

NOTICE

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2015 IL App (4th) 140770-U

NO. 4-14-0770

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 14, 2015

Carla Bender

4th District Appellate

Court, IL

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| In re: K.S., a Minor, |) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| Petitioner-Appellee, |) | McLean County |
| v. |) | No. 12JA14 |
| TEDD MITCHELL, |) | |
| Respondent-Appellant. |) | Honorable |
| |) | Kevin P. Fitzgerald, |
| |) | Judge Presiding. |

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in terminating respondent's parental rights to K.S.

¶ 2 On July 31, 2014, the trial court terminated the parental rights of respondent, Tedd Mitchell, to K.S. (born July 24, 2009). Respondent appeals, arguing the court erred in finding him unfit and terminating his parental rights to K.S. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 25, 2012, the State filed a petition for adjudication of wardship with regard to K.S. and her younger sister K.H. (born August 12, 2010), who had a different father. The next day, the trial court entered an order giving temporary custody of the children to the guardianship administrator for the Department of Children and Family Services. On February 29, 2012, the court entered an adjudicatory order, finding the children were neglected or abused pursuant to section 2-3 of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3

(West 2012)). On April 24, 2012, the court entered a dispositional order, finding respondent and K.S.'s mother, Tiffany Scheets, unfit to care for K.S. The order noted respondent was in the custody of the McLean County jail. The court set the permanency goal as return home within 12 months.

¶ 5 The trial court entered permanency orders on July 24, 2012; December 18, 2012; March 19, 2013; July 5, 2013; November 8, 2013; and January 23, 2014, finding respondent had made neither reasonable and substantial progress nor reasonable efforts toward returning K.S. home. Respondent was in the Illinois Department of Corrections (DOC) from August 2012 until November 2013.

¶ 6 On January 30, 2014, the State filed a petition to terminate respondent's and Scheets's parental rights to K.S. The petition alleged respondent was unfit and his parental rights should be terminated because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to K.S.'s welfare (750 ILCS 50/1(D)(b) (West 2012)), (2) is depraved (750 ILCS 50/1(D)(i) (West 2012)), and (3) failed to make reasonable progress toward K.S.'s return during any nine-month period, specifically April 30, 2013, to January 30, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 7 At an April 18, 2014, hearing on the State's petition to terminate respondent's and Scheets's parental rights to K.S., Kelly Petrovics, a foster-care worker employed by the Center for Youth and Family Solutions, testified she was assigned this case on July 25, 2013. K.S. came into care when Scheets was arrested after a drug deal in the presence of her younger daughter, K.H. K.S. and K.H. were taken into protective custody. Respondent's whereabouts were unknown at that time. Respondent made his first court appearance in this case on April 4, 2012,

while in state custody. At that hearing, both children were made wards of the court. On March 19, 2013, the court granted custody and guardianship of K.H. to her father, Richard Horton.

¶ 8 Petrovics testified she completed an integrative assessment over the telephone with respondent, who was in custody, on September 13, 2013. She provided him with a general explanation of the goals that would be part of his service plan. He was provided a hard copy of the service plan after it was completed. The goals in the service plan included the following: (1) obtain a legal means of income once released from custody; (2) achieve appropriate parenting skills and knowledge; (3) participate in supervised visitation; and (4) complete a substance-abuse assessment and any resulting treatment recommendations.

¶ 9 Petrovics testified respondent was released from prison in early November 2013. In January 2014, Petrovics rated his compliance with the service plan as unsatisfactory. At that time, he was not participating in any services. He told her he had completed some services while incarcerated, but he never complied with her request to provide her with written confirmation. Petrovics testified she just received documentation regarding the prison classes the day of the hearing. Further, although obtaining a legal means of income was one of the goals set for respondent, he provided Petrovics with no documentation regarding employment prior to the January assessment. Because respondent was not cooperating with services, Petrovics was unable to give him a parenting inventory test or refer him to any kind of parenting classes or substance-abuse treatment. He also missed two scheduled visits with his daughter in December 2013.

