2016 IL App (5th) 150511-U

NO. 5-15-0511

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re S.P., JR., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	No. 14-JA-14
	)	
v.	)	
	)	
Samuel P.,	)	Honorable
	)	Walter C. Brandon, Jr.,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's decision finding a father to be an unfit parent and terminating his parental rights was not against the manifest weight of the evidence.

¶ 2 Samuel P., the father of S.P., appeals from the judgment of the circuit court finding that Samuel was an unfit parent and finding that it was in the best interest of S.P. to terminate Samuel's parental rights. We affirm.

¶ 3 BACKGROUND

¶ 4 On April 23, 2013, Samuel was incarcerated in the St. Clair County jail awaiting trial on three counts of aggravated domestic battery and one count of aggravated battery. On October 12, 2013, S.P. was born. On January 21, 2014, Samuel was convicted on all four counts and sentenced to 10 years. On January 24, 2014, Samuel was incarcerated at the Hill Correctional Center in Galesburg. Samuel has thus been incarcerated for the entirety of S.P.'s life. Samuel has a projected parole date of October 23, 2021, and a projected discharge date of October 23, 2025.

¶ 5 On February 11, 2014, the State filed a petition for adjudication of wardship regarding S.P. According to the petition, S.P. had been left unattended in his maternal grandmother's home, and his respondent mother had returned home "intoxicated and belligerent." The petition further stated that the Department of Children and Family Services (DCFS) had received three hotline reports regarding S.P. alleging medical neglect and that S.P. had been left unattended without adequate supervision. A temporary custody order was filed that same day finding probable cause for the filing of the petition and granting temporary custody of S.P. to the Guardianship Administrator of DCFS. On March 10, 2014, an order of adjudication and disposition was entered without Samuel being present. The order set a permanency goal of returning S.P. to his home within 12 months.

¶ 6 On April 24, 2014, a caseworker met with Samuel. Samuel was not aware that S.P. was in DCFS custody. During this visit, Samuel reported he had grown up in the foster system due to indicated reports where Samuel had been a victim and his mother,

Diana Belk, had been the perpetrator. The caseworker discussed a service plan and reunification with Samuel. The caseworker told Samuel that he would need to complete a substance abuse assessment, participate in and complete parenting education, receive training on domestic violence and anger management, and receive individual counseling. Samuel reported that he would seek to begin those tasks while in prison. On June 23, 2014, the caseworker had a second visit with Samuel. At this meeting, the caseworker told Samuel that he should attend future court hearings on this matter.

¶ 7 On July 29, 2014, the court entered a permanency order finding that Samuel had failed to make reasonable efforts towards returning S.P. home. Custody of S.P. remained with DCFS, and Samuel was ordered to cooperate with services. On January 26, 2015, the court entered another permanency order again finding that Samuel had failed to make reasonable efforts towards returning the minor home. Custody of S.P. again remained with DCFS.

¶ 8 On March 20, 2015, the State filed a motion for termination of parental rights and for appointment of guardian with power to consent to adopt. The motion alleged that Samuel was an unfit parent because he was incarcerated as a result of criminal conviction at the time the motion for termination of parental rights was filed, Samuel had little or no contact with S.P. and had provided little or no support to S.P., and Samuel's incarceration would prevent him from discharging his parental responsibilities for S.P. for a period in excess of two years after the filing of the motion for termination of parental rights. The motion also alleged that Samuel was depraved because he had been convicted of at least three felonies under the laws of the state of Illinois and at least one of the convictions

took place within five years of the filing of the motion seeking termination of parental rights.

¶ 9 On October 26, 2015, the circuit court held a hearing on the motion for termination of parental rights. Mayra Velasco, a caseworker for Hoyleton Ministries, testified. Velasco set up Samuel's service plan, which expected him to cooperate with his parole status, attend anger management classes, attend parenting classes, and fulfill other requirements. Velasco testified that, to her understanding, the prison did provide such services, but Samuel had been on a waitlist and thus unable to participate in them. She testified that Samuel had not been able to see S.P. due to S.P.'s condition. S.P. had numerous medical requirements, including chronic lung disease requiring oxygen, and thus could not safely travel the four hours needed to visit Samuel. She testified that, to her knowledge, Samuel had not provided any financial support for S.P.

