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2016 IL App (3d) 150885-U

Order filed May 4, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

<i>In re</i> J.P., J.P., and M.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of Illinois,)	
	)	Appeal Nos. 3-15-0885, 3-15-0886, and
Petitioner-Appellee,	)	3-15-0887
	)	Circuit Nos. 12-JA-182, 12-JA-183, and
v.	)	12-JA-184
)	
Eddie P.)	
	)	The Honorable
Respondent-Appellant).	)	Timothy J. Cusack,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice O'Brien and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* In a termination of parental rights case, the appellate court affirmed the circuit court's rulings that the respondent was an unfit parent due to depravity and that it was in the minors' best interest to terminate the respondent's parental rights.
- ¶ 2 The circuit court entered orders finding the respondent, Eddie P., to be an unfit parent and terminating his parental rights to the minors, J.P., J.P., and M.P. On appeal, the respondent

argues that the circuit court erred when it found that: (1) he was an unfit parent based on depravity; and (2) it was in the minors' best interest to terminate his parental rights. We affirm.

¶ 3

FACTS

¶ 4

On August 3, 2012, the State filed juvenile petitions alleging that the minors, J.P. (born June 18, 2007), J.P. (born July 6, 2009), and M.P. (born May 27, 2011) were neglected by reason of an injurious environment. The petition alleged that: (1) between July 16¹ and 27, 2012, the respondent struck the younger J.P. in the face, knocked him down, grabbed him by the ankle and slammed him into a wall, and he had a black eye and bruising to his face; (2) the respondent and his paramour physically disciplined all of the minors; (3) between July 29 and 30, 2012, the respondent was watching his paramour's children and he beat a two-year-old by striking and kicking the child, which caused a broken clavicle, lacerated liver, damaged spleen, damaged pancreas, and bodily bruising; (4) the respondent struck his paramour in the face on February 24, 2008; and (5) the respondent had a criminal history that included juvenile convictions in 2000 for burglary and aggravated battery, and convictions as an adult in 2002 for possession of cannabis, and in 2002, 2006, and 2008 for resisting police. The petition as to the younger J.P. also alleged that he was an abused minor, based on the allegations of physical abuse inflicted on him by the respondent.

¶ 5

On June 24, 2013, the respondent pled guilty to two counts of aggravated battery of a child (720 ILCS 5/12-3.05(b)(1) (West 2012)) pursuant to a partially negotiated plea agreement, in which the State and the respondent agreed to a sentencing cap of 15 years. One charge involved the respondent striking the younger J.P. in the face and was charged as a Class 3 felony.

¹ The juvenile petitions were later amended to reflect that the incident with the younger J.P. took place between July 17 and 27, 2012.

The other charge involved a minor not involved in the instant case and was charged as a Class X felony. The defendant remained in the Peoria County jail as he awaited sentencing.

¶ 6 On August 19, 2013, the circuit court held an adjudicatory hearing on the juvenile petitions. At the close of the hearing, the court found that the State had proven the allegations of the petitions by a preponderance of the evidence. Thus, the court entered orders finding the younger J.P. to be abused and neglected, and the other two minors to be neglected.

¶ 7 On October 30, 2013, the circuit court held a dispositional hearing. A report prepared by Lutheran Social Services (LSS) for the hearing stated that the minors had been taken from the maternal grandparents' home on August 16, 2013, at the grandparents' request. M.P. had been placed in one foster home, and the two other minors had been placed together in another foster home.

¶ 8 At the close of the hearing, the court found the respondent to be an unfit parent based on the allegations of the juvenile petitions, the physical abuse of the younger J.P., the physical abuse of another minor, and the serious injuries that were inflicted on the younger J.P. by the respondent. The court also made the minors wards of the court and granted guardianship with placement rights to the Department of Children and Family Services. In addition, while the respondent was ordered to complete numerous tasks, the court ordered that the respondent was to have no contact with the minors.

¶ 9 The respondent filed an appeal from the circuit court's adjudication and dispositional orders, and this court affirmed the circuit court's judgment. *In re J.P., J.P., and M.P.*, 2014 IL App (3d) 130890-U (unpublished order under Supreme Court Rule 23).

¶ 10 On January 9, 2014, the circuit court sentenced the defendant to concurrent prison terms of 15 years on his two aggravated battery of a child convictions.

