

NOTICE

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2016 IL App (5th) 160021-U

NO. 5-16-0021

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> J.C., Jr., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Union County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 13-JA-19
)	
Jeremiah C.,)	Honorable
)	Charles C. Cavaness,
Respondent-Appellant).)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment terminating the respondent father's parental rights to his minor child was affirmed, holding that the court's finding that the father was an unfit parent under subsection 1(D)(r) of the Adoption Act was not against the manifest weight of the evidence where the child was in the temporary custody and guardianship of the Department of Children and Family Services; the father was incarcerated as a result of criminal conviction when the motion for termination of parental rights was filed; prior to incarceration, he had little or no contact with, and provided little or no support for, the child; and his incarceration will prevent him from discharging his parental responsibilities for the child for more than two years after the filing of the motion for termination of parental rights.

¶ 2 The respondent father, Jeremiah C., appeals the judgment of the circuit court of Union County, terminating his parental rights to his minor child, J.C., Jr., arguing that the court's finding that he is an unfit parent under subsection 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2012)) was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On September 4, 2013, the State filed a petition for adjudication of wardship of J.C., Jr., who was born on May 10, 2013, alleging that he was neglected in that his environment was injurious to his welfare, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)), and that he was abused in that he was in substantial risk of physical injury, pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2012)). The petition also alleges, *inter alia*, that J.C., Jr.'s, father, Jeremiah C., lived with his mother, Brittany L.; that the couple had a history of domestic violence incidents; that Jeremiah C. had an indicated report for the sexual abuse of his 11-year-old daughter; and that his other children, who were removed in April 2013, were in foster care while a juvenile abuse and neglect case was pending in Pulaski County.

¶ 5 At a shelter care hearing that same day, Michelle Dirden, from the Department of Children and Family Services (DCFS), testified, *inter alia*, that DCFS had prior interactions with Jeremiah C., that his other two children were removed from his custody in April 2013 after an indicated report of sexual abuse of his 11-year-old daughter, that

the children were placed in temporary custody with relatives, and that the case was ongoing in Pulaski County. After the hearing, the court entered a shelter care order.

¶ 6 On December 20, 2013, the State filed an amended petition for adjudication of wardship. The amended petition alleges, *inter alia*, that Jeremiah C. was accused of the sexual assault of his 11-year-old daughter, J.C., Jr.'s, half-sibling; that, after an adjudicatory hearing in Pulaski County case numbers 13-JA-4 and 13-JA-5, the minors were adjudicated abused based on the sexual abuse allegations; and that the minors were removed from Jeremiah C.'s home in April 2013 and placed with their mother. The amended petition further alleges that Jeremiah C. was charged, in Pulaski County case number 13-CF-88, with predatory criminal sexual assault of a minor, a Class X felony.

¶ 7 On March 13, 2014, the circuit court entered an adjudicatory order, finding that J.C., Jr., was abused or neglected in that he was in an environment that was injurious to his welfare, pursuant to section 2-3(1)(b) of the Juvenile Court Act, and was in substantial risk of physical abuse, pursuant to section 2-3(2)(ii) of the Juvenile Court Act. The adjudicatory order notes that this finding was based on the following facts: Jeremiah C. had been charged with predatory criminal sexual abuse of J.C., Jr.'s, sibling, there had been an adjudication of abuse after a hearing in Pulaski County case numbers 13-JA-4 and 13-JA-5, and Brittany L. had previously admitted the allegations in the petition.

¶ 8 In a dispositional order entered that same day, the court made J.C., Jr., a ward of the court and placed custody and guardianship with DCFS. The order notes that Jeremiah C. was denied visitation with J.C., Jr., because he was in custody on charges of criminal

sexual abuse of a minor, J.C., Jr.'s, sibling. The court entered an amended dispositional order on May 2, 2014, correcting a scrivener's error.

¶ 9 A February 3, 2015, permanency hearing report filed with the court notes that Jeremiah C. was convicted of "aggravated sexual assault" of his daughter and sentenced to nine years in prison. The report also notes that he was incarcerated at Big Muddy Correctional Center.

