2015 IL App (4th) 150090-U

NOS. 4-15-0090, 4-15-0091 cons.

FILED
June 23, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: R.D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
v. (No. 4-15-0090)	)	No. 12JA12
CINDY DIXON,	)	
Respondent-Appellant.	)	
_____	)	
In re: R.D., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0091)	)	Honorable
DAVID DIXON,	)	Robert M. Travers,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondents' parental rights.

¶ 2 In February 2014, the State filed separate petitions to terminate the parental rights of respondents, Cindy and David Dixon, as to their daughter, R.D. (born November 14, 2012). Following a fitness hearing that ended in September 2014, the trial court found respondents unfit. Following a best-interest hearing that ended in December 2014, the court terminated respondents' parental rights.

¶ 3 Respondent mother appeals, arguing that the trial court's best-interest determination was against the manifest weight of the evidence. Respondent father appeals, arguing that (1)

the court erred by finding that he did not rebut the presumption of depravity during his fitness hearing and (2) the court's best-interest determination was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In November 2012, the State filed separate petitions for adjudication of wardship against respondents, alleging that R.D. was a neglected minor as defined by section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). Each petition alleged that R.D.'s environment was injurious to her welfare due to respondent mother's inability to correct the conditions that brought two of her other children, K.S. (born September 22, 2002) and K.R. (born March 13, 2005), under the care of the Illinois Department of Children and Family Services (DCFS). Specifically, the State claimed that respondent mother (1) used controlled substances while pregnant with R.D., (2) failed to complete a substance-abuse program, and (3) continued to be "involved" with controlled substances. (Respondent mother has since surrendered her parental rights to K.S. and K.R.)

¶ 7 At a shelter-care hearing conducted shortly thereafter, the trial court found that respondents had pending criminal charges and failed to address ongoing drug problems. As a result, the court determined that an urgent and immediate necessity required R.D.'s placement in shelter care under DCFS' temporary guardianship.

¶ 8 On February 1, 2013—following an adjudicatory hearing—the trial court entered an order, finding that R.D. was a neglected minor under the theory of anticipatory neglect. In April 2013, the court entered a dispositional order, adjudicating R.D. a ward of the court and maintaining DCFS as her guardian.

¶ 9 B. The State's Petitions To Terminate Respondents' Parental Rights

¶ 10 In February 2014, the State filed separate petitions to terminate respondents' parental rights pursuant to the Adoption Act (750 ILCS 50/1 to 24 (West 2012)). The State alleged that respondent mother was an unfit parent because she failed to (1) make reasonable progress toward the return of R.D. to her care within nine months after an adjudication of neglect (February 1, 2013, to November 1, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2012)) and (2) maintain a reasonable degree of interest, concern, or responsibility as to R.D.'s welfare (750 ILCS 50/1(D)(b) (West 2012)). The State alleged that respondent father was an unfit parent in that he (1) failed to make reasonable progress toward the return of R.D. to his care within nine months after an adjudication of neglect (February 1, 2013, to November 1, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2012)), (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of R.D. from his care (750 ILCS 50/1(D)(m)(i) (West 2012)), and (3) was depraved in that he had been convicted of three or more felony offenses and at least one of those convictions occurred within five years of the State's petition to terminate respondent father's parental rights (750 ILCS 50/1(D)(i) (West 2012)).

¶ 11 1. *The Evidence Presented at the Fitness Hearing*

¶ 12 The evidence presented at respondents' fitness hearing occurred during two separate hearings held in August and September 2014.

¶ 13 a. The State's Evidence

¶ 14 The trial court admitted an April 2013 sentencing order in Livingston County case No. 12-CF-177, which indicated that respondent mother was sentenced to (1) two concurrent three-year prison terms and (2) a year of mandatory supervised release (MSR) for her convictions on two counts of possession of a controlled substance (hydrocodone and tramadol) (720

ILCS 570/402(c) (West 2012)). The court also admitted an exhibit showing that respondent father had four prior felony convictions in Livingston County case Nos. 06-CF-107, 06-CF-220, 07-CF-23, and 10-CF-93.

¶ 15 Ashleigh Fogarty, a child-welfare specialist employed by Baby Fold, a DCFS contractor, testified that during her tenure as respondents' caseworker, she created an initial client-service plan, which covered May to November 2013. The plan required respondents to (1) complete parenting classes; (2) comply with weekly drug screens; (3) complete a substance-abuse assessment; (4) comply with any substance-abuse-treatment recommendations; (5) actively participate in mental-health-therapy sessions; (6) maintain safe, stable housing; and (7) establish a legal means of employment.