¶ 11 At a permanency review hearing on March 26, 2014, the circuit court ordered that the respondent could write letters to the minors, but the minors' therapist would determine whether those letters were appropriate for the minors to have. A permanency review hearing report prepared on September 9, 2014, stated that the respondent had written numerous letters and cards to the minors, but that none of them had been given to the minors. Appended to the report was a counseling report in which the minors' counselor opined that the minors were not ready to have the communications from the respondent. She was concerned with the possible negative psychological impact that the communications could have on the minors. The counselor recommended that the older J.P. be allowed to process more of her feelings of anxiety and confusion before communicating with the respondent. The counselor also stated that the younger J.P. had severe emotional disturbances when he learned that the respondent had been sentenced to prison. The younger J.P. blamed himself and went from having one violent outburst per month to three to five per week, and the counselor also felt he was confused about his feelings because he had expressed conflicting desires about seeing the respondent, that he was mad at the respondent, and that he wanted to hurt the respondent through physical attacks.

¶ 12 The permanency review hearing report also noted that the facility in which the respondent was incarcerated did not offer parenting classes or counseling services.

¶ 13 The permanency review hearing that was scheduled for September 24, 2014, was continued to October 15, 2014. The permanency review hearing report was updated for the new hearing date, and it stated that permanency commitments had been signed by the foster parents of M.P. and the foster parents of the other two minors. Both sets of foster parents stated that they were able and willing to adopt their respective foster children. At the close of the permanency

review hearing, the court, *inter alia*, ordered the respondent to complete a psychological evaluation and appointed a guardian *ad litem*.

¶ 14 On February 11, 2015, the State filed a petition to terminate the respondent's parental rights, alleging that he was a depraved person pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012)) based on his convictions for aggravated battery of a child.

¶ 15 The circuit court held a hearing on the termination petition on July 8 and October 14, 2015. Certified copies of the defendant's convictions for aggravated battery of a child were entered into evidence. The defendant testified that while he was incarcerated, he had completed Alcoholics Anonymous and Narcotics Anonymous classes on June 30, 2014; a lifestyle redirection program on July 18, 2014; an anger management class on July 21, 2014; and a two-day seminar called "Transforming Incarcerated Dads" on October 12, 2004. He was employed in the kitchen at the prison, and he was trying to get transferred to get a better job. He had no disciplinary issues while incarcerated. He had written many letters and cards for the minors. He also testified that Lawrenceville Correctional Center did not offer psychological evaluations, but he was trying to get one scheduled.

¶ 16 On October 21, 2015, the circuit court announced its ruling on the termination petition. The court found that the State had proven the allegations against the respondent by clear and convincing evidence, and accordingly, the court entered an order finding the respondent to be an unfit parent.

¶ 17 LSS compiled a best interest hearing report on November 4, 2015. With regard to the older J.P. and the younger J.P., the report stated that they had been in the same foster home since August 16, 2013. The foster parents were meeting the minors' basic needs and medical needs, the foster home was adequate, and the foster parents had signed a permanency commitment on

September 17, 2014, regarding the minors. The minors were adjusted to their home and community and were involved in several community activities.

¶ 18 The minors were attending the same grade school, and the foster parents were actively involved in their schooling. The older J.P. was doing well in school. She had an Individualized Education Program (IEP) for speech services, and she was making progress. The younger J.P. had done well in kindergarten and he was on track in the first grade, but he was having behavioral issues. The foster parents and LSS were working to help the younger J.P. with his issues. He was being evaluated for an IEP and he had a one-on-one aide to help him with his emotional outbursts.

¶ 19 The older J.P. was attending counseling on a weekly basis and was making progress on her issues, which included strong feelings of guilt that she could not protect the younger J.P. from the respondent's abuse. The younger J.P. was also attending weekly counseling and was working on coping skills and anger management. When the younger J.P. was initially placed in the foster home, he had three to five violent rages per day that would last up to two hours. Those outbursts decreased to one to two per month for about a year, but over the past 2½ months, they increased again. He had recently spent 1½ weeks in a psychiatric hospital, where he was diagnosed with attention deficit/hyperactivity disorder and post-traumatic stress disorder. He was prescribed Ritalin, which helped him focus on completing tasks before getting frustrated.

¶ 20 Both the older J.P. and the younger J.P. had developed close relationships with both of their foster parents. The older J.P. called her foster mother "mom" and confided in, and expressed her feelings with, her foster mother. They also shared similar interests. The older J.P. called her foster father "dad" and she often sought comfort from him. The foster father was conscientious about serving as a positive male role model. The younger J.P. trusted his foster

parents and sought approval and guidance from them. He shared a bedroom with his 16-year-old foster brother, with whom he had a close relationship.