¶ 10 On April 24, 2015, the State filed a motion for termination of parental rights. The motion alleges, *inter alia*, that Jeremiah C. is unfit in that "[h]e is incarcerated as a result of criminal conviction at the time the motion for termination of parental rights is filed, prior to incarceration he had little or no contact with the child or provided little or no support for the child and his incarceration will prevent him from discharging his parental responsibilities for the minor for a period in excess of 2 years after the filing of the motion for termination of parental rights." The motion further alleges that Jeremiah C. is incarcerated at Big Muddy Correctional Center.

¶ 11 Permanency hearing reports dated August 14, September 18, and October 9, 2015, filed with the court note that Jeremiah C. was found guilty of aggravated criminal sexual abuse in August 2014 and is not set to be released until 2018. The reports also note that J.C., Jr., will be over five years old when Jeremiah C. is released; that there is no established relationship or bond between the two of them due to his incarceration; and that he has not completed any of his services due to being incarcerated. Family service plans dated January 8 and September 29, 2015, filed with the court also note that Jeremiah C. was convicted of aggravated sexual abuse of his daughter in August 2014

and sentenced to nine years in prison; that his case is not up for review until 2018; and that he has been denied any visitation with his children per court order.

¶ 12 A permanency hearing was held on October 22, 2015. After the hearing, the court entered a permanency order, changing the permanency goal from return home within 12 months to substitute care pending determination of termination of parental rights.

¶ 13 A fitness hearing was held on November 12, 2015. Ashley Cramer, a caseworker at Caritas Family Solutions, testified that since August 2015 she had been the caseworker for J.C., Jr., a male minor born on May 10, 2013, to Brittany L. and Jeremiah C. J.C., Jr., was taken into protective custody on August 31, 2013. At that time, Jeremiah C. was under investigation because of allegations of sexual abuse to his daughter. In early March 2014, J.C., Jr., was adjudicated neglected and made a ward of the court.

¶ 14 Cramer testified that Jeremiah C. was currently incarcerated at Big Muddy Correctional Center serving a sentence for aggravated criminal sexual abuse of his 11-year-old daughter, who is a half-sibling of J.C., Jr. Cramer stated that Big Muddy Correctional Center is the Illinois Department of Corrections (DOC) facility for sex offenders and offers specific, intensive sexual offender counseling. She testified that she spoke with Jeremiah C. during an October 8, 2015, visit, and he told her that he was aware of sexual offender services offered at Big Muddy Correctional Center but had not yet availed himself of those services. She stated that, to her knowledge, he was not doing anything to try to avail himself of any services that would help him reestablish his relationship with J.C., Jr. She testified that, for the two years since he had been in custody, he had not had visits with J.C., Jr., had not provided any support for J.C., Jr., and

had not done anything to interact with J.C., Jr. She stated that his projected release date is April 2018, which is more than two years after April 24, 2015, the date the motion for termination of parental rights was filed.

¶ 15 Jeremiah C. testified that he is currently 35 years old and that he is incarcerated at Big Muddy Correctional Center, with a projected release date of April 20, 2018. He stated that he is J.C., Jr.'s, father and that, when J.C., Jr., was born on May 10, 2013, J.C., Jr., and Brittany L. lived with him in a home owned by his family. Because of DCFS involvement, Brittany L. was forced to leave the home with J.C., Jr., on August 14, 2013, approximately two weeks before J.C., Jr., was taken into protective custody.

¶ 16 During the three months that Brittany L. and J.C., Jr., lived with him, Jeremiah C. had income and was paying all of the living expenses as Brittany L. had no income. He had daily contact with J.C., Jr. He took care of J.C., Jr., washed his clothes, fed him, changed his diaper, and played with him.

¶ 17 Jeremiah C. testified that he was arrested on the sexual abuse charges on October 17, 2013. He acknowledged that he had no income after he was arrested and, therefore, had not contributed to J.C., Jr.'s, support since his arrest; nor had he been allowed visitation with J.C., Jr., since his arrest.

¶ 18 Jeremiah C. testified that he did have weekly visitation with J.C., Jr., between August 31, 2013, when J.C., Jr., was taken into protective custody, and October 17, 2013, when he was arrested. He stated that, during the visits, he fed J.C., Jr., played with him on the floor, and changed his diapers. He testified that he had developed an affection for J.C., Jr., and that a bond was established.

