2015 IL App (5th) 150334-U

NO. 5-15-0334

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re K.F., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 14-JA-88
	)	
Matthew F.,	)	Honorable
	)	Janet Heflin,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determinations that the respondent was unfit and that termination of his parental rights was in the minor's best interests were not contrary to the manifest weight of the evidence.

¶ 2 The respondent, Matthew F., appeals the judgment of the circuit court of Madison County terminating his parental rights to K.F. He argues that the circuit court's determinations that he was unfit and that termination of his parental rights was in K.F.'s best interests are contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Matthew F. and Jennifer B. are the biological parents of K.F., who was born on August 3, 2011.[1] On July 16, 2014, the State filed a petition to terminate Matthew F.'s parental rights, alleging: (1) that K.F. was abused as defined by section 2-3(2)(i) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(2)(i) (West 2012)) in that Matthew F. had inflicted great bodily harm upon K.F.; (2) that Matthew F. was an unfit person as defined by section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) in that he was depraved; (3) that he had been criminally convicted of aggravated battery to a child (720 ILCS 5/12-3.05(b)(1) (West 2012)) and that the victim was K.F.; and (4) that it was in K.F.'s best interests that Matthew F.'s parental rights be terminated.

¶ 5 Following a June 4, 2015, adjudicatory hearing, the circuit court entered an adjudicatory order finding that K.F. was physically abused in that she had been the victim of an aggravated battery perpetrated by Matthew F.

¶ 6 On July 30, 2015, the court held a dispositional hearing and a hearing on the State's petition to terminate Matthew F.'s parental rights. At the State's request and without objection from Matthew F., the court took judicial notice of Matthew F.'s guilty plea to and conviction for the offense of aggravated battery to a child. The State presented no further evidence.

¶ 7 Matthew F. testified that he was incarcerated in the Hill Correctional Center serving a nine-year term of imprisonment and that his parole release date was June 4,

[1]Jennifer B. is not a party to this appeal.

2019. While in prison he was taking classes to earn his general education development (GED) certificate. He was also attempting to enroll in anger management and parenting classes. Matthew F. had no visitation with K.F. since being incarcerated.

¶ 8 The circuit court found that the State had proved by clear and convincing evidence that Matthew F. was depraved and that he had failed to rebut the presumption of depravity. After a brief recess, the court proceeded with a best-interests hearing.

¶ 9 Jennifer B. testified that she was living with her fiancé, with whom she had a two-month-old son. On October 10, 2011, she took K.F. to the hospital where she was diagnosed with traumatic brain injury as a result of blunt force trauma to the head and shaken baby syndrome. The following day, Matthew F. was charged with aggravated battery to a child. Jennifer B. testified that K.F. cannot talk, walk, or sit alone. She attends a special needs school and takes "every therapy except for nutritional therapy." K.F.'s doctors have advised Jennifer B. that K.F. will have special needs her entire life. Her last visit with her doctors was in February or March, but there were no signs of improvement. Jennifer B. testified that her fiancé helps with therapy and bath time and reads books to K.F. He wants to adopt her. Matthew F. last inquired about K.F. in 2013, and the last time Jennifer B. spoke with Matthew F. he stated that he wanted nothing to do with K.F. He never sent gifts or monetary support.

¶ 10 Matthew F. testified that he had attempted to contact Jennifer B. so he could send K.F. birthday and Christmas cards, but that she had rebuffed his attempts. He did not recall telling Jennifer B. that he wanted nothing to do with K.F. and stated that he would like to have contact with her once he was released from prison.

¶ 11 On August 4, 2015, the circuit court entered a written order finding that Matthew F. was unfit. Specifically, the court found that Matthew F. was depraved in that he had been convicted of aggravated battery to a child, a Class X felony, and that the victim was K.F. The court further found that termination of Matthew F.'s parental rights was in K.F.'s best interests. Matthew F. appeals.

¶ 12 ANALYSIS

¶ 13 The Act establishes a two-step process for terminating parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first prove by clear and convincing evidence that the parent is an unfit person as defined by section 1(D) of the Adoption Act. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Section 1(D) of the Act sets forth numerous grounds under which a parent can be found unfit, any one of which standing alone will support a finding of unfitness. *Id.* A circuit court's determination that there is clear and convincing evidence of parental unfitness will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Id.* at 891.

¶ 14 If the circuit court finds the parent to be unfit, the court must then determine whether it is in the child's best interests that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interests of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interests. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best

interests, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, (2) the development of the child's identity, (3) the child's background and ties, including familial, cultural, and religious, (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A trial court's determination that termination of parental rights is in the child's best interests will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004).

¶ 15 In the present case, the circuit court found Matthew F. to be unfit based on depravity. "Depravity," for purposes of determining whether a parent is unfit, is an inherent deficiency of moral sense and rectitude. *In re S.W.*, 315 Ill. App. 3d 1153, 1158 (2000); *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005); *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003). Section 1(D)(i)(7) of the Adoption Act creates a rebuttable presumption of depravity where the parent has been convicted of aggravated battery of any child. 750 ILCS 50/1(D)(i)(7) (West 2012). The presumption can only be overcome by clear and convincing evidence. 750 ILCS 50/1(D)(i) (West 2012).

¶ 16 In the present case, the circuit court took judicial notice of Matthew F.'s conviction for aggravated battery of a child. That conviction raised the statutory presumption that

Matthew F. was depraved. The only evidence that Matthew F. presented to rebut the presumption was his testimony that he was taking GED classes while in prison and that he was attempting to enroll in parenting and anger management classes. While the completion of classes while in prison is commendable, it does not show rehabilitation. *In re A.M.*, 358 Ill. App. 3d at 254; *In re Shanna W.*, 343 Ill. App. 3d at 1167). Matthew F. failed to present clear and convincing evidence rebutting the presumption of depravity, and the circuit court's determination that he was unfit is not contrary to the manifest weight of the evidence.

¶ 17 With respect to K.F.'s best interests, the evidence demonstrates that Matthew F. has played no role in K.F.'s life since his imprisonment for inflicting life-changing injuries on her, nor will he be able to play a meaningful role until he is released from prison. By contrast, Jennifer B. and her fiancé provide K.F. with a loving and stable home where she receives the care and support she needs. The circuit court's determination that termination of Matthew F.'s parental rights is not contrary to the manifest weight of the evidence.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 20 Affirmed.