¶ 10 Petrovics did not believe respondent had shown reasonable progress toward K.S.'s return as of the date of the fitness hearing. Respondent had been unsuccessfully discharged from a parenting program for two unexcused absences. Further, respondent admitted to using

marijuana. Respondent regularly attended scheduled visits with K.S. starting in January 2014, followed the instructions he was provided, and was "awesome" during those visits. Petrovics denied ever telling respondent Scheets would likely receive a fitness finding and would get the children back.

¶ 11 The State introduced evidence showing respondent was convicted of robbery (720 ILCS 5/18-1(a) (West 2004)), possession of a controlled substance (less than 15 grams of cocaine) (720 ILCS 570/402(c) (West 2004)), unlawful delivery of a controlled substance (less than 1 gram of cocaine) within 1000 feet of a church (720 ILCS 570/407(b)(2) (West 2006)), unlawful possession of controlled substance (less than 15 grams of a substance containing methylenedioxymethamphetamine (720 ILCS 570/402(c) (West 2006)) in March 2007, unlawful delivery of a controlled substance (less than 1 gram of cocaine) (720 ILCS 570/401(d) (West 2006)) in March 2007, and theft subsequent offense (possession of stolen property with a prior retail theft conviction) (720 ILCS 5/16-1(a)(5) (West 2010)) in August 2012.

¶ 12 Respondent testified on his own behalf. According to his testimony, he was working approximately 30 hours per week installing appliances. He described growing up in the rough and violent Englewood area of Chicago. He was shot four times in the leg on his way to school his sophomore year and never went back to school. Respondent testified he was trying to change his life since his release from prison. According to his testimony, he stopped hanging out with the same people, spent more time at home, went to his classes, and started looking for a job. While in prison, he completed some parenting and substance-abuse classes. He did not immediately start working on his service plan after his release from prison. He claimed Petrovics told him she saw no reason why he should start because it appeared Scheets was going to be found fit and get K.S. back within 1½ months.

¶ 13 Respondent acknowledged testing positive for drugs in March 2014, a month prior to the fitness hearing. Respondent was on mandatory supervised release at that time. He testified he was taking some general-education classes at Heartland Community College.

According to respondent, he had changed since his felony convictions. He testified:

"This time going to jail, it took a lot out of me and it made me see life clearer, for real. I appreciate my freedom, I appreciate everything. I don't want to lose my family, my friends. I don't want to lose my life again, for real. I want more out of life. I just want more. I just want to enjoy my two kids, for real. Because I know, like, I got a plan for the next ten years, and if I keep my head on, I'm going to make it. I'm going to accomplish it."

¶ 14 On cross-examination, the State established respondent had been in DOC on two occasions. He was first in DOC from March 2007 until November 2007. He was then in DOC from August 2012 until November 2013. He was incarcerated in the Cook County jail for 18 months prior to his convictions in March 2007. Respondent admitted he still had a problem with marijuana.

¶ 15 After respondent testified, the State sought to introduce evidence of respondent's misdemeanor convictions because respondent was attempting to rebut the presumption of depravity. Over respondent's objection, the trial court admitted evidence of respondent's 12 misdemeanor convictions between 2008 and 2011. The court found the State proved by clear and convincing evidence respondent was unfit because he failed to make reasonable progress, failed to maintain a reasonable degree of responsibility, and was depraved.

¶ 16 On July 9, 2014, Scheets signed a final and irrevocable consent to adoption of K.S. by her foster mother. That same day, the trial court entered an order terminating Scheets's parental rights to K.S.

¶ 17 On July 31, 2014, the trial court held a best-interests hearing. Petrovics testified she had been the caseworker in this case since August 2013 and prepared the best-interests report. She testified it was her opinion termination of respondent's parental rights was in K.S.'s best interests for the reasons stated in her report. (The court had earlier taken judicial notice, without objection, of the best-interests report filed on July 22, 2014, and the addendum to the report filed on July 31, 2014.) Those reasons included the following: (1) K.S. and her foster mother, her maternal great-aunt, whom K.S. refers to as "grandma," had formed a strong attachment; (2) K.S. had been able to maintain her sense of family as the foster mother was a relative; (3) K.S. was very familiar with her foster mother and the community they live in; (4) K.S. had her own bedroom, clothes, and toys at her foster mother's home and friends in the community; (5) K.S.'s foster mother cared deeply for K.S. and provided a loving and stable environment; (6) K.S.'s foster mother had allowed K.S. to maintain relationships with K.S.'s half-sister and other family members; (7) the risk to K.S. of being returned to an unstable environment far outweighed any risk of her staying in substitute care; and (8) K.S.'s foster mother was willing to provide K.S. permanency. The addendum to the best-interests report included a clinical-treatment report, which stated the following:

