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2015 IL App (3d) 140774-U

Order filed January 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> R.D. and A.D.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Minors)	Knox County, Illinois.
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-14-0774
)	Circuit Nos. 12-JA-16
v.)	
)	
Robert D.,)	
)	
Respondent-Appellant).)	The Honorable
)	James R. Standard,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that respondent father was an unfit parent due to depravity was not against the manifest weight of the evidence.

¶ 2 Respondent, Robert D., appeals from the judgments of the circuit court finding him to be an unfit parent as to his minor children, R.D. and A.D., and terminating his parental rights. On

appeal, respondent argues that the trial court's findings of unfitness were against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

In May of 2012, the State filed a juvenile petition alleging that R.D., born on August 5, 2006, and A.D., born on October 5, 2007, were neglected due to an injurious environment. Specifically, the petition alleged that R.D. and A.D. were neglected minors under section 2-3(1)(d) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(d) (West 2012)) in that (1) respondent father had engaged in domestic violence in the presence of the children, (2) the mother's current paramour engaged in domestic violence in the presence of the children, (3) the mother and her paramour have a domestically violent relationship, and (4) respondent father and the mother's paramour had criminal histories that included felony convictions for aggravated criminal sexual abuse.

¶ 5

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).

¶ 6

Following a dispositional hearing, R.D. and A.D. were adjudicated neglected. The court entered a dispositional order finding respondent was unfit, making R.D. and A.D. wards of the court, and awarding DCFS custody of the children. In addition, the trial court ordered respondent to obtain and maintain stable housing, not to allow alcohol or illegal substances in the home, not to allow anyone in the home under the influence of alcohol or illicit drugs, and to keep the home clean and free from clutter.

¶ 7

On March 4, 2014, the State filed a petition seeking to terminate respondent's parental rights. The petition alleged that respondent was unfit based on several grounds, including: (1)

failure to make reasonable efforts to correct the conditions that necessitated the removal of the minors; (2) failure to make reasonable progress toward the minors' return home within the nine-month period between July 3, 2012, and April 3, 2013; (3) failure to make reasonable progress toward the minors' return home within the nine-month period between April 4, 2013, and January 4, 2012; (4) failure to maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare; (5) depravity, based on a felony conviction for aggravated criminal sexual abuse of a victim younger than 13; (6) depravity, based on multiple felony convictions, including theft, aggravated criminal sexual abuse, domestic battery and unlawful failure to register as a sex offender; and (7) abandonment of the minors.

¶ 8 At the hearing on the termination petition, Jennifer Johnson testified that she was the caseworker for the entire family, both children and parents, from May 2012 until September 2013. She stated that the last time respondent spent time with R.D. and A.D. was on August 27, 2012. Johnson testified that respondent was taken into custody in February of 2013 and that his projected discharge date is February of 2017. She noted that, while in prison, respondent has completed a "food service college class" and has enrolled in other courses, but he has not completed parenting classes or substance abuse treatment.

¶ 9 The State tendered certified copies of respondent's convictions for the following offenses: (1) felony theft in 1999; (2) aggravated criminal sexual abuse in 1999; (3) unlawful failure to report an address change/sex offender in 2005; (4) domestic battery in 2008; (5) unlawful failure to register/sex offender in 2011; (6) retail theft in 2011; (7) unlawful presence of a sex offender in a school zone in 2012; and (8) unlawful failure to register as a sex offender in 2013. Copies of the sentencing orders for the most recent convictions indicated that respondent was sentenced on February 13, 2013, to four years in prison for unlawful failure to register as a sex offender and

two years in prison for unlawful presence of a sex offender in a school zone, to be served concurrently.

¶ 10 The trial court found that the State had proved by clear and convincing evidence that respondent was unfit as alleged in the termination petition. The court found that respondent failed to make reasonable efforts toward the return home of the children, failed to make reasonable progress toward their return, failed to maintain a reasonable degree of interest or concern in their welfare, was depraved based on his conviction for aggravated criminal sexual abuse, was depraved based on multiple felony convictions and had deserted the children. The court subsequently conducted a best interests hearing and determined that it was in R.D. and A.D.'s best interests that respondent's parental rights be terminated.

¶ 11 ANALYSIS

¶ 12 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).

¶ 13 In determining fitness, the focus is on the parent. *In re M.B.*, 332 Ill. App. 3d 996, 1004 (2002). The State must prove unfitness by clear and convincing evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. 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.*

¶ 14 Here, the trial court found that respondent was unfit because he failed to make reasonable efforts, failed to make reasonable progress, failed to maintain a reasonable degree of interest or concern, was depraved and had deserted the children. Respondent contends that the State failed to prove any of the grounds of unfitness by clear and convincing evidence. The State argues that it proved respondent was depraved based on multiple felony convictions, and that respondent failed to rebut the presumption of depravity.

¶ 15 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, ¶ 201.

¶ 16 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 conditions, he 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.*

¶ 17 In this case, the State presented certified copies of eight felony convictions that respondent committed between 1999 and 2013. Four of those convictions occurred within five years of the filing of the petition seeking termination of respondent's parental rights in May of 2014. This evidence was sufficient to raise a rebuttable presumption of depravity under section 1(D)(i) of the Act.

¶ 18 Respondent argues that even if his criminal history gave rise to a rebuttable presumption of depravity, he presented evidence sufficient to prove that he was rehabilitated and no longer depraved based on the rehabilitative potential of his jail experience. While respondent has been incarcerated, he has enrolled in courses and has completed a college class.

¶ 19 However, respondent has not completed any of the tasks he was instructed to address in the dispositional order. Moreover, he was taken into custody approximately six months after he last visited the children in August of 2012 and is not due to be released until 2017. Thus, respondent's criminal conduct will prevent him from establishing a lifestyle worthy of parenting R.D. and A.D. for several more years. In addition, respondent committed several felonies after the minors were adjudicated neglected and after respondent was found dispositional unable to parent them. His criminal behavior after those findings demonstrates an inability or unwillingness to conform to accepted morality. On the record before us, a conclusion that respondent was not depraved or has been rehabilitated is not clearly evident. The trial court's finding of unfitness based on depravity was not against the manifest weight of the evidence.

¶ 20 Since only one statutory ground is necessary to prove that a parent is unfit, we need not address the remaining grounds for unfitness. See 750 ILCS 50/1(D) (West 2012); *In re H.D.*,

343 Ill. App. 3d 483, 493 (2003). Respondent does not challenge the finding that it was in the best interests of the children to terminate his parental rights. Thus, we affirm the trial court's order terminating respondent's parental rights as to R.D. and A.D.

¶ 21

CONCLUSION

¶ 22

The judgment of the circuit court of Knox County is affirmed.

¶ 23

Affirmed.