2014 IL App (3d) 150563-U

Order filed December 1, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re J.K. & K.K., Minors,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
(The People of the State of Illinois	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-15-0563, 3-15-0564
	)	
v.	)	Circuit Nos. 11-JA-90, 11-JA-91
	)	
David S.,	)	Honorable
	)	Paula Gomora,
Respondent-Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Trial court's finding that father was unfit based on depravity was supported by the evidence where father had three felony convictions, two of which were less than five years old, and he failed to present any evidence showing that he was rehabilitated.

¶ 2 Respondent is the father of J.K. and K.K. The State filed a motion for termination of respondent's parental rights, alleging that respondent was unfit because he (1) failed to maintain a reasonable degree of interest, concern and responsibility as to the children's welfare, and (2) is

a depraved person. Following a hearing, the trial court found respondent unfit on both grounds. Respondent appeals, arguing that the trial court's finding of unfitness was against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 In August 2011, the State filed a petition alleging that J.K. and K.K. were neglected minors in that their environment was injurious to their welfare because their "mother has an untreated substance abuse problem and was found unresponsive in a vehicle with the minors," who were four and five years old. On May 22, 2012, the trial court entered an order of adjudication, finding that J.K. and K.K. were neglected due to an injurious environment. Respondent was admonished that he must cooperate with Illinois Department of Children and Family Services (DCFS), comply with the terms of the service plan, and correct the conditions that require the children to be in care, or risk termination of his parental rights.

¶ 5 On August 6, 2012, the court entered a dispositional order finding respondent unfit because he was incarcerated and had not completed services. One year later, the court ruled that respondent had not made reasonable efforts or reasonable progress toward becoming fit. On February 20, 2015, the State filed a motion to terminate respondent's parental rights, alleging that he (1) failed to maintain a reasonable degree of interest, concern and responsibility as to the children's welfare, and (2) was depraved in that he had been convicted of three felonies, at least one of which had taken place in the last five years.

¶ 6 A hearing was held on the State's motion in May 2015. Denise Beal of Lutheran Social Services testified that she has been J.K. and K.K.'s caseworker since September 2014. According to Beal, the service plan for respondent required that he remain clean and sober, obtain housing, become employed, attend Narcotics Anonymous/Alcoholics Anonymous

meetings, submit to a substance abuse evaluation, participate in visits with his children and follow DCFS's recommendations. Since Beal became the children's caseworker, respondent has continuously been incarcerated. Beal learned that respondent was incarcerated in November 2014, and contacted him at that time. Respondent sent one letter to his children after the State filed its motion to terminate his parental rights. There was no record of respondent sending correspondence to J.K. and K.K. before that.

¶ 7 Beal testified that she spoke with respondent about completing required services while incarcerated. Respondent told her that he was interested in completing those services but was more interested in completing a work program first. Respondent last saw J.K. and K.K. in December 2013. He completed a substance abuse evaluation and was recommended to undergo substance abuse treatment, but he never did.

¶ 8 Following Beal's testimony, the State offered records of defendant's Illinois certified criminal convictions into evidence. The first was a 2014 conviction for unlawful possession of a controlled substance with intent to deliver, a Class 1 felony, for which respondent was sentenced to nine years in prison. The second was a 2012 conviction for unlawful possession of cannabis, a Class 3 felony, for which respondent was sentenced to two years in prison. The third conviction was from 2008, for unlawful possession of a controlled substance, a Class 2 felony, for which respondent was sentenced to a three-year prison term.

¶ 9 Respondent testified that he is currently incarcerated at Vienna Correctional Center and is serving a nine-year prison sentence. When the State filed the neglect petition in 2011, he was in prison. In April 2012, he was released from prison. He went back to prison in late 2012.

¶ 10 Respondent testified that he completed a drug and alcohol assessment at a facility in Chicago in 2013. As a result of that assessment, he was to complete outpatient drug treatment,

but he never did because he was trying to juggle three jobs and weekly visits with J.K. and K.K. He testified that he visited his children once a week from May 20, 2013, until December 5, 2013, when he was incarcerated again. After he returned to prison in December 2013, DCFS failed to contact him about the status of J.K. and K.K. for quite a while.