¶ 16 Fogarty reported that from February 1, 2013, to November 1, 2013, the only task respondent mother successfully completed was parenting classes, which occurred in April 2013, prior to her incarceration. Fogarty explained that she had minimal contact with respondent father, explaining that she met with him in May 2013, but she did not do so again until September 2013. Respondent father would not return Fogarty's calls or respond to her text messages, claiming that he was too busy working. During the aforementioned nine-month period, respondent father had missed three scheduled visits with R.D. and was late at least 20 minutes on three other occasions. Fogarty acknowledged that as of September 2014, she would have rated respondent father's overall progress in completing his client-service-plan goals as unsatisfactory, because he did not comply with his mental-health-therapy task.

¶ 17 Respondent mother, who was 26 years old, testified that she had given birth to five children but she no longer had custody of them, explaining that one child had died, another was living with her mother-in-law, and the remaining children, including R.D., were in foster

care. Respondent mother admitted that she was (1) pregnant with her sixth child, with an anticipated November 2014 delivery date; and (2) a recovering heroin addict who had been incarcerated from April 2013 to February 2014. Prior to her incarceration, respondent mother visited R.D. weekly.

¶ 18 After her release from prison, respondent mother moved into a two-bedroom home with respondent father, her husband. Respondent mother explained that she began using drugs when she was 16 years old, recounting that she experienced periods of sobriety but had relapsed twice. The 18-month period prior to the fitness hearing, which included the 10 months she was in prison, was her longest period of sobriety. Respondent mother then summarized the actions she had taken to comply with her client-service-plan goals following her release. Respondent mother explained that she could not find employment because she lacked photographic identification and a social security card. Because her pregnancy was considered high risk, respondent mother was concerned about the possible negative side effects that physical exertion would have on her unborn child. Respondent mother believed that the income respondent father earned constructing grain elevators and the public aid she received was sufficient to provide for her family.

¶ 19 Christina Dixon, respondent father's sister-in-law, testified that she was R.D.'s foster parent and had been caring for R.D since her birth. Christina stated that she had a 31-year-old son, who no longer lived with her, and four grandchildren. In November 2012, Christina began supervising visits between respondents and R.D. in her home, explaining that initially, respondents visited weekly, but the frequency had since been changed to twice a month. Christina described respondent mother's demeanor during her visits with R.D. as "a little nervous because she [did] not know [R.D.] that well." During her incarceration, respondent mother wrote to R.D.

once or twice a month.

¶ 20 As to respondent father, Christina observed that he would text, call, or respond to messages on his cellular phone during his visits with R.D. Christina elaborated that although respondent father spent time on his phone during his visits, he did not ignore R.D. Respondent father had cancelled three scheduled visits because of illness, transportation issues, and the death of his father. Christina recounted one visit in which respondent father explained that he and respondent mother were late because "they were up all night with friends." Cristina was not worried about respondent father's interaction with R.D., noting that during visits, which occurred twice a month, respondent father exhibited the "kind of action a parent should have with their child." Christina acknowledged that (1) respondent father brought R.D. clothes during at least four different visits and (2) R.D. refers to respondents as "mom" and "dad."

¶ 21 Respondent father, who was 25 years old, testified that he was "not good with dates," but he remembered receiving a client-service plan that outlined tasks DCFS required him to accomplish to regain custody of R.D. In November 2012—shortly after R.D.'s birth—respondent father completed an inpatient substance-abuse program. DCFS requested the respondent father continue his drug treatment through an outpatient program. Respondent father failed to comply, explaining that his new employer would not give him the time off.

¶ 22 Prior to November 2013, the only service respondent father successfully completed was parenting classes. Respondent father invoked his right against self-incrimination when asked to identify the date he last used drugs. Respondent father confirmed that he (1) stopped his mental-health sessions because he claimed his assigned counselor was ineffective and (2) refused to meet with Fogarty because she denied his request for additional visitation with R.D.

¶ 23 At the September 5, 2014, continuance of respondents' fitness hearing, respondent

father admitted that (1) in September 2012, the trial court sentenced him to probation for 24 months for unlawful possession of a hypodermic needle in Livingston County case No. 12-CM-370 and (2) his probation was scheduled to end on September 14, 2014. In December 2013, respondent father violated his probation by smoking cannabis. As a consequence, respondent father attended an outpatient drug-treatment program, which he completed in the spring of 2014.

¶ 24 Respondent father admitted that (1) he had three prior felony convictions and (2) his most recent conviction occurred for possession of a controlled substance, for which he served 18 months in prison. Respondent father stated that since his treatment, "I've done a complete 180," explaining that he realized that he had to "grow up" if he wanted R.D. back in his life.

