2017 IL App (2d) 160855-U
No. 2-16-0855
Order filed January 31, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re CHASE H., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 15-JA-77
	)	
(People of the State of Illinois, Petitioner-Appellee, v. Phillip H., Respondent-Appellant.)	)	Honorable
	)	Francis M. Martinez,
	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Counsel's motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), was granted, and the trial court's order terminating respondent's parental rights was affirmed, where an examination of the record revealed no issue of arguable merit to support an appeal from the judgment.

¶ 2 The trial court found respondent, Phillip H., to be an unfit parent and determined that it was in the best interests of his minor son, Chase H., to terminate his parental rights. Respondent appealed, and the trial court appointed counsel on his behalf. Counsel now moves to withdraw pursuant to *Anders v. California*, 386 U.S. 738 (1967), representing to this court that there is no issue of arguable merit to support an appeal. Counsel further states that she advised respondent

of her opinion. Respondent filed a timely response to the motion. For the following reasons, we grant counsel's motion to withdraw and affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 Rather than provide a detailed recitation of the facts here, we will briefly outline the background and address the relevant facts more fully in the analysis section below.

¶ 5 When Chase was born on January 2, 2015, both he and his mother, Heather J.,[1] tested positive for opiates. Chase exhibited symptoms of withdrawal, and he remained hospitalized for the first two months of his life. Meanwhile, on February 17, 2015, respondent was arrested and charged with numerous offenses, including possession of heroin with the intent to deliver. Respondent ultimately pleaded guilty to a class 1 felony, and he has been incarcerated since his arrest.

¶ 6 On March 4, 2015, the State filed a petition alleging that Chase was a neglected minor. Respondent waived his right to a shelter care hearing, and the court found probable cause to believe that Chase was neglected. On June 3, 2015, respondent stipulated that Chase was neglected pursuant to section 2-3(1)(c) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(c) (West 2014)), because he was born with opiates in his system not attributable to medical treatment. Respondent subsequently agreed to a dispositional order transferring custody and guardianship of Chase to the Department of Children and Family Services.

¶ 7 At the first permanency review hearing on January 11, 2016, the court deferred findings as to the reasonableness of respondent's efforts and progress. On June 22, 2016, the court held a

[1] Heather did not engage in services or attend court proceedings regularly. The trial court entered an order in October 2016 terminating her parental rights, but she is not involved in this appeal.

second permanency review hearing and found that respondent had failed to make reasonable efforts or progress. At that point, the court changed the goal to substitute care pending court determination of termination of parental rights.

¶ 8 On July 25, 2016, the State filed a petition to terminate respondent's parental rights. Count I alleged that respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to Chase's welfare (750 ILCS 50/1(D)(b) (West 2014)). Count II alleged that respondent was depraved (750 ILCS 50/1(D)(i) (West 2014)). Count III alleged that respondent failed to make reasonable efforts within two specified nine-month periods following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)). Count IV alleged that respondent failed to make reasonable progress toward the return of the child during those same nine-month periods (750 ILCS 50/1(D)(m)(ii) (West 2014)). Count V alleged that respondent's repeated incarceration had prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2014)).

¶ 9 Following a fitness hearing that was held on August 5 and September 9, 2016, the court found respondent unfit pursuant to counts II, IV, and V of the petition (depravity, progress, and repeated incarceration). However, the court found that the State did not meet its burdens as to counts I and III (interest/concern/responsibility and efforts). Following a best interests hearing on October 7, 2016, the court found that it was in Chase's best interests to terminate respondent's parental rights.

¶ 10 Respondent timely appealed, and counsel was appointed on his behalf.

¶ 11 II. ANALYSIS

¶ 12 In her motion to withdraw, counsel submits that respondent cannot reasonably argue that the findings as to either parental unfitness or Chase's best interests were against the manifest weight of the evidence. We agree.