"This worker has concerns regarding visits with her biological father, [respondent], due to [K.S.'s] confusion of him being her father. At this time [K.S.] believes that her father is [R.H.], and has expressed confusion after [respondent] reportedly

told [K.S.] he is her new dad and [R.H.] is her old dad. [K.S.] has a history of adults coming in and out of her life and it is not beneficial for her to have another adult come into her life if he is not going to be consistent. It was reported by [K.S.'s] foster mother that [K.S.'s] behaviors had worsened once [she] started visits with [respondent]."

¶ 18 On cross-examination, Petrovics testified respondent cooperated with the integrated assessment. Petrovics testified respondent claimed he saw K.S. every other weekend from the age of nine months until K.S. was two years old. K.S.'s mom told Petrovics that respondent had very minimal contact with K.S. during this period. Respondent was incarcerated when K.S. was 2 years old and remained incarcerated until she was 3½ years old. About two months after his release from prison, respondent began interacting with the agency. Petrovics testified K.S. was confused for 1½ months as to who respondent was after he began having visits with her. She testified K.S. and respondent had "great interaction," and K.S. was often sad at the end of their visits.

¶ 19 Petrovics testified respondent's visits with K.S. were cut back to once per month in June. Respondent had dropped out of parenting-education classes and substance-abuse services in April. He then reenrolled for inpatient treatment, and then he dropped out again on July 1.

¶ 20 Petrovics acknowledged respondent showed an interest in K.S. and visits went well. However, she testified respondent is either unwilling or incapable of completing services. Petrovics saw no adverse reaction from K.S. after visits with respondent were reduced. K.S.'s foster parent and school reported K.S. had not mentioned respondent.

¶ 21 Jeanne Kashner, K.S.'s foster mother, testified she is a marketing analyst at State Farm and is Scheets's aunt. K.S. lived with her for approximately 11 months after Scheets was arrested for a drug transaction. K.S. then came back to live with Kashner in July 2013 and had been with her since then. Kashner testified K.S. is very comfortable with Kashner's family. According to Kashner, she intended to adopt K.S. if that option was available and felt it was in K.S.'s best interests to remain with her. Kashner testified she loved K.S. and K.S. loved her.

¶ 22 Respondent testified he lived in Normal, Illinois, with his girlfriend and her mother and worked for College Works Painting. According to respondent, he left the inpatient drug-treatment program because he got a job offer. He testified he had a good, substantial relationship with K.S. He did not see K.S. during the first nine months of her life because K.S.'s mother was incarcerated when K.S. was born. He testified he saw K.S. on a regular basis (two to three times a month) for the next 15 months of her life. Those visits would last a few days.

¶ 23 Respondent testified he moved to Chicago when K.S. turned two and was incarcerated in March 2012, and he had no contact with K.S. while in prison. When he was released from prison 18 months later, he began to involve himself with this case and K.S. He testified he enjoyed his visits with K.S. Respondent believed he was in a position to take care of K.S. because he had a stable home, employment, and was not doing anything "negative." Respondent had no concerns with the care K.S. was receiving from Kashner and believed Kashner was doing a good job with K.S., except K.S. was not getting to know him. Respondent admitted he failed to complete recommended parenting classes or substance-abuse treatment.