¶ 25 b. Respondents' Evidence

¶ 26 Respondent mother testified that although she was currently serving a one-year MSR term, her probation officer recommended early termination because of her compliance with required mandates. Respondent mother confirmed that she had missed one visit with R.D. since her February 2014 release from prison. Initially, R.D. was reluctant to approach respondent but had become more receptive during recent visits. Respondent mother stated that she was complying with her client-service-plan because she wanted to regain custody of R.D. The trial court then took judicial notice of a May 2014 permanency report, which showed that with the exception of establishing a legal means of employment, respondent mother was complying with her remaining client-service-plan goals.

¶ 27 Respondent father testified generally about the random nature of drug testing he had been subjected to during his probationary term.

¶ 28 c. The Trial Court's Ruling

¶ 29 Following argument, the trial court found that the State had proved by clear and

convincing evidence that respondent mother was unfit on the grounds that she failed to make reasonable progress toward the return of R.D. to her care within nine months after an adjudication of neglect (February 1, 2013, to November 1, 2013). The court found, however, that the State did not prove respondent mother failed to maintain a reasonable degree of interest, concern, or responsibility as to R.D.'s welfare.

¶ 30 As to respondent father, the trial court found that the State had proved by clear and convincing evidence that he failed to make reasonable (1) progress toward the return of R.D. to his care within nine months after an adjudication of neglect (February 1, 2013, to November 1, 2013) and (2) efforts to correct the conditions that were the basis for the removal of R.D. from his care. As to the final allegation, the court found that the State had satisfied the presumption of depravity in that the evidence presented showed that respondent father had been convicted of three or more felony offenses and at least one of those convictions occurred within five years of the State's petition to terminate respondent father's parental rights, a presumption respondent father failed to rebut. Specifically, the court stated, as follows:

> "[T]here has been no showing, by reason of [respondent father's] compliance or noncompliance with service plan conditions, that he has rehabilitated himself in relation to these offenses. As a matter of fact, the evidence here really doesn't deal with rehabilitation of this particular individual. *** [T]he court specifically find[s] that there has been no rebuttal of the presumption of depravity on the part of [respondent] father. Depravity has been shown by clear and convincing evidence."

¶ 31 2. *The Evidence Presented at the Best-Interest Hearing*

¶ 32 The evidence presented at the best-interest hearing occurred during two separate hearings held in September and December 2014.

¶ 33 a. The State's Evidence

¶ 34 Christina testified that she had been R.D.'s foster parent for R.D.'s entire life. Along with her husband, Tommy Dixon, they provided for R.D.'s health, welfare, and emotional needs. Christina explained that R.D. also lived with her 16-month-old cousin, whom Tommy and Christina adopted. Christina confirmed that aside from administering daily antibiotics as a precautionary measure, R.D. had no developmental, emotional, or physical concerns. If given the opportunity, Christina stated that she and Tommy would be willing to adopt R.D. Christina acknowledged that she had no concerns regarding respondents' visitations with R.D.

¶ 35 At the December 2014 continuation of the best-interest hearing, Fogarty testified that since November 2012, she had visited R.D.'s foster home at least twice a month and typically received the following greeting:

> "I *** am usually greeted at the door by [R.D.] and then the foster brother that's also placed there. They seem very happy, very comfortable. [R.D.] wants to show me toys [and] her room. She[] always want[s] me to get on the floor and play with her. And Chris[tina] is right there on the floor with her as well playing[.] [R.D.] seems very comfortable there."

Fogarty observed that (1) R.D. calls her foster parents "mommy" and "daddy," (2) R.D.'s foster home was always clean and safe, and (3) R.D. had her own room. Fogarty had no concerns during her numerous visits to the foster parents' home, adding that along with R.D.'s younger cousin, the foster parents had recently begun caring for R.D.'s infant brother. Fogarty opined that R.D.

was "very much attached" and protective of her younger foster brother (her cousin). Fogarty noted that Christina and Tommy were deemed eligible to adopt R.D. After observing a recent visit between respondents and R.D., Fogarty stated that she had no concerns.

¶ 36 b. The Guardian *ad Litem's* Proffer

¶ 37 Following the State's presentation of evidence, the trial court asked the guardian *ad litem*, Sarah Duffy, whether she had any evidence to present on R.D.'s behalf. Without objection, Duffy made the following proffer.