¶ 19 On cross-examination, Jeremiah C. testified that he was "looking into getting into the service programs" at Big Muddy Correctional Center. He acknowledged, however, that he had not yet done so despite the fact that he had been there for almost a year.

¶ 20 After the hearing, the circuit court found, by clear and convincing evidence, that Jeremiah C. and Brittany L. were unfit persons to have J.C., Jr., and proceeded to a best interests hearing that same day. After the best interests hearing, the court found that termination of parental rights was in J.C., Jr.'s, best interests.

¶ 21 In its written order finding unfitness, which was entered on December 31, 2015, the court explained its reasons for finding Jeremiah C. unfit as follows:

"[Jeremiah C.] is incarcerated as a result of a criminal conviction for Aggravated Criminal Sexual Abuse perpetrated against his *** daughter *** and was incarcerated at the time the Motion to Terminate Parental Rights was filed. The minor was only three months old at the time he was taken into protective custody. [Jeremiah C.] was taken into custody by the Pulaski County Sheriff's Department for the charge of Aggravated Criminal Sexual Assault against a minor under 13 years of age, a Class X Felony, in October of 2013. At that time [J.C., Jr.] was five months old. [Jeremiah C.] was only present in his son's life for five months during his infancy before he was incarcerated for sexually victimizing his daughter, [J.C., Jr.'s] half-sister. [Jeremiah C.] eventually plead guilty to Aggravated Criminal Sexual Abuse against a victim under 18 years of age as a result of a plea agreement resulting in a lesser charge, this charge being a Class 2 Felony. He was sentenced to 9 years in the Illinois Department of Corrections.

Prior to his incarceration he had little or no contact with the child and provided little or no support for the child. This short period of involvement in his child's life followed by his extended incarceration amounted to little or no actual support for the child. [His] incarceration will prevent him from discharging his parental responsibilities for the minor for a period in excess of 2 years after the filing of the motion for termination of parental rights. [He] has a projected parole date of April 20, 2018[,] according to the Illinois Department of Corrections. On that date the minor would be almost five years old."

¶ 22 Also on December 31, 2015, the court entered its written order finding that it was in J.C., Jr.'s, best interests that parental rights be terminated. The court, therefore, terminated the parental rights of Jeremiah C. and Brittany L. Jeremiah C. appeals.

¶ 23 ANALYSIS

¶ 24 In Illinois, the authority to terminate parental rights involuntarily is found in the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2012)) and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)). *In re J.L.*, 236 Ill. 2d 329, 337 (2010). A petition to terminate parental rights is filed pursuant to section 2-29 of the Juvenile Court Act, which delineates a two-step process in seeking to terminate parental rights involuntarily. 705 ILCS 405/2-29(2) (West 2012). The State must first establish, by clear and convincing evidence, that the parent is an unfit person under one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). 705 ILCS 405/2-29(2), (4) (West 2012); *In re J.L.*, 236 Ill. 2d at 337. If the court finds that the parent is unfit, the matter proceeds to a second hearing, at which the State must prove

that it is in the best interests of the child that the parent's parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012); *In re J.L.*, 236 Ill. 2d at 337-38.

¶ 25 Here, Jeremiah C. challenges only the court's finding that he is unfit. He does not challenge the court's finding that termination of parental rights is in J.C., Jr.'s, best interests.

¶ 26 "The termination of parental rights constitutes a permanent and complete severance of the parent-child relationship." *In re C.N.*, 196 Ill. 2d 181, 208 (2001). "Accordingly, proof of parental unfitness must be clear and convincing." *Id.* A finding of parental unfitness will not be reversed on appeal unless it is against the manifest weight of the evidence. *Id.* "A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident." *Id.*

¶ 27 Here, the court found that Jeremiah C. was unfit under section 1(D)(r) of the Adoption Act (750 ILCS 50/1(D)(r) (West 2012)), which provides that a parent can be deemed unfit if "[t]he child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights." There are four elements in this definition of an unfit parent.

