2015 IL App (4th) 141053-U

NO. 4-14-1053

FILED
April 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.V., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 12JA48
TERRENCE GARRETT,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's finding respondent was unfit was not against the manifest weight of the evidence.

(2) The trial court's finding it was in the best interest of the minor to terminate respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 2 Respondent father, Terrence Garrett, appeals the orders finding him unfit and terminating his parental rights to his child. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 18, 2012, the State filed a petition for adjudication of wardship as to A.V., born December 24, 2007. The petition alleged A.V.'s environment was injurious to her welfare because the child's mother did not provide an adequate care plan, the mother had

untreated mental-health issues, and the mother inflicted physical injury on A.V. by other than accidental means. At a shelter-care hearing on July 19, 2012, evidence was presented A.V. was left in the care of a caregiver who had been drinking and A.V. was removed from the home. Respondent was incarcerated at the time of this incident. An adjudicatory hearing was held on October 26, 2012, and the trial court ordered deoxyribonucleic acid (DNA) testing on respondent and A.V.

¶ 5 Respondent was found to be A.V.'s father via DNA testing. A dispositional report, filed on November 26, 2012, stated respondent anticipated he would be released from the Department of Corrections (DOC) on January 31, 2013. He was very interested in having a relationship with A.V. and was trying to be paroled to an address in Danville to be near her.

¶ 6 A permanency report was filed on March 4, 2013. The report stated respondent was released from DOC on January 31, 2013, and left a message with the Department of Children and Family Services stating he wanted visitation with A.V., but he did not leave any contact information.

¶ 7 A client service plan was filed on July 16, 2013. The plan reported respondent was reincarcerated in DOC on April 11, 2013. He had one visit with A.V. on March 20, 2013. Although requested, respondent did not complete an integrated assessment to determine what services he would need. Respondent remained incarcerated for the remainder of this case.

¶ 8 On September 12, 2013, the State filed a motion seeking a finding of unfitness and termination of parental rights. The petition alleged respondent failed to maintain interest, concern, or responsibility as to A.V., had deserted her, was depraved, and failed to make reasonable efforts or progress in this case.

¶ 9 At an October 30, 2014, hearing, the State presented evidence of respondent's convictions. The record indicates three convictions, in 2010, 2011, and 2013. The record indicates these convictions were for burglary, the sentence for which respondent was serving when this case began, and battery against a police officer, for which he was sent back to DOC in 2013. The particulars of the third felony conviction are not mentioned in the record.

¶ 10 Testimony showed respondent had only had one visit with A.V. before returning to prison. He did not have any services set up for him because he was incarcerated. The caseworker stated respondent sent a couple letters and a card inquiring as to A.V.'s well-being.

¶ 11 Respondent testified during 2008 and 2009, he lived with A.V. and her mother. He stated he took care of A.V. during that time. When he no longer resided with A.V., he sent her clothes but did not offer any other support. During his current incarceration, respondent participated in anger-management and substance-abuse classes. He is on the waiting list for parenting classes. He is currently scheduled to be released from DOC in July 2015.

¶ 12 At the close of the hearing, the trial court found by clear and convincing evidence respondent was interested in his child but had not maintained any responsibility for her. The court also found respondent was depraved and had not shown any rehabilitative potential. He was found to be an unfit parent.

¶ 13 A best-interests report was filed on November 5, 2014. It stated A.V. was bonded with her foster family and the family was willing to provide permanency through adoption. A.V. was doing well with the family.

¶ 14 A best-interests hearing was held on November 26, 2014. Gwendolyn Parker, A.V.'s caseworker, testified A.V. had been with the same foster family since the case began. The

family was willing to provide permanency through adoption. Parker stated A.V. interacted well with the family and had a loving relationship with the foster mother. Respondent presented no evidence. The trial court found the State proved by a preponderance of the evidence it was in the best interests of A.V. to terminate respondent's parental rights. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Respondent argues both the trial court's decisions he was an unfit parent and it was in the best interests of A.V. to terminate his parental rights were against the manifest weight of the evidence.

¶ 17 A. Parental Unfitness

¶ 18 Respondent argues the trial court's finding of unfitness based on depravity was improper since he rebutted the presumption of depravity arising from the State's proof of his felony convictions and the court erred in finding he failed to take responsibility for A.V.'s welfare.

¶ 19 The State must prove a parent's unfitness by clear and convincing evidence. A trial court's finding of unfitness will not be reversed unless it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence only if the opposite conclusion is readily apparent. *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22, 989 N.E.2d 224.

¶ 20 Respondent's convictions for three felonies created a rebuttable presumption of depravity, one of the grounds of unfitness. 750 ILCS 50/1 (D)(i) (West 2012). Once the presumption of depravity has been established, the respondent is required to present clear and convincing evidence to rebut the *prima facie* case of depravity. *In re Donald A.G.*, 221 Ill. 2d

234, 253, 850 N.E.2d 172, 182 (2006).

¶ 21 Respondent failed to present clear and convincing evidence to rebut the presumption of depravity. He notes he tried to get a parole address in Danville so he could be near his daughter. However, rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely." *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167, 799 N.E.2d 843, 852 (2003). In this case, respondent was sent to prison again within months of his release.

¶ 22 The trial court's finding respondent was unfit due to depravity was not against the manifest weight of the evidence.

¶ 23 As for failure to maintain a reasonable degree of responsibility as to a child's welfare, the language of section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)) is disjunctive and failure to maintain a reasonable degree of responsibility may be considered on its own as a basis for unfitness. Despite respondent sending a few letters and cards inquiring as to A.V.'s welfare, his crimes and his resulting stints in prison prevented him from maintaining a reasonable degree of responsibility for the care and custody of A.V., except for three months from September 2010 through the present. Respondent failed to explain how he maintained responsibility for A.V.'s welfare while imprisoned.

¶ 24 B. Best Interests

¶ 25 Respondent argues termination of his parental rights was not in the best interests of A.V. He cites the circumstances preventing his participation in services, the visit he attended and the letters he sent regarding his child.

¶ 26 Following a finding of unfitness, the focus shifts to the child. The issue is

whether, in light of the child's needs, parental rights should be terminated. The parent's desire to maintain the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence it is in the child's best interests the parental rights be terminated. *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "A reviewing court will not disturb a trial court's determination unless it is against the manifest weight of the evidence." *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000).

¶ 27 The best-interests report opined adoption would provide the best opportunity for permanency. The child was six years old and she was bonded in the foster home. She had been in that same foster home since the case opened and the foster parent was willing to provide permanency through adoption. The caseworker testified the foster parent had adopted four other foster children. The children were "very good" in their interactions.

¶ 28 The guardian *ad litem* proffered A.V. was "very bonded" to the foster parent and "connected to the other siblings in the home." A.V. referred to the foster parent as "Mom."

¶ 29 Terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 30 III. CONCLUSION

¶ 31 We affirm the judgment of the trial court.

¶ 32 Affirmed.