¶ 10 Samuel testified that he had made numerous requests to be enrolled in the programs necessary for his service plan. However, he had been told that he would be prioritized behind people about to be released from prison. He stated that he had written numerous letters and talked to Velasco numerous times seeking information about how S.P. is doing. He testified that he wanted to be able to see S.P. and had asked for pictures of S.P. He testified that he was making efforts to reform on behalf of S.P. On cross-examination, Samuel admitted that he had been reprimanded for fighting in prison and had an issue involving jamming a door lock. He also admitted that he had been unable to participate in any of the programs on the service plan due to the waitlist. Samuel also

admitted to being convicted of three counts of aggravated domestic battery and one count of aggravated battery.

¶ 11 After a recess, the court found that the State had shown by clear and convincing evidence that Samuel was incarcerated as a result of criminal conviction at the time the motion for termination of parental rights was filed, that prior to incarceration he had little or no contact with S.P. and provided little or no support for S.P., and that his incarceration would prevent him from discharging his parental responsibilities for S.P. for a period in excess of two years after the filing of the motion for termination. The court also found that Samuel had been convicted of at least three felonies under Illinois law and that at least one conviction took place within five years of the filing of the motion for termination. The court did not find that Samuel had rebutted the presumption of depravity and therefore found Samuel to be an unfit parent.

¶ 12 The court immediately proceeded to conduct a best-interest hearing. Velasco testified once again. Velasco stated that, due to S.P.'s prematurity and chronic lung disease, he had been diagnosed with respiratory distress, asthma, chronic lung disease, mild mental retardation, developmental delay, obstructive sleep apnea, and bronchial hyperactivity. Due to his condition, S.P. will need long-term care because he will likely have pneumonia and future hospitalization. Velasco testified that S.P. was currently with Amy Alexander in a specialized traditional foster home. Velasco stated that Alexander "has the medical training and has the experience of raising other foster children who [have] had these issues." S.P. had been with Alexander for a year and a half. Velasco testified that Alexander had gone "above and beyond" all necessary requirements.

Alexander had opened her home to therapist visits twice a week. She had converted her living room into a space for S.P., including his toys and therapist-recommended equipment. She slept next to him each night with a hand in his crib to ensure that he remained attached to equipment necessary for him to breathe. She had stayed with S.P. in the hospital each time he had been in the hospital. S.P. had bonded with Alexander and her children, and Alexander had "provide[d] a loving, caring and secure home." Velasco testified that all of S.P.'s needs were being met and that Alexander hoped to adopt S.P.

¶ 13 Velasco testified that she had considered Diana Belk, S.P.'s paternal grandmother, as a placement option. However, Belk had six indicated reports in which her own biological children had been the victims. While the reports had occurred nearly 20 years prior, Velasco testified that "the allegations are so severe" that they had justified retention of the reports. Velasco testified that, under DCFS policy, she could not place a ward in the care of someone who had an indicated report. Velasco testified that Belk also had a recent arrest in June 2003 for illegal possession and transportation of liquor, as well as an arrest in 1999 or 2000. Further, Velasco testified that Belk had originally told her that "having [S.P.] in her care was not her first priority." Velasco testified that Belk only began showing interest in having S.P. placed with her after DCFS had found out about Belk's indicated reports. Velasco testified she also considered Samuel as a placement option. However, Samuel could not complete his service plan, nor would he be released from prison for many years. Thus, Velasco recommended that it was in S.P.'s best interest to change his goal to adoption by Alexander. On cross-examination, Velasco was

asked if she had considered placing S.P. with Sidney Robinson, S.P.'s paternal uncle. Velasco testified that she had never heard of Robinson. In fact, Velasco testified that no other family member had tried to contact her regarding S.P.

