2016 IL App (4th) 150955-U

NO. 4-15-0955

FILED
April 14, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 14JA29
ANTHONY BRINKER,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness finding and best-interest determination were not against the manifest weight of the evidence.

¶ 2 In September 2015, the State filed a motion to terminate respondent Anthony Brinker's parental rights to N.B. (born January 8, 2014). In December 2015, the trial court found respondent to be unfit and determined it was in the minor's best interest to terminate his parental rights. Respondent appeals, arguing the trial court's unfitness finding and best-interest determination were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 24, 2014, the State filed a petition for adjudication of wardship, alleging N.B. was neglected (705 ILCS 405/2-3(1)(b) (West 2012)) and abused (705 ILCS

405/2-3(2)(ii) (West 2012)).

¶ 5 On April 4, 2014, the trial court entered adjudicatory and dispositional orders. The court adjudicated the minor neglected as she was residing in an environment injurious to her welfare (705 ILCS 405/2-3(1)(b) (West 2012)). The factual basis provided the minor was exposed to domestic violence, substance abuse, mental-health issues, environmental neglect, and lack of supervision. The court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services.

¶ 6 On September 10, 2015, the State filed a motion to terminate respondent's parental rights to N.B. The State alleged respondent was an unfit parent as he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) was depraved in that he had been convicted of six felonies, with at least one of those convictions taking place within five years of the filing of the motion (750 ILCS 50/1(D)(i) (West 2012)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal within any nine-month period following the adjudication of neglected (750 ILCS 50/1(D)(m)(i) (West 2012)); and (4) failed to make reasonable progress toward the return of the minor within any nine-month period following the adjudication of neglected (April 4, 2014, to January 14, 2015, and December 10, 2014, to September 10, 2015) (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 7 A. The Fitness Hearing

¶ 8 On October 28, 2015, the trial court held a fitness hearing. At the hearing, the State presented certified copies of respondent's felony convictions and testimony from a caseworker, foster-care supervisor, and court-appointed special advocate. Respondent did not

present evidence. Our review of the evidence reveals the following.

¶ 9 1. *Prior Convictions*

¶ 10 Respondent's criminal record included the following felony convictions: (1) a 2004 theft with a prior theft conviction (04-CF-1377), (2) a 2005 unlawful possession of a stolen motor vehicle (05-CF-1014), (3) a 2006 aggravated battery (06-CF-1345), (4) a 2008 burglary (08-CF-572), (5) a 2014 unlawful violation of an order of protection with a prior domestic battery conviction (14-CF-231), and (6) a 2014 burglary (14-CF-1245). As to his 2014 burglary conviction, respondent was incarcerated in September 2014 and then sentenced to a term of six years' imprisonment in November 2014.

¶ 11 2. *Service Plan*

¶ 12 Respondent's service plan required him to (1) complete a substance-abuse assessment, (2) visit a psychiatrist and maintain medications, (3) complete a parenting course, (4) complete drug screens, and (5) complete counseling. Respondent's substance-abuse assessment directed he attend outpatient classes. Respondent was unsuccessfully discharged from outpatient classes. Respondent visited a psychiatrist on two occasions. Respondent failed to complete a parenting course, having attended only 11 of 17 classes. Respondent failed to obtain employment. Respondent completed one drug screen but failed to obtain a state-issued identification card to complete additional screens. Respondent failed to complete counseling. Respondent was later referred to domestic-violence counseling due to an incident with the minor's mother. Respondent failed to complete domestic-violence counseling prior to being incarcerated.

¶ 13 3. *Visitation*

¶ 14 Prior to his incarceration, respondent visited with the minor for two hours a week. Once incarcerated, respondent visited with the minor for 15 minutes a week. Respondent's lack of parenting skills was evident during visits. Visits ultimately ceased by court order as they were not going well.

¶ 15 Following this evidence, the trial court found respondent to be unfit for all the reasons alleged in the State's petition.

¶ 16 B. The Best-Interest Hearing

¶ 17 On December 2, 2015, the trial court held a best-interest hearing. At the hearing, the State presented a November 10, 2015, best-interest report and testimony from a caseworker. Respondent did not present evidence. Our review of the evidence reveals the following.

¶ 18 N.B. had been residing with her maternal grandmother, grandfather, and brother. N.B. was doing well and her needs were being addressed. N.B. had bonded to her grandmother and grandfather as if they were her parents. N.B. continued to have visitation and a relationship with her mother. N.B. was exposed to her grandmother's Native American heritage. The caseworker opined the least-disruptive placement for N.B. was with her grandparents.

¶ 19 Respondent was serving a six-year prison sentence and had a projected parole date of September 2017. Respondent had failed to complete services.

¶ 20 After hearing the evidence, the trial court found it was in the minor's best interest to terminate respondent's parental rights.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, respondent argues the trial court's unfitness finding and best-interest

determination were against the manifest weight of the evidence.

¶ 24 A. Fitness Finding

¶ 25 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn a trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* A decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006). Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005).

¶ 26 The State alleged respondent was depraved in that he had been convicted of six felonies, with at least one of those convictions taking place within five years of the filing of the motion to terminate his parental rights (750 ILCS 50/1(D)(i) (West 2012)). Section 1(D)(i) of the Adoption Act provides "[t]here 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 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." *Id.* A parent may overcome the presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003).

¶ 27 The State presented evidence respondent had accrued six felony convictions. Respondent's 2014 burglary conviction, for which he is currently imprisoned, occurred within

five years of the State filing its motion to terminate respondent's parental rights. This evidence established a rebuttable presumption of depravity. See 750 ILCS 50/1(D)(i) (West 2012).

¶ 28 Upon establishing the rebuttable presumption of depravity, it was incumbent on respondent to rebut said presumption. See *In re Travarius O.*, 343 Ill. App. 3d 844, 853, 799 N.E.2d 510, 517 (2003). Respondent offered no evidence in rebuttal. We reject defendant's suggestion the State's evidence, which he characterizes as demonstrating "[h]e attended to his services and visited with [the minor]," was sufficient to rebut the presumption of depravity. The trial court's finding of unfitness due to respondent's depravity was not against the manifest weight of the evidence. As only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other grounds for the court's unfitness finding. *Gwynne P.*, 215 Ill. 2d at 349, 830 N.E.2d at 514.

¶ 29 B. Best-Interest Finding

¶ 30 Following a finding a finding of unfitness, the State must prove by a preponderance of the evidence it is in the child's best interest parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004). At the best-interest stage, a 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, 818 N.E.2d at 1227.

¶ 31 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in a child's best interest: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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; (5) the child's wishes and long-term

goals; (6) the child's community ties, including church, school, and friends; (7) 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; (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 2014).

¶ 32 This court will not reverse a trial 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, 932 N.E.2d 1192, 1199 (2010). As previously stated, a decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 33 N.B. had been living with her grandmother, grandfather, and brother. N.B. had become bonded to her grandparents as if they were her parents. N.B.'s needs were being addressed and she was doing well. Conversely, respondent was serving a six-year prison sentence and had failed to complete services, which prevented him from caring for N.B. for the foreseeable future. When considering the evidence presented, the trial court's determination it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 We affirm the trial court's judgment.

¶ 36 Affirmed.