¶ 28 The first element is that "[t]he child is in the temporary custody or guardianship of the Department of Children and Family Services." *Id.* It is undisputed that J.C., Jr., was in the temporary custody and guardianship of DCFS at the time the motion for termination of parental rights was filed. Thus, the first element is satisfied.

¶ 29 The second element is that "the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed." *Id.* In his appellate brief, Jeremiah C. disputes proof of this element, arguing that the State failed to prove he was convicted before the motion for termination of parental rights was filed on April 24, 2015. However, in his closing argument at the unfitness hearing, Jeremiah C.'s counsel stated: "we do grant that he is incarcerated as a result of a criminal conviction at the time the motion to terminate was filed. That's true." Moreover, at the November 12, 2015, unfitness hearing, Jeremiah C. testified that he had been at Big Muddy Correctional Center for almost a year; thus, based on his own testimony, he was incarcerated as a result of a criminal conviction when the motion for termination of parental rights was filed on April 24, 2015. In addition, numerous status reports, permanency hearing reports, and family service plans filed with the court note that he was found guilty of aggravated criminal sexual abuse in August 2014 and sentenced to nine years in prison. Thus, the second element is satisfied.

¶ 30 The third element is that "prior to incarceration the parent had little or no contact with the child or provided little or no support for the child." 750 ILCS 50/1(D)(r) (West 2012). In his closing argument at the unfitness hearing, Jeremiah C.'s counsel argued that

this element was not met because the evidence showed that Jeremiah C. had substantial contact with J.C., Jr., before his incarceration.

¶ 31 Jeremiah C. narrowly focuses on the three-month period from when J.C., Jr., was born on May 10, 2013, to when J.C., Jr., left his home with Brittany L. on August 14, 2013. He does not claim that he provided any kind of support during the two-month period between August 14, 2013, when J.C., Jr., left his home with Brittany L., and October 17, 2013, when he was arrested; nor does he claim that he provided any kind of support or had any contact with J.C., Jr., during the 10-month period from October 17, 2013, when he was arrested until August 27, 2014, when he was sent to the DOC.

¶ 32 Section 1(D)(r) of the Adoption Act refers to "incarceration" as that which results from "conviction," and, thus, the period of incarceration began when Jeremiah C. was sent to the DOC. The applicable time period for assessing his preincarceration contact with and support of J.C., Jr., is, thus, the 15-month period from May 10, 2013, when J.C., Jr., was born, to August 27, 2014, when he was sent to the DOC.

¶ 33 It is undisputed that Jeremiah C. had substantial contact with J.C., Jr., for the first three months of his life and weekly supervised visitation with him for the next two months. However, it is also undisputed that, for the 10 months that Jeremiah C. was in jail before being sent to the DOC, he had absolutely no contact with J.C., Jr. Therefore, the circuit court's finding that he had little or no contact with J.C., Jr., prior to his incarceration was not against the manifest weight of the evidence.

¶ 34 Furthermore, the third element is phrased in the disjunctive, *i.e.*, *either* little or no contact prior to incarceration *or* little or no support prior to incarceration. It is undisputed

that, except for the three-month period that J.C., Jr., lived with him immediately after his birth, Jeremiah C. provided no support. Thus, for the 12-month period immediately prior to his incarceration, Jeremiah C. provided absolutely no support. Therefore, the circuit court's finding that he provided little or no support prior to his incarceration was not against the manifest weight of the evidence, and the third element is satisfied.

¶ 35 Finally, the fourth element is that "the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights." 750 ILCS 50/1(D)(r) (West 2012). Naturally, it is impossible to discharge parental responsibilities while in prison. During his testimony at the unfitness hearing, Jeremiah C. admitted that his projected release date is April 20, 2018, which is clearly more than two years after April 24, 2015, the date the motion for termination of parental rights was filed. Thus, the fourth, and final, element is satisfied.

¶ 36 Accordingly, the circuit court's finding of unfitness was not against the manifest weight of the evidence. Jeremiah C. has not challenged the circuit court's best interests finding, and termination of his parental rights must, therefore, be affirmed.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we affirm the judgment of the circuit court of Union County.

¶ 39 Affirmed.