¶ 11 Beal informed him at a court hearing that he was required to complete parenting and anger management classes. He said he tried to sign up for an anger management class in prison but was put on a waiting list. He testified that "[t]here [was] no way possible" for him to complete services in prison. During the last four years, respondent has been out of prison for a total of one year. He claimed that his last conviction for unlawful possession with intent to deliver was the result of him being "in the wrong place at the wrong time." He insisted that he did nothing wrong, and the conviction was not his fault.

¶ 12 At the conclusion of the hearing, the trial court found by clear and convincing evidence that respondent was unfit for failing to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare because he had not completed any tasks outlined in the service plan nor seen his children since August 2014. The court also found that clear and convincing evidence established that respondent was unfit based on depravity in light of his three criminal convictions, the last of which was less than a year before the State filed its motion to terminate respondent's parental rights. While respondent's convictions raised only a presumption of depravity, the court stated that "there was no testimony that was offered in support of rehabilitation while [respondent] has been in the Department of Corrections or otherwise or to restore his sense of morality."

¶ 13 ANALYSIS

¶ 14 Respondent argues that the trial court's order finding him unfit was against the manifest weight of the evidence.

¶ 15 A trial court's finding of unfitness is afforded great deference because the trial court has the best opportunity to view and evaluate the parties and their testimony. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A finding of unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *Id*. Where the State alleges more than one ground for unfitness, evidence supporting any one of the alleged statutory grounds is sufficient to uphold a finding of unfitness. *In re Adoption of K.B.D.*, 2012 IL App (1st) 121558, ¶ 197.

¶ 16 I

¶ 17 The statutory ground of depravity requires the trial court to closely scrutinize the character and credibility of the parent, and the reviewing court will give such a determination deferential treatment. *In re J.A.*, 316 Ill. App. 3d 553, 563 (2000). A trial court's finding of unfitness based on depravity is not against the manifest weight of the evidence unless it is clearly evident that respondent is not depraved or has been rehabilitated. See *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 26.

¶ 18 A parent can be unfit based on depravity. 750 ILCS 50/1(D)(i) (West 2012). Depravity is "an inherent deficiency of moral sense and rectitude." *Stalder v. Stone*, 412 Ill. 488, 498 (1952). "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 *** 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) (West 2012). "Because the presumption is

rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not deprived." *J.A.*, 316 Ill. App. 3d at 562.

¶ 19 A rebuttable presumption creates a *prima facie* case as to a particular issue. *Id*. Once a party presents sufficient evidence to meet the presumption, the other party must present evidence opposing it. *Id*. When evidence opposing the presumption comes into the case, the presumption ceases to operate, and the issue is determined as if no presumption ever existed. *Id*. However, if no proof contrary to the presumption is offered, the presumption prevails. *Id*. at 562-63.

¶ 20 Here, the State presented uncontested evidence that respondent had felony criminal convictions in 2008, 2012, and 2014. The State filed its motion to terminate respondent's parental rights in 2015. Since respondent had three felony convictions and at least one was within five years of the State's motion to terminate, the State created a *prima facie* case that respondent was depraved. See 750 ILCS 50/1(D)(i) (West 2012); *J.A.*, 316 Ill. App. 3d at 562.

¶ 21 Respondent was then required to present evidence showing that he was not depraved or had been rehabilitated. See *In re M.B.C.*, 125 Ill. App. 3d 512, 516 (1984). He failed to do so. The only evidence respondent presented was that he completed one drug assessment and visited his children regularly for approximately six months when he was not incarcerated. Respondent has been in prison for the majority of his children's lives and has failed to complete any services while in prison. He also fails to take responsibility for his criminal behavior, claiming that his most recent conviction was not his fault. Based on the evidence presented, the trial court's determination that respondent was depraved and had not been rehabilitated was not against the manifest weight of the evidence.

¶ 22 II

¶ 23 Since the trial court's finding of unfitness based on depravity is not against the manifest weight of the evidence, we need not consider the court's alternative ground of unfitness. See *K.B.D.*, 2012 IL App (1st) 121558, ¶ 209.

¶ 24 The judgment of the circuit court of Will County is affirmed.

¶ 25 Affirmed.