¶ 14 Karen Dickson, a court appointed special advocate, testified that she had been working with S.P. since March 2014. In her experience, S.P. had been very susceptible to medical complications. Tonsil removal had necessitated S.P. being on a ventilator and feeding tube in a hospital for several days, and a cold could put him in the hospital for up to a week. However, Alexander had taken every possible precaution to reduce S.P.'s exposure to illness. Dickson testified that Alexander's youngest daughter had become very close to S.P., and the family refused to take a vacation because S.P. was not able to go with them. S.P.'s foster father had built stairs in the living room on the advice of therapists in order to help S.P. learn and strengthen his core. Dickson believed that moving S.P. from the Alexanders' home could be "life threatening."

¶ 15 Diana Belk testified that she had been involved in S.P.'s life since at least February 2014, when she provided money to S.P.'s mother to purchase necessities for S.P. She testified that she had been to see S.P. on the day he was taken by DCFS, but she had not been allowed to see S.P. by his maternal grandmother. She testified that she did not immediately seek to have S.P. placed with her because she wanted to give his biological mother a chance to complete her service plan and regain custody. She testified that she had since made efforts to gain custody of S.P. She owned her own house where she had set up a room for S.P. Belk also testified that she had raised her granddaughter from birth to age nine, was continuing to raise her, and that her granddaughter had also required

medical appointments and "breathing treatments three times a day." She claimed she could handle S.P.'s health issues because she "stay[ed] here" and had relatives nearby. Belk admitted that she had indicated reports, but she claimed she had changed. She stated that she would like a chance to complete a service plan and show she was capable of caring for S.P. She claimed that her 2003 arrest was for "some cans in the car" and that the other arrest was for slapping someone who had slapped her child. On cross-examination, Belk admitted she had also gone to prison in the late 1990s for throwing boiling hot water on another woman. Belk also admitted she had no particular training to handle S.P.'s medical care, but she insisted that such training could be part of her service plan.

¶ 16 Sidney Robinson, S.P.'s paternal uncle, testified that he would like to take custody of S.P. He testified that he worked as a bus monitor and that he also worked with an after-school mentoring program. He testified that he had not told DCFS of this desire because he assumed Belk would have no difficulty getting custody of S.P. He testified that he had received CPR training and that he had managed breathing issues in his own son. On cross-examination, Robinson stated that he had worked with children having a variety of disabilities. However, he had never had to deal with the particularized problems that S.P. currently had, nor had he cared for anyone requiring the 24-hour monitoring S.P. needed.

¶ 17 Samuel testified that it was the acts of S.P.'s mother, and nothing done by Samuel himself, that caused S.P. to be taken into DCFS custody. He testified that he had been trying to complete his service plan and was on waitlists for the necessary programs. He

testified that it was his intent and desire that he follow through with all requirements of his service plan so that he could have custody of S.P. Samuel testified that he believed being in a foster home had caused him to have anger issues, ultimately resulting in his imprisonment. He believed that placing S.P. with a foster family, even for purposes of adoption, could have the same result. He testified that, if he were unable to have custody of S.P., both Belk and Robinson would be able to provide for S.P. Samuel testified that he believed it was in S.P.'s best interest "to grow up with his family."

¶ 18 After closing arguments, Jeanne Aubuchon, S.P.'s guardian *ad litem*, stated that, while it appeared that Samuel and his family did love S.P. and wanted to care for him, S.P.'s medical needs and the fact that the Alexander home had been a "stellar placement" mattered more. She therefore recommended that the court find that the termination of parental rights and setting a goal of adoption was in S.P.'s best interest. The court found that the State had shown by a preponderance of the evidence that it was in the best interest of S.P. that Samuel's parental rights be terminated. The court further ordered that S.P. would remain a ward of the court, that guardianship to place S.P. be granted to DCFS with power to consent to adoption, and that the permanency goal be set as adoption. The court entered an order that same day memorializing its decision. On November 19, 2015, Samuel filed notice of appeal.