¶ 21 The older J.P. and the younger J.P. had not seen the respondent in more than three years. The older J.P. rarely spoke of the respondent and generally called him by his first name, rather than “dad” or “daddy.” The younger J.P. had expressed mixed emotions regarding the respondent, but he feared the respondent and often needed reassurance that the respondent was not getting out of prison anytime soon. In addition, the younger J.P. spoke often about the abuse inflicted on him by the respondent.

¶ 22 The best interest hearing report stated that M.P. had been in his foster home since March 13, 2014. M.P.’s foster parents were meeting his basic needs and medical needs, the foster home was adequate, and M.P. was adjusted to his foster home and community. His foster parents signed a permanency commitment to adopt him on September 17, 2014.

¶ 23 M.P. was in his second year at the same school, where he had an IEP for his speech delay issues. He was doing well in school and the behavioral issues he had in past academic settings had dramatically improved. The behavioral issues he displayed in the foster home had also improved over time.

¶ 24 M.P. had not seen the respondent in over three years, and due to his young age, he had no recollection of the respondent. When asked who his father was, M.P. identified his foster father. M.P. shared a strong bond with both of his foster parents.

¶ 25 The best interest hearing report stated that the foster families were committed to continuing contact among all three of the minors. The report also noted that the minors would be 18, 16, and 14 years old at the time the respondent was scheduled to be released from prison.

¶ 26 On November 20, 2015, the guardian *ad litem* filed a report that briefly addressed the time the younger J.P. spent in the psychiatric hospital. The report also stated that the younger J.P. was doing fine in school behaviorally until mid-November 2015; he was suspended from school for three days due to foul language, fighting, and aggression toward his teachers. His behavior carried over into the foster home, where he threatened to kill the entire foster family. The foster mother raised concerns about the younger J.P.'s psychiatrist, and LSS was working to find a new psychiatrist for him. The report said that the foster parents "stated that these violent behaviors must be addressed and treated before they proceed to adoption."

¶ 27 On November 25, 2015, the circuit court held a best interest hearing. The State presented no evidence beyond the best interest hearing report and the guardian *ad litem*'s report. The respondent's attorney called Lila Schmick, the foster mother of the younger J.P. and the older J.P., to the stand. Schmick confirmed that on the Monday prior to the best interest hearing, the younger J.P. had threatened to kill the whole foster family. She testified that she was not rethinking her agreement to provide permanency for those two children, however. She also testified that steps have been taken to address the younger J.P.'s violent outbursts and that he has shown improvement in that area.

¶ 28 The defendant also testified. He expressed a concern that the minors were not doing well in school and that the younger J.P. had been admitted to a psychiatric hospital for 1½ weeks. He claimed that "I would never have placed my child or any child in a psych unit at that age. I don't believe that's like the best way to go, you know, to handle the situation." He also did not like

that M.P. was placed in a different foster home than the other two minors.² He believed that the minors were not adapting to their situations at all.

¶ 29 At the close of the hearing, the circuit court found that the statutory factors weighed in favor of termination. Accordingly, the court found that it was in the minors' best interest to terminate the respondent's parental rights.

¶ 30 The respondent appealed.

¶ 31 ANALYSIS

¶ 32 The respondent's first argument on appeal is that the circuit court erred when it found him to be an unfit parent based on depravity. He contends that he rebutted the presumption that he was depraved.

¶ 33 Parental rights cannot be involuntarily terminated absent proof by clear and convincing evidence that the parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005); 705 ILCS 405/2-29(2) (West 2012). One ground upon which a parent can be found unfit is depravity. 750 ILCS 50/1(D)(i) (West 2012). Under that section, in relevant part, a rebuttable presumption arises that a parent is unfit due to depravity when the parent has been convicted of aggravated battery of a child. *Id.* Depravity has been defined as "an inherent deficiency of moral sense and rectitude." *Stalder v. Stone*, 412 Ill. 488, 498 (1952). To establish unfitness due to depravity, "[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." *Young v. Prather*, 120 Ill. App. 3d 395, 397 (1970). Unfitness due to depravity must

² The best interest hearing report indicated that an adoptive home able to take all three minors could not be found.

be proven by clear and convincing evidence. *Gwynne P.*, 215 Ill. 2d at 354. We will not disturb a circuit court's unfitness determination unless it was against the manifest weight of the evidence. *Id.*

¶ 34 In this case, the State presented certified copies of the respondent's two convictions for aggravated battery of a child. Pursuant to section 1(D)(i) of the Adoption Act, the State proved that the respondent was unfit due to depravity. 750 ILCS 50/1(D)(i) (West 2012).