¶ 38 In November 2014, Duffy visited the foster home where R.D. lived. Duffy found the home to be clean and furnished. R.D. showed off her bedroom, which contained a bed, a chest of drawers, a television, appropriate toys, and ample bedding and clothing. Duffy characterized the interaction between Christina and R.D. as "a mother-daughter type of relationship." Duffy found R.D. to be a happy, communicative, and friendly child, who moved about her home freely. At one point, R.D. became upset because she wanted to wash dishes, but Christina appropriately redirected R.D.

¶ 39 c. Respondent Mother's Evidence

¶ 40 Respondent mother testified that upon her February 2014 release from prison, she (1) contacted Fogarty to identify the services she needed to complete and (2) began attending Narcotics Anonymous meetings until the following week, when she began a substance-abuse-treatment program. After approximately three months of treatment, respondent mother successfully completed the program. Respondent mother stated that she had also completed mental-health therapy, parenting classes, and maintained her sobriety since her release from prison.

¶ 41 Respondent mother characterized the residence she shared with respondent father as a stable, two-bedroom house, adding that Fogarty never informed her that her home was inad-

equate. Respondent mother acknowledged that her mother and brother also lived in the home but stated it was not a permanent living arrangement. During her two-hour, weekly visits with R.D., respondent mother never experienced problems regarding R.D.'s care or discipline, commenting that R.D. is always happy to see her and calls her "mommy." Respondent mother opined that (1) she was ready, willing, and able to care for R.D.; and (2) no reason existed why R.D. could not be returned to her custody.

¶ 42 d. Respondent Father's Evidence

¶ 43 Respondent father testified that during his visits with R.D., they played and watched recordings on his cell phone, which he described as "my perception of trying to get closer to [R.D.] as a father." Respondent father acknowledged that he had yet to complete his mental-health-therapy task, but he was attending sessions with a new counselor. Respondent father stated that it was in R.D.'s best interest to maintain his parental rights, explaining as follows:

> "I've met kids that have grown up in foster care *** and, honestly, they didn't turn out the best. *** [I]t's just [that R.D.] would be with her real family[;] her real mom and her real dad, not her aunt and uncle. I mean, they're family too[.] They might love her and stuff, but they can't show her the love that her mom and dad are actually going to show her."

Respondent father stated that he had fathered three children, but he did not have custody of any of those children. Respondent father admitted that R.D.'s foster parents (1) appropriately cared for R.D., (2) showed R.D. love and affection, (3) provided a comfortable home for R.D., and (4) provided R.D. the only home she has ever known.

¶ 44 Respondent father admitted that he began using drugs when he was 17 years old.

After being incarcerated, respondent father maintained his sobriety until he was 21 years old (2010), when he began using heroin with respondent mother.

¶ 45 e. The Trial Court's Ruling

¶ 46 After enumerating the appropriate statutory factors a trial court should consider when determining the best interest of a child as provided by section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2012)), the court made the following observations:

> "[T]he best indicator of what's going to happen in the future is what's happened in the past. That's why we have words like, character, that's why we have words like, history. Those things are important as indicators of what might happen in the future. And the statute recognizes that."

¶ 47 The trial court continued, as follows:

> "But when we look at the subparagraphs here, where the child actually feels love, attachment, and a sense of being valued, as opposed to where adults believe the child should feel such love attachment, and sense of being valued. Well, this has all been supplied by someone other than the parents. If this child feels loved, it's the result of the foster parents, not someone who occasionally appears in the child's life when they're not in the Department of Corrections or undergoing problems that they *** can't control."

Thereafter, the court found that the State had shown by a preponderance of the evidence that it was in R.D.'s best interest to terminate respondents' parental rights.

¶ 48 This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 A. The Trial Court's Fitness Finding

¶ 51 Respondent father argues that the trial court erred by finding that he did not rebut the presumption of depravity during his fitness hearing. (As previously noted, respondent mother challenges only the court's best-interest finding.) We decline to address respondent father's claim.

¶ 52 At the conclusion of respondents' September 2014 fitness hearing, the trial court found respondent father unfit. Specifically, the court determined that the State had proved by clear and convincing evidence that respondent father (1) failed to make reasonable progress toward the return of R.D. to his care within nine months after an adjudication of neglect (February 1, 2013, to November 1, 2013); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of R.D. from his care; and (3) was depraved in that he had been convicted of three or more felony offenses and at least one of those convictions occurred within five years of the State's petition to terminate respondent father's parental rights.