¶ 19 ANALYSIS

¶ 20 On appeal, Samuel challenges the circuit court's finding that Samuel is an unfit parent under sections 1(D)(r) and 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(r), (D)(i) (West 2014)). "A parent is considered 'unfit' if the State proves any one of the

grounds listed in section 1(D) of the Adoption Act." *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 68. If the State proves any one ground of unfitness, it is sufficient for the circuit court to enter a finding of unfitness. *Id*.; see also *In re C.W.*, 199 Ill. 2d 198, 217 (2002). "Because termination of parental rights is a serious matter, the State must prove unfitness by clear and convincing evidence." *In re Richard H.*, 376 Ill. App. 3d 162, 164-65 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 365 (2001)). Thus, "[a] reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500 (2011).

¶ 21 Under section 1(D)(i) of the Adoption Act, "[t]here is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State *** 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." 750 ILCS 50/1(D)(i) (West 2014). Here, the State has shown that Samuel has been convicted of at least three felonies in Illinois and that at least one of these convictions took place within five years of the filing of the motion seeking termination of parental rights. Nonetheless, " '[b]ecause the presumption is rebuttable, a parent is still able to present evidence showing that, despite her convictions, she is not depraved.' " *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 24 (quoting *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166 (2003)).

¶ 22 Samuel failed to show that he is not depraved. Samuel argues that his efforts to fulfill his service plan show that he is not depraved, even though he so far has been

unsuccessful in enrolling in the required classes. However, courts have found that attempts to follow a service plan are insufficient to show a parent is not depraved even when a parent completes portions of a service plan. See *In re A.M.*, 358 Ill. App. 3d 247, 254 (2005) (completion of GED and obtaining certificates in prison, plus enrolling in parenting and drug abuse programs and approval for work release, insufficient to show rehabilitation); *In re Shanna W.*, 343 Ill. App. 3d at 1167 ("Receiving a few certificates for completing basic services in prison, while commendable, is not a difficult task and does not show rehabilitation."). Because Samuel has not even begun the classes required by his service plan, we cannot say that he has shown that he is not depraved.

¶ 23 Samuel also challenges the circuit court's decision that it is in the best interest of S.P. to terminate Samuel's parental rights and retain guardianship with DCFS with power to consent to adoption. Samuel argues that it is in the best interest of S.P. to be placed with a relative. Samuel therefore argues that S.P. should be placed with Belk, S.P.'s paternal grandmother, who had been the caretaker of another grandchild since birth. At the best-interest hearing, Samuel also argued that, in the alternative, S.P. should be placed with Robinson, his paternal uncle.

¶ 24 "Following a finding of unfitness *** the focus shifts to the child. The issue is no longer whether parental rights *can* be terminated; the issue is whether, in light of the child's needs, parental rights *should* be terminated." (Emphasis in original.) *In re D.T.*, 212 Ill. 2d 347, 364 (2004). Thus, "the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* In making a best-interest determination, the court considers factors including but not limited to the

physical safety and welfare of the child; the child's sense of attachments, including where the child feels love and what feels familiar to the child; the child's need for permanence; and the risks attendant to entering and being in substitute care. 705 ILCS 405/1-3(4.05) (West 2014). If the circuit court has found a parent to be unfit, it then must determine, by a preponderance of the evidence, whether termination of parental rights is in the child's best interest. *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 63 (citing *In re D.T.*, 212 Ill. 2d at 366). We will reverse the circuit court's best-interest finding only if it is against the manifest weight of the evidence. *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41.

¶ 25 The circuit court's decision to terminate Samuel's parental rights was not against the manifest weight of the evidence. As noted above, Samuel was found to be an unfit parent on two grounds, and he has failed to complete the service plan as required. Further, the circuit court's decision that S.P. would remain a ward of the court, that guardianship to place S.P. be granted to DCFS with power to consent to adoption, and that the permanency goal be set as adoption was not against the manifest weight of the evidence. The record clearly indicates that S.P. had bonded with the Alexanders and that the Alexanders provided exemplary care for S.P. The record does not show that S.P. had a similar bond with Belk or Robinson, nor does it show that either Belk or Robinson had the capacity to attend to S.P.'s medical conditions. Because it is clear that keeping S.P. with the Alexanders is in his best interest, we cannot say that the circuit court's decision was against the manifest weight of the evidence.

¶ 26 CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of St. Clair County.

¶ 28 Affirmed.