¶ 13 Involuntary termination of parental rights under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq*. (West 2014)) is a two-step process. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). The State must first prove by clear and convincing evidence that the parent is unfit under any single ground listed in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *C.W.*, 199 Ill. 2d at 210. If the parent is unfit, the matter proceeds to a second hearing, at which the State must prove by a preponderance of the evidence that it is in the best interests of the minor to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 352, 366 (2004). We will not disturb a finding of unfitness unless it is against the manifest weight of the evidence. *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 19. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006).

¶ 14 The trial court found respondent unfit pursuant to counts II, IV, and V of the petition. We focus on count II, which alleged depravity. See *In re B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 30 ("As the grounds for finding unfitness are independent, we may affirm the trial court's judgment if the evidence supports it on any one of the grounds alleged."). "Depravity" is defined as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). "[C]lear and convincing evidence of depravity must be shown to exist at the time of the petition, and the '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.' " *J.A.*, 316 Ill. App. 3d at 561 (quoting *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166 (1976)).

¶ 15 There is a rebuttable presumption of depravity where the parent has been convicted of three felonies, and at least one conviction took place within five years of the filing of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2014). The parent may rebut this presumption by introducing evidence that, in spite of his convictions, he is not depraved. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005). Once the parent introduces evidence opposing the presumption, "the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." *J.A.*, 316 Ill. App. 3d at 562.

¶ 16 Ordinarily, the State would raise the presumption of depravity by introducing into evidence certified copies of the respondent's criminal convictions. See, *e.g.*, *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 11. In the present case, the State and the guardian *ad litem* instead each asked the court to take judicial notice of respondent's criminal case files, and they each described the convictions on the record. The case files were not included in the record on appeal, and the record does not reflect the citations to the specific statutes that respondent violated. Moreover, the State and the guardian *ad litem* used slightly different language to describe some of the same offenses. We note that respondent did not object to this procedure at trial, and he acknowledged his felony convictions on cross-examination. In the future, to avoid unnecessary confusion, we stress the importance of creating a detailed record, particularly if the State intends to rely on judicial notice of case files rather than certified copies of criminal convictions.

¶ 17 Nevertheless, the transcript here reflects that in connection with case number 2015-CF-386, respondent pleaded guilty in March 2016 to a class 1 felony for possession with intent to

deliver less than 1 gram of heroin within 1,000 feet of a school, church, or park. He was sentenced to 6 years in the Illinois Department of Corrections. Prior to that, in connection with case number 2010-CF-3495, respondent was convicted in October 2011 of a class 1 felony for manufacture and delivery of cocaine, as well as a class 3 felony for being a felon in possession of a firearm. He received concurrent terms of six years' imprisonment for those offenses. In connection with case number 2002-CF-59, respondent was convicted of a class 4 felony for possession of a controlled substance, and he was sentenced to two years' imprisonment. In connection with case number 1991-CF-382, respondent was convicted of armed violence with a category I weapon, and he received a nine-year sentence of imprisonment. The evidence thus showed that respondent had been convicted of five felonies, three of which occurred in the five years preceding the petition to terminate parental rights. This gave rise to the statutory presumption of depravity.

¶ 18 To rebut the presumption, respondent introduced evidence that he had achieved sobriety during his most recent term of incarceration and that he had voluntarily participated in numerous programs. For example, respondent presented testimony from Benjamin Murray, an addiction counselor with Rosecrance, who explained that respondent participated in a jail re-entry group that focused on criminal thinking and addiction before he went to the Department of Corrections. According to Murray, respondent had no unexcused absences, his participation was excellent, he encouraged others to participate, and he would share poetry with the group. Furthermore, respondent presented testimony from Alva Page, a volunteer chaplain. Page testified that respondent participated in and served as a secretary for Reformers Unanimous, a Bible-based drug abstinence program. Page said that respondent completed all four phases of the program several times, that he helped other people, and that he had outstanding character. Respondent

also presented evidence that he completed parenting classes and participated in other programs such as Malachi Dads and Lead Like Jesus.

¶ 19 Respondent testified on his own behalf and acknowledged his history of drug addiction, which he described as a "deadly disease." He declared his intent to remain sober upon his release from prison. According to respondent, his projected release date was October 16, 2017, but he had the opportunity to be released six months early if he received credit for "good time."