¶ 35 The respondent claims that he rebutted the presumption through proof that he completed some services and that he did not have any disciplinary issues while incarcerated. We disagree that this constitutes clear and convincing evidence that the respondent was not unfit due to depravity.

¶ 36 The presumption of unfitness due to depravity can be overcome if a parent can present contrary proof by clear and convincing evidence. *Id.* If a strong presumption arises, the contrary proof must be just as strong. *In re J.A.*, 316 Ill. App. 3d 553, 563 (2000). With regard to the respondent's claims in this case, we find the First District's decision in *In re Shanna W.*, 343 Ill. App. 3d 1155 (2003), to be instructive. There, the First District commented that "[r]eceiving a few certificates for completing basic services in prison, while commendable, is not a difficult task and does not show rehabilitation." *Id.* at 1167. The court also stated:

"Respondent has shown no evidence that she is rehabilitated; that can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely. Here, respondent could not show this because the felonies which gave rise to the initial depravity presumption caused her to be incarcerated for a lengthy time period. This was respondent's fault.

Respondent's incarceration prevented her from having visits with Shanna and receiving the necessary services aimed at helping Shanna's caregiver attend to her special needs.” *Id.*

¶ 37 Here, a strong presumption of unfitness due to depravity arose based on the fact that the respondent was convicted of two counts of aggravated battery of a child—with one of those children being the younger J.P. As was the case in *Shanna W.*, the respondent has not—and cannot—show that he has been rehabilitated. See *id.* The respondent has been incarcerated throughout the entirety of these proceedings and he is not eligible for release from prison until 2025. While the respondent did complete a few services while incarcerated, we hold that his efforts were insufficient to overcome the strong presumption of unfitness due to depravity that arose in this case. See *id.* Accordingly, we hold that the circuit court did not err when it found the respondent to be unfit due to depravity.

¶ 38 The respondent’s second argument on appeal is that the circuit court erred when it found that it was in the minors’ best interest to terminate his parental rights. Specifically, the respondent takes exception to the fact that he was never given an opportunity to have contact with the minors and that the agency did not provide any services to him.

¶ 39 Once a parent has been found unfit and the case proceeds to a best interest hearing, the State is required to prove by a preponderance of the evidence that it is in the minors’ best interest to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 367 (2004). At this stage, the focus shifts to the minors and “the parent’s interest in maintaining the parent-child relationship must yield to the child’s interest in a stable, loving home life.” *Id.* at 364. We will not disturb a circuit court’s best interest determination unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883 (2010).

When considering what is in the best interest of a minor, the circuit court is required to consider the following factors in light of the minor's age and developmental needs:

“(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) 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 a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child.” 705 ILCS 4051-3(4.05) (West 2012).

¶ 41 In this case, the best interest hearing report indicated that the foster parents were meeting the basic needs of the minors. The minors had adjusted to their foster homes and communities and had established strong bonds with their foster families. The minors’ needs for permanence, stability, and continuity of relationship were being met by the foster parents. The minors were also getting assistance in their schools for their various needs. The older J.P. and the younger J.P. were receiving counseling for their emotional needs, which included the psychological impacts that the abuse the respondent inflicted on the younger J.P. had on them. The foster parents had signed permanency commitments for the minors and expressed their desire to adopt the minors. Under these circumstances, we hold that the manifest weight of the evidence presented in this case supported the circuit court’s determination that it was in the best interest of the minors to terminate the respondent’s parental rights.

¶ 42 While the respondent complains that he was not given an opportunity to have contact with the minors in this case, we emphasize that this situation was created by the respondent himself. He committed aggravated battery of a child against two children—the younger J.P. and another. He was not eligible to be released from prison until 2025, and he has provided no compelling reason for the minors to be held, essentially, in limbo until that time. Such a decision would be contrary to one of the Juvenile Court Act of 1987’s stated purposes—to secure permanence, at the earliest opportunity, for minors who have been removed from their parents’

custody. 705 ILCS 405/1-2(1) (West 2012); see also *In re D.F.*, 208 Ill. 2d 223, 231-32 (2003) (generally discussing the importance of expeditiously resolving cases brought under the Juvenile Court Act of 1987 and the Adoption Act). Accordingly, we hold that the circuit court did not err when it terminated the respondent's parental rights.

¶ 43

CONCLUSION

¶ 44

The judgment of the circuit court of Peoria County is affirmed.

¶ 45

Affirmed.