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2018 IL App (3d) 180126-U

Order filed July 19, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> L.O.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-18-0126
)	Circuit No. 15-JA-235
v.)	
)	
Lacinda O.,)	Honorable
)	David A. Brown,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that the respondent was unfit to parent L.O. and L.O.'s best interest favored terminating the respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found the respondent, Lacinda O., unfit to parent her child L.O. (born June 2015). Following a best interest hearing, the court entered an order terminating the respondent's parental rights. The respondent appeals.

FACTS

¶ 3

¶ 4 On August 27, 2015, the Department of Children and Family Services (DCFS) filed a petition for adjudication of neglect of L.O., arguing that her environment was injurious to her welfare. The State proceeded on the following bases (1) the respondent lost custody and guardianship of L.O.'s sibling in Rock Island County Case No. 11-JAS-83; (2) on August 18, 2015, the respondent took L.O. to a clinic and the respondent was falling asleep on the table while holding L.O., began yelling and screaming at staff, and after the respondent left the clinic, the staff found an empty syringe in the garbage can and diapers and syringes were missing; (3) DCFS investigated the incident from the clinic and the respondent refused to comply and allow access to L.O.; and (4) the respondent had an extensive criminal record.

¶ 5 On January 4, 2016, the trial court held an adjudicatory hearing on the petition and found that L.O. was neglected based on the allegations in the petition. The respondent appealed the court's neglect finding and this court affirmed. *In re L.O.*, No. 3-16-0081 (2017) (unpublished summary order under Illinois Supreme Court Rule 23(c)(8)).

¶ 6 On February 1, 2016, the trial court entered a dispositional order, in which L.O. was made a ward of the court and the respondent was found unfit. The court's decision was based on the respondent's instability, drug use, temper, and the allegations in the petition. The respondent was ordered to execute releases, cooperate with DCFS, obtain a drug and alcohol assessment and follow recommendations, perform two drug drops per month, submit a psychological examination and follow recommendations, participate and successfully complete counseling as recommended, participate and successfully complete a parenting course, obtain and maintain stable housing, provide any change of address, provide information of anyone with whom the respondent developed a relationship, visit L.O., and obtain a legal source of income.

¶ 7 On November 15, 2016, the State filed a petition for the termination of the respondent's parental rights. The petition alleged that the respondent was unfit on the basis of depravity (750 ILCS 50/1(D)(i) (West 2016)). The petition listed the respondent's 14 convictions, which included 6 felonies: (1) disorderly conduct, a Class 4 felony, in Rock Island County Case No. 10-CF-02; (2) possession of a controlled substance, a Class 4 felony, in Rock Island County Case No. 10-CF-594; (3) forgery, a Class 3 felony, in Rock Island Case No. 10-CF-853; (4) child abduction, a Class 4 felony, in Rock Island County Case No. 11-CF-782; (5) retail theft, a Class 3 felony, in Rock Island County Case No. 12-CF-1122; and (6) aggravated battery, a Class 3 felony, in Peoria County Case No. 15-CF-880.

¶ 8 On December 18, 2017, the trial court held a hearing on the State's petition to terminate the respondent's parental rights. The State admitted into evidence certified copies of the respondent's convictions without objection.

¶ 9 The respondent testified that she did not deny her criminal convictions, but that she had done some things to rehabilitate herself. She testified that she had not been using drugs "lately." She testified that she was in prison from December 2015 to June 2017 and was in segregation twice. The segregation stints caused her to miss visits with L.O. While incarcerated, she participated in the Wells program, which had elements of drug treatment and mental health counseling, and she believed that she benefited from the program. However, she was only in the program for six months until her roommate "got in trouble and we all got sent into segregation" and was eventually kicked out of the program. She claimed that she was included in the disciplinary action because she was in the vicinity of her roommate's trouble. While incarcerated, the respondent completed two parenting classes and an anger management program. She stated that she also underwent weekly counseling with the counselor that provided

the anger management program, but could not recall the counselor's name. She also participated in "Seeking Safety," a program that involved learning from criminal activity and transitioning back into society. She believed that this program helped her adjust and behave appropriately once she was released. She also received a certificate from a six-week job partnership program, which was a bible-based program that taught her how to obtain a job. She underwent a psychological evaluation while incarcerated, but the program was not to the satisfaction of DCFS. At the time of this hearing, she was incarcerated in the Peoria County jail and claimed that she was unable to get records of her completion of these programs from prison.