¶ 20 In finding that the State met its burden to show unfitness by reason of depravity, the court determined that respondent's testimony was "not sufficient to overcome the presumption that [he] is depraved." The court reasoned that, although respondent's conduct while incarcerated was admirable, given his lengthy criminal history, the court had "no evidence to believe" that this rehabilitation would continue once he is released.

¶ 21 The court's finding of unfitness was not against the manifest weight of the evidence. In *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003)—a case, like the present one, where the respondent-mother was incarcerated through the entire history of the proceedings and was found to be depraved—the court asserted that rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely." See also *Addison R.*, 2013 IL App (2d) 121318, ¶ 30 ("Notwithstanding respondent's argument to the contrary, her efforts in prison, while commendable, were insufficient evidence of rehabilitation or lack of depravity."); *A.M.*, 358 Ill. App. 3d at 254 (recognizing that "completion of classes in prison, while *** commendable, does not show rehabilitation"). Certainly, respondent is to be commended both for his willingness to engage in services and for his recent commitment to abandon a life of crime and drug addiction. However, the reality of the matter is that he has not yet faced the challenges of rebuilding his life outside the confines of prison walls. Given

respondent's 25-year history of criminal activity and repeated incarcerations, the trial court correctly found that the State met its burden to show depravity. We agree with counsel that respondent cannot reasonably argue otherwise.

¶ 22 After the court makes a finding of parental unfitness, "the focus shifts to the child." *D.T.*, 212 Ill. 2d at 364. Specifically, the court must consider whether it is in the best interests of the child to terminate parental rights. *B'yata I.*, 2014 IL App (2d) 130558-B, ¶ 41. At the best interests hearing, the trial court considers:

> "(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 *** (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 405/1-3(4.05) (West 2014).

We will not overturn the trial court's finding that termination of parental rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24.

¶ 23 The evidence at the best interests hearing showed that Chase had resided with his foster family since he was two months old. His foster father was also his half-brother (respondent's adult son). The unrefuted testimony was that Chase was bonded to his foster family, including the foster parents' other children, and was well-adjusted to his home. The foster mother testified

that Chase had a difficult first year as a result of his exposure to drugs during pregnancy, but that he was now thriving. She and her husband were willing to adopt Chase, and she intended to maintain Chase's relationship in the future with all of respondent's other children.

¶ 24 Throughout these proceedings, respondent professed a willingness to embrace his role as a father upon his release from prison. He also expressed his wish to have visitation with Chase until that time comes. However, the caseworker determined that it was not in Chase's best interests to visit respondent in jail or prison. As a result, respondent and Chase had not seen each other since before respondent was arrested, when Chase was still in the hospital for opiate withdrawal.

¶ 25 In finding that it was in Chase's best interests to terminate respondent's parental rights, the court noted that Chase had resided with the foster parents for a substantial period of time and that he was bonded to their family. The court recalled that Chase had come into their care with "delays," but that he was now thriving. According to the court, it would be "traumatic" and "intentionally cruel" to separate Chase from his foster family. The court again praised respondent for the great strides he had made while incarcerated, but noted that he had "a long road ahead of him." The court added that it would be unfair to Chase to have to wait during respondent's rehabilitation.

¶ 26 The trial court's findings were amply supported by the evidence. Chase has lived with his foster family for the majority of his life, and, as the court noted, it would be detrimental to disrupt the stability that has allowed him to thrive. Accordingly, the determination that it was in Chase's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence, and respondent cannot reasonably argue otherwise. In his response to counsel's motion to withdraw, respondent contends that the trial court rushed to judgment and

discriminated against him based on his addiction, which he characterizes as a "disease." He emphasizes that he has done everything available to him to clean up his life and overcome his addiction. However, contrary to respondent's contention, there is simply no indication in the record that the trial court discriminated against him or rushed to judgment.

¶ 27 III. CONCLUSION

¶ 28 For the forgoing reasons, counsel's motion to withdraw is granted. The judgment of the circuit court of Winnebago County is affirmed.

¶ 29 Affirmed.