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2015 IL App (3d) 140955-U
Consolidated with 140956

Order filed April 23, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

In re A.S. and S.S., Minors,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
(THE PEOPLE OF THE STATE)	Peoria County, Illinois,
OF ILLINOIS,)	
)	
Petitioner-Appellee,)	Appeal Nos. 3-14-0955 & 3-14-0956
)	Circuit No. 10-JA-244; 12-JA-116
v.)	
)	
MARVIN S.,)	Honorable
)	Albert L. Purham
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not violate the respondent's constitutional right to be free from self-incrimination when it found that he was an unfit parent.

¶ 2 The trial court found the respondent, Marvin S., unfit to parent his children, A.S. and S.S.

The court then found that it was in the best interest of the minors to terminate the respondent's parental rights. The respondent appeals, arguing that the court's findings of unfitness violated

his constitutional right to be free from self-incrimination. The respondent does not challenge the ruling terminating his parental right on any basis other than the validity of the unfitness determination.

¶ 3

FACTS

¶ 4

On January 11, 2013, the State filed petitions to terminate the respondent's parental rights as to A.S (born August 13, 2010) and S.S. (born October 2, 2007). Both petitions alleged that the respondent was unfit in that he had failed to make reasonable progress toward the return of the minors during any nine month period after the end of the initial nine month period following the adjudication of neglect, abuse or dependence. 750 ILCS 50/1(D)(m)(iii) (West 2012). The specific period at issue in this matter was from October 23, 2011, to July 23, 2012.

¶ 5

At a hearing held on July 2, 2014, the trial court took judicial notice of the case files for both minors, including, the petitions for wardship, the respondent's admissions regarding the petitions for wardship, the petitions alleging neglect, the permanency review orders, and the adjudication and dispositional orders. The court also admitted into evidence respondent's counseling records pertaining to the nine month period at issue, as well as a psychological evaluation of the respondent completed immediately prior to the start of the nine month period.

¶ 6

The evidence established that in the summer of 2010, the respondent completed a psychological evaluation which indicated that his motivation to engage in treatment was low as he did not believe that he needed to make any significant changes. The evaluator opined that respondent's "primary difficulty appear[ed] to involve codependency, in that he has experienced extreme difficulty ending his relationship with [the minors' mother], an extremely dysfunctional and treatment resistant female." The evaluator observed that it was "extremely important" for

respondent to attend codependency meetings, and that it was “essential” for him to continual individual therapy to address his codependency issues.

¶ 7 On March 19, 2010, the trial court ordered the respondent to complete a psychological evaluation and to follow the recommendations resulting from the evaluation, to initiate a codependency treatment program, and to have no contact with the minors’ mother. On October 5, 2010, the court again ordered the respondent have no contact with the mother and admonished him that any contact would result in criminal contempt proceedings.

¶ 8 In November 2011, the respondent was discharged from codependency counseling due to a reported lack of progress and issues of dishonesty. A discharge report, dated November 17, 2011, reported the respondent “appears unwilling or unable to discontinue relationship with [the mother] and to be less than straightforward about this.” The report concluded with the statement that “unless [the respondent] can disclose more honesty in treatment, it is unlikely to be of any benefit to him.”

¶ 9 The record further established that the respondent was given another opportunity to enroll in codependency counseling on March 29, 2012, but he declined, stating that he believed that he did not need such counseling. On May 16, 2012, he cancelled a counseling session, and on November 14, 2011, May 30, 2012, and June 6, 2012, he failed to show up for scheduled counseling appointments. The respondent testified that all missed appointments were due to his employment.

¶ 10 The respondent argued that by ordering him to have no contact with the mother of the minors and threatening him with criminal contempt if he violated the no-contact order, the court violated his constitutional right against self-incrimination. The court rejected this argument stating that the respondent’s failure to cooperate with the codependency treatment recommended

as a result of the court ordered psychological examination, as well as his belief that he had no issues in need of treatment were responsible for his failure to make reasonable progress. The court noted that the respondent's belief that he could not cooperate with the program without risking a charge of criminal contempt had nothing to do with his failure to complete treatment or cooperate with his counseling program.

¶ 11 On September 17, 2014, following the close of all evidence, the trial court found that respondent was unfit in that he failed to make reasonable progress toward that return of the minors to his care and custody during the relevant 9 month period. On October 29, 2014, the court found that it was in the best interest of each of the minors that the respondent's parental rights be terminated. The respondent filed this appeal challenging the finding of unfitness.

¶ 12 ANALYSIS

¶ 13 On appeal, the respondent argues that the order finding him unfit should be reversed because his constitutional right against self-incrimination was violated. The right against self-incrimination applies in any proceeding, civil or criminal, where there is a reasonable expectation that a person would subject himself to criminal contempt proceedings by making any compelled statements. *People v. Lindsey*, 199 Ill. 2d 460, 467 (2002). A respondent cannot be forced to choose between self-incrimination and loss of parental rights. *In re A.W.*, 231 Ill. 2d 92, 110-11(2008). Whether a respondent's constitutional rights were violated in a juvenile proceeding is reviewed *de novo*. *Id.*, at 106.

¶ 14 Here, the respondent maintains that by ordering him to undergo codependency counseling where he would be forced to reveal his contacts with the mother of the minors, and threatening him with criminal contempt if he had contact with that individual, the court forced him to choose

between self-incrimination and the loss of his parental rights. See *In re L.F.*, 306 Ill. App. 3d 748, 754 (1999).

¶ 15 The State maintains that the respondent was not required to choose between self-incrimination and cooperation with the court ordered treatment plan. The State points out that a trial judge can order a service plan that requires counseling and can weigh the respondent's efforts to cooperate with the program to determine whether the respondent has made reasonable progress toward the minors' return. The State points out that where the court does not specifically require a parent to admit criminal wrongdoing or order a parent to complete a specific program requiring him to admit criminal wrongdoing, the right against self-incrimination is not implicated. *In re A.W.*, 231 Ill. 2d at 108.

¶ 16 Here, the State points out that the trial court did not order the respondent to admit criminal wrongdoing and then base its finding of unfitness upon the respondent's failure to admit such wrongdoing. Rather, the record clearly established that the trial court based the unfitness finding on the respondent's attitude toward the counseling program. The trial court specifically noted that the respondent "does not recognize the co-dependency issue because that is not a concern of his." The court also noted that, when he was given a second chance at attending counseling, the respondent "does not believe he needs counseling." The court focused on the alleged self-incrimination issue in addressing the respondent's lack of progress, observing "[i]ts not the Fifth Amendment claim. It is because he didn't feel the need for treatment."

¶ 17 We find that the record clearly supports the trial court's finding that the respondent's constitutional right against self-incrimination was not violated. The record established that the respondent was not presented with a choice of violating his right against self-incrimination or losing his parental rights. The trial court held that the respondent failed to make reasonable

progress toward the return of the minors because he failed to cooperate with the court ordered service plan, not because he failed to provide self-incriminating evidence against himself. The court's order that the respondent stay away from the minors' mother and that he fully cooperate with co-dependency treatment were appropriate components of a service plan. The fact that the respondent chose not to recognize his need to cooperate with the plan, and his decision to have contact with the minors' mother were facts that the court could reasonably take into account in deciding whether the respondent had made reasonable progress. There is no evidence in the record that supports the respondent's contention that he was forced to choose between admitting criminal wrongdoing and the loss of his parental rights.

¶ 18 Because we find that the respondent's constitutional rights were not violated, we affirm the finding of parental unfitness entered by the circuit court of Peoria County.

¶ 19 Affirmed.