¶ 10 The respondent testified, that after her June 2017 release from prison, she did not attend her scheduled psychological evaluation on July 8, 2017, because she was not aware of it. After her release, she was arrested multiple times on a 2013 warrant from Rock Island County, a 2014 warrant from Tazewell County, a 2014 warrant from Peoria County, and a 2014 warrant from Mercer County. She was also charged in Peoria County Case No. 17-CF-744 for felony retail theft that occurred on July 30, 2017. She missed a court date on October 26, 2017, which resulted in a \$15,000 warrant for her arrest. She turned herself in on the warrant and explained that she was currently incarcerated based on that warrant. Her most recent incarceration also resulted in additional missed visits with L.O.

¶ 11 The respondent also testified regarding her desire to start an organizations called "Beauty Inside Out" to help battered women and "Youth to Me" to help young mothers and women. She testified that she had negative drug drops in prison and while on parole. Upon release, she had housing arrangements and could maintain her employment through a job partnership at Dunkin' Donuts and VSI cleaners. She believed that she had a plan to not participate in criminal activity.

¶ 12 Kim Rashid, the respondent's caseworker, testified at the hearing. Rashid stated, when

the respondent was released from incarceration in June 2017, she set up a psychological evaluation for the respondent and communicated the date of the evaluation both in person and in writing. Rashid also set up a visit with L.O. in July, which the respondent missed. Rashid stated, the respondent missed the August visit because she was incarcerated, made the visit in October, and missed the November visit. Rashid received a certificate that the respondent received as part of completing the parenting class in prison. Rashid testified that she was in constant contact with the prison's DCFS liaison in regard to the respondent's progress. The respondent had monthly visits scheduled while she was in prison, but missed several visits due to behavioral reasons. During the last six months of the respondent's incarceration, she was only allowed three out of six of the visits due to being placed in segregation. Prison personnel informed Rashid that the respondent was in segregation because of issues with the respondent's behavior. Rashid stated that the respondent claimed that it was someone else's fault she was in segregation. Rashid also testified that the respondent was appropriate during visits with L.O. held at the prison.

¶ 13 The State argued that the petition was proved by clear and convincing evidence based on the respondent's numerous convictions, including multiple felonies, and at least one felony within the prior five years. The State contended, that the respondent maintained a lifestyle of criminal activity, and after her participation in these programs and her June 2017 release, her actions still caused her to be in jail and miss services and visits—like she did before. The respondent argued that she rebutted the presumption of depravity because of the services she completed, her goals, and her plans for housing and employment after her release.

¶ 14 L.O.'s guardian *ad litem* (GAL) argued that the evidence was clear that the respondent conducted her life in such a way that resulted in her incarceration for the majority of L.O.'s life. The GAL stated, when the respondent was not incarcerated, she failed to take advantage of

opportunities to benefit L.O. Last, the GAL emphasized that the respondent's own behavior resulted in her segregation while in prison and missed visits with L.O.

¶ 15 The trial court found that the respondent had been convicted of six felonies and one within the last five years. Considering all of the evidence, the court found that the respondent was deprived under the Adoption Act. The court explained that the respondent spent the majority of L.O.'s life in jail or prison and that her representations about what she intended to do fell short of what she actually completed. The court entered an adjudicatory order finding that the petition was proven by clear and convincing evidence.

¶ 16 On January 29, 2018, the trial court held a best interest hearing. The respondent reiterated her testimony given at the fitness hearing regarding her completion of programs. At the time of the best interest hearing, the respondent was no longer incarcerated and was employed. However, she missed her visit in January because it was the same day of her release. The respondent testified that she was in compliance with her parole and acquired suitable housing for L.O. The respondent stated that she decided to turn away from criminal activity and had no plans of being incarcerated. At that time, she was on parole and expected to be discharged early in five months.

¶ 17 The respondent testified that she attended the same church as L.O., L.O. recognized her as "mommy," L.O. appeared happy to see her, and L.O. was reluctant to separate from her following church services. The respondent testified that she believed she would be in a position to provide immediate care for L.O. with proper medical care if needed. The respondent arranged to have clothes for L.O. delivered to her foster placement. Although the respondent was only permitted to visit L.O. one time per month for two hours, she believed that L.O. was familiar with her extended family. The respondent stated she had great affection for L.O. and believed that L.O. loved her because L.O. would cry following the end of their visits.

¶ 18 On cross-examination, the respondent testified that she did not have a certificate of completion for the one-on-one counseling she participated in while incarcerated because it was not from a DCFS approved counselor. The respondent clarified that she lived with her aunt who owned the home and rented it to her. The respondent said that she took L.O. to church almost every time except twice, but later agreed that she did not take L.O. to church and only saw her there. The respondent did not know the name of L.O.'s current primary care physician. The respondent stated that she brought items to her visits with L.O., such as clothes, shoes, an iPad, and "anything a child would want." However, when asked about the specific items she provided, she said, "I brought her love. A child don't need clothes and material stuff. I brought her love."

¶ 19 The best interest report indicated that the foster parents ensured that L.O. was current with her medical exams and immunizations. L.O. had a hernia repair surgery in July 2017 with no complications. L.O. was developmentally on target, talking, and had a large vocabulary for her age. Since L.O.'s foster parents worked, L.O. attended daycare full-time. L.O. loved to "mother" her foster brother who was a toddler, and she was very attached and protective of him. L.O. had a strong relationship with her foster mother. L.O. was seen as a permanent member of the family and went to both foster parents to have her needs met. L.O. was attached to all of the foster siblings. L.O.'s foster father was a pastor at a local church, and he was observed to be very loving, patient, and kind with the children. L.O. loved her foster father and many times would go to him first to have her needs met. L.O. waves at her foster father from the pews during church service. The foster family had a close-knit extended family. The foster family was very active in the school district and L.O. attended her foster sister's sports games. The foster family expressed their desire to adopt L.O.

¶ 20 The best interest summary from the report stated that it was in the best interest of L.O. to

terminate the respondent's parental rights based on the facts and the best interest factors. An addendum to the best interest report included, in relevant part, the following:

“The foster mother reported that [the respondent] showed up to church in December of 2017 where the foster family attends and the foster father is the pastor. She attended two times. On the second visit to church, [the respondent] was forceful with [L.O.] [The respondent] would not let her go when [L.O.] was crying for her foster sister to hold her. [The respondent] stated to the foster mother that the foster mother needed to understand that [the respondent] was her mother. [L.O.] was crying, wanting the foster mother and sister[,] and not being allowed which was upsetting the family. [The respondent] was eventually escorted from the church.”

¶ 21 The State argued that it was in the best interest of L.O. to terminate the respondent's parental rights because the respondent was unable to parent or visit L.O. due to her multiple incarcerations, missed numerous visits, only recently started attending church to see L.O., and was forceful with L.O. during a particular incident at church. The State emphasized that L.O. was loved, cared for, and provided for by her foster parents and that the foster parents provided a stable, loving, and nurturing environment that the respondent could not provide. The respondent admitted that she was incarcerated periodically but that she participated in services while incarcerated. She argued that the statements regarding the forceful contact at church were unsworn and her testimony demonstrated that these interactions went well. The respondent also emphasized that she was employed and had a place for L.O. to stay. Last, she argued the less disruptive placement under these circumstances would be guardianship as opposed to adoption.

¶ 22 The GAL noted that L.O. had come into care when she was just two months old and the

case had been open for over two years. During that time, the respondent did not take advantage of the opportunities and services available to her. The GAL also noted, that even when the respondent was not incarcerated, she missed numerous hearings in the case. The GAL argued that the respondent's testimony was contrary to her actions and did not believe that the respondent's inability to meet L.O.'s needs would change given another two years. The GAL also noted, that although L.O. recognized the respondent and smiled at her, that alone was not a parent-child relationship and did not equate to the kind of attachment the statute sought to preserve. The GAL further argued that L.O.'s wishes were expressed by whom she looked to for nurturing, care, and safety—her foster family. L.O. was safe with, cared for, and bonded with her foster family. The GAL asked for the termination of the respondent's parental rights.

¶ 23 The trial court stated that it considered the statutory factors, the best interest report, the evidence, and the arguments presented. The court found the best interest of L.O. was clearly met by the foster parents during which the respondent was unable to care for L.O. The court noted that the respondent's testimony was not credible and was "all over the place." The court also noted, that even after the respondent's release from incarceration, she continued her pattern of lack of participation and lack of meaningful engagement. The court entered an order finding it was in the best interest of L.O. to terminate her parental rights. The respondent appeals.

¶ 24 ANALYSIS

¶ 25 On appeal, the respondent argues that the trial court's findings that she was unfit and L.O.'s best interest favored terminating her parental rights were against the manifest weight of the evidence. The State argues that the court's decisions were proper.

¶ 26 The involuntary termination of parental rights is a two-step process. See 705 ILCS 405/2-29 (West 2016). First, the State must prove by clear and convincing evidence that the parent is

“unfit” as defined in section 1(D) of the Adoption Act. *In re Tiffany M.*, 353 Ill. App. 3d 883, 889 (2004). Second, if the court finds that a parent is “unfit” within the meaning of section 1(D) of the Adoption Act, the court must then determine whether the child’s best interest favors terminating parental rights. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010).

¶ 27

I. Fitness

¶ 28

A trial court’s fitness determination will only be reversed if the court’s findings of fact were against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence when an opposite conclusion is clearly evident. *In re A.W.*, 231 Ill. 2d 92, 102 (2008). Additionally, a reviewing court will not overturn a trial court’s findings merely because it would have reached a different result. *In re K.B.*, 2012 IL App (3d) 110655, ¶ 23.