¶ 53 In this case, respondent father challenges only the trial court's depravity finding. Specifically, respondent father urges this court to reverse that determination because he contends the trial court incorrectly found that he did not rebut the presumption of depravity. See 750 ILCS 50/1(D)(i) (West 2012) ("There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least [three] felonies under the laws of this State ***."). However, even if we were to agree with respondent father's depravity claim and reversed the court's judgment as to that statutory ground, that conclusion would have no practical effect because respondent father does not also challenge the court's remaining statutory grounds that substantiated its fitness findings. In other words, to the extent that respondent father is challeng-

ing the trial court's fitness finding, this court can affirm the trial court's judgment on any statutory ground. See *In re Brandon A.*, 395 Ill. App. 3d 224, 241, 916 N.E.2d 890, 904 (2009) (evidence sufficient to satisfy any one statutory ground regarding parental fitness obviates the need to review the propriety of other statutory grounds).

¶ 54 Here, because respondent father does not challenge the trial court's additional findings that he was an unfit parent, he has forfeited any challenge to these specific findings. See *In re N.T.*, 2015 IL App (1st) 142391, ¶ 41 ("Generally, an issue that was not objected to during trial and raised in a posttrial motion is forfeited on appeal."). Given respondent's forfeiture and our review of the record, we decline to address respondent father's depravity claim because that issue is moot. See *Oak Grove Jubilee Center, Inc. v. City of Genoa*, 347 Ill. App. 3d 973, 977, 808 N.E.2d 576, 581 (2004) ("When the resolution of an issue will have no practical effect on the existing controversy, it is moot.").

¶ 55 B. The Trial Court's Best-Interest Finding

¶ 56 1. *Standard of Review*

¶ 57 Once a parent has been found unfit, "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 that it is in the child's best interest to terminate parental rights by a preponderance of the evidence." *N.T.*, 2015 IL App (1st) 142391, ¶ 28. Section 1-3(4.05) of the Juvenile Court Act lists the following factors that a trial court must consider when determining whether termination of parental rights is in the minor's best interest: (1) the physical safety and welfare of the child, (2) the development of the child's identity, (3) the child's background and ties, (4) the child's sense of attachments, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, (8) the uniqueness of every family and child, (9) the

risks attendant to entering and being in substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). "Additionally, the court may consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being." *In re Tajannah O.*, 2014 IL App (1st) 133119, ¶ 19, 8 N.E.3d 1258. "The [juvenile] court's best[-]interest determination need not contain an explicit reference to each of these factors, and a reviewing court need not rely on any basis used by the [juvenile] court below in affirming its decision." *Id*. Upon review, a trial court's determination that the State has met its burden will not be reversed unless it was against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). "[A] finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent." *N.T.*, 2015 IL App (1st) 142391, ¶ 28.

¶ 58 2. *Respondents' Best-Interest Claims*

¶ 59 Respondents argue that the trial court's best-interest finding, which terminated their parental rights, was against the manifest weight of the evidence. We disagree.

¶ 60 We note that before finding that termination of respondents' parental rights was in R.D.'s best interest, the trial court considered the aforementioned statutory factors enumerated in section 1-3(4.05) of the Juvenile Court Act and noted that for the entirety of her young life, R.D.'s physical safety, welfare, development, family ties, and need for permanency were being provided by someone other than respondents—namely, R.D.'s foster parents. The evidence presented also showed that R.D. (1) felt safe and comfortable in the only home she has ever known; (2) had "a mother-daughter type of relationship" with her foster mother; and (3) had bonded with her cousin, whom the foster parents had adopted. R.D.'s foster parents pledged their willingness

to continue providing for R.D.'s stability on a permanent basis by adopting her.

¶ 61 The crux of respondents' challenge to the trial court's best-interest finding is that because they demonstrated a sincere commitment to successfully complete the prerequisites DCFS identified as mandatory to regaining custody of R.D., it was clearly apparent that termination of their parental rights was not in R.D.'s best interest. Although we commend respondents for the progress they have made to improve their quality of life, we decline to reweigh the evidence and find in their favor.

¶ 62 In this case, the trial court was faced with deciding whether to remove R.D. from a safe and nurturing environment, where she had developed a bond with her foster family, and place her with respondents, who, at the time of the December 2014 best-interest hearing, had not complied with all provisions of their respective client-service plans. In addition, aside from visiting R.D. twice a month for two hours, during which time R.D. referred to respondents as "mommy" and "daddy," no evidence existed that a strong bond had yet developed between R.D. and respondents. Accordingly, we conclude that the evidence presented at the best-interest hearing was more than sufficient to support the court's determination that termination of respondents' parental rights was in R.D.'s best interest.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's fitness and best-interest determinations.

¶ 65 Affirmed.