¶ 24 In considering the statutory best-interests factors found in section 1-3 of the Juvenile Act (705 ILCS 405/1-3(4.05) (West 2012)), the trial court found the following factors favored termination: (1) K.S.'s physical safety and welfare; (2) her familial ties (her foster

mother supported K.S.'s relationship with her sister, K.H.); (3) her sense of attachment, sense of security, familiarity, and continuity of affection with her foster mother; and (4) her permanency. The court found the development of K.S.'s identity, her community ties, her wishes, and the risks of entering substitute care were neutral factors in this case. After considering these factors, the trial court found it was in K.S.'s best interests to terminate respondent's parental rights.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/0.01 to 24 (West 2012)) (*In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008)). A reviewing court will reverse a trial court's finding of unfitness only when it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004).

¶ 28 An individual's parental rights can be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514. The manifest-weight-of-the-evidence standard of review, as applied to a trial court's fitness findings, calls for deference to be given to the court's decision.

¶ 29 Once a parent has been found unfit in a termination proceeding, "the parent's rights must yield to the best interests of the child." *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). The State has the burden of proving termination is in the best interest of

the child by a preponderance of the evidence. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence." *M.F.*, 326 Ill. App. 3d at 1115-16, 762 N.E.2d at 706. Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanors. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008).

¶ 30 The trial court did not err in finding respondent unfit based on his depravity. To find a parent unfit based on depravity, the State must establish the parent is depraved at the time of the petition to terminate parental rights. *In re A.M.*, 358 Ill. App. 3d 247, 253, 831 N.E.2d 648, 654 (2005). "[T]he 'acts constituting depravity *** must be of sufficient duration and of sufficient repetition to establish a 'deficiency' in moral sense and either an inability or an unwillingness to conform to accepted morality.'" *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000) (quoting *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166, 345 N.E.2d 714, 717 (1976)). The trial court's finding in this case was not against the manifest weight of the evidence.

¶ 31 Section 1(D)(i) of the Adoption Act states, in pertinent part, the following:

"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) (West 2012).

"Because the presumption is rebuttable, a parent is still able to present evidence showing that, despite his convictions, he is not depraved." *J.A.*, 316 Ill. App. 3d at 562, 736 N.E.2d at 686. If a respondent offers evidence he is not depraved, the presumption of depravity ceases to exist. Once the presumption is gone, the State bears the burden of proving depravity by clear and convincing evidence. *A.M.*, 358 Ill. App. 3d at 253-54, 831 N.E.2d at 654.

¶ 32 Respondent does not dispute the State presented sufficient evidence to establish a presumption of depravity pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)). However, respondent argues the trial court erred in considering his misdemeanor convictions in finding him unfit. We disagree.

¶ 33 The trial court did not consider respondent's misdemeanor convictions for purposes of establishing a presumption of depravity pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)). The court only allowed evidence of the misdemeanor convictions after defendant introduced evidence attempting to rebut the presumption of depravity created by his felony convictions.

¶ 34 Respondent cites no authority for the proposition a trial court may not consider misdemeanor convictions in determining whether the State had proved a parent's depravity by clear and convincing evidence. A parent is depraved if he or she possesses an inherent deficiency of moral sense and rectitude (*In re J.B.*, 298 Ill. App. 3d 250, 254, 698 N.E.2d 550, 552 (1998)) or demonstrates an unwillingness to conform to acceptable morality (*A.M.*, 358 Ill. App. 3d at 256, 831 N.E.2d at 656).

¶ 35 Although he claimed his time in prison had changed him, this is contradicted by the fact he admitted smoking marijuana after his release from his second prison term while still on mandatory supervised release. Considering respondent's extensive criminal history (6 felony and 12 misdemeanor convictions in 7 years) and the fact he admitted to engaging in illegal behavior after his release from prison, we cannot say the trial court's decision to find respondent depraved was against the manifest weight of the evidence.

¶ 36 Because we have determined the trial court's unfitness finding was not against the manifest weight of the evidence, we next address respondent's contention the trial court erred in finding it was in K.S.'s best interests to terminate his parental rights. Based on the record in this case, we cannot conclude the trial court's best-interests determination is against the manifest weight of the evidence in this case. K.S. was living in a stable and loving environment with her foster parent who was meeting all of her needs and wanted to adopt her. While respondent loved K.S., his chances of being able to parent K.S. in the near or distant future were minimal based on the record in this case.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated above, we affirm the trial court's decision to terminate respondent's parental rights.

¶ 39 Affirmed.