them with other daily activities. There were no problems or complaints concerning her job performance. Respondent stated that she was released from prison six weeks early for good behavior. She also received good time credit for participating in a treatment program.

¶ 10 Respondent further testified that since her release in March, she has committed no new offenses, has participated in outpatient aftercare treatment at White Oaks, is taking domestic violence classes and participates in a TASC program. She stated that she is currently residing at "Women's Strength," a temporary housing facility for women. She also attends Alcoholics Anonymous (AA) meetings.

¶ 11 On cross-examination, respondent acknowledged that the last substance abuse course she completed was in 2009. She admitted that she has relapse issues and that the felonies she committed in 2011 and 2012 and the misdemeanors she committed in 2010, 2011 and 2012 were all related to her struggles with substance abuse.

¶ 12 Earlene Goss, a domestic violence counselor, testified that she counsel's respondent at the Center for Prevention of Abuse, otherwise referred to as "Women's Strength." Goss stated that respondent follows the rules and has never been in trouble at the center. She further testified that

respondent is progressing with her domestic violence education. On cross-examination, she confirmed that respondent had been living at the shelter for less than 30 days.

¶ 13 The trial court found that respondent met the statutory definition of depravity under the Adoption Act and that she had not shown sufficient evidence of rehabilitation. The court subsequently conducted a best interests hearing and determined that it was in W.T., N.T. and C.W.'s best interests that respondent's parental rights be terminated.

¶ 14 ANALYSIS

¶ 15 The Juvenile Court Act of 1987 provides a two-stage process for the involuntary termination of parental rights. 705 ILCS 405/2-29(2) (West 2012). Initially, the State must prove that the parent is unfit. 705 ILCS 405/2-29(2), (4) (West 2012). If the parent is found unfit, the matter proceeds to a best interests hearing. 705 ILCS 405/2-29(2) (West 2012). We will reverse the trial court's finding of unfitness only if it is against the manifest weight of the evidence. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22. A determination of unfitness is 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. *Id.*

¶ 16 On appeal, respondent challenges the trial court's finding of unfitness based on depravity. The Adoption Act (Act) (750 ILCS 50/1(D) (West 2012)) provides several grounds for unfitness, including a parent's depravity. See 750 ILCS 50/1(D)(i) (West 2012). Although the legislature did not include a definition of "depravity," our supreme court has defined depravity as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). A parent's depravity may be shown by a series of acts or a course of conduct that indicates a moral deficiency and shows either an

inability or an unwillingness to conform to accepted morality. *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 200.

¶ 17 Section 1(D)(i) of the Act creates a rebuttable presumption of depravity where the parent has been criminally convicted of at least three felonies and where one of those convictions took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2012). Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his or her conditions, he or she is still not depraved. *Addison R.*, 2013 IL App. (2d) 121318, ¶ 24. If the parent presents evidence rebutting the presumption, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption existed. *J.A.*, 316 Ill. App. 3d at 562. In determining depravity, the court is required to closely scrutinize the character and credibility of the parent. *K.B.D.*, 2012 IL App (1st) 121558, ¶ 201. Each case involving parental unfitness is *sui generis*, and courts do not make factual comparisons to other cases. *Id.*

¶ 18 During the fitness hearing in this case, the State entered into evidence certified copies of five felony convictions. Four of those convictions occurred within five years of the filing of the petition seeking termination of respondent's parental rights. This evidence was sufficient to raise a rebuttable presumption of depravity under section 1(D)(i) of the Act.

¶ 19 Respondent argues that even if her criminal history gave rise to a rebuttable presumption of depravity, she presented evidence sufficient to prove that she was rehabilitated and no longer depraved. While she was incarcerated, respondent participated in and successfully completed a substance abuse treatment program. Immediately following her release, she participated in outpatient treatment at White Oaks. Moreover, respondent attended AA meetings and was living in a safe and stable environment.

¶ 20 Despite this evidence, we cannot conclude that the trial court's finding of unfitness due to depravity was against the manifest weight of the evidence. Although the completion of classes while in prison is commendable, it does not necessarily establish rehabilitation. See *In re A.M.*, 358 Ill. App. 3d 247, 254 (2005). Moreover, while respondent has been drug and alcohol free since her incarceration in May of 2013, she has achieved this sobriety in a highly structured environment. It is not clear whether respondent will be able to continue abstaining from substance abuse for an extended period of time when she is no longer in prison. The evidence demonstrated that she completed a substance abuse program in 2009 and then committed three felonies and three misdemeanors between 2010 and 2012. Respondent testified that all of those offenses were committed while she was abusing substances. Thus, a conclusion that respondent was not depraved or has been rehabilitated is not clearly evident. On the record before us, we conclude that the trial court's finding of unfitness based on depravity was not against the manifest weight of the evidence.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Peoria County is affirmed.

¶ 23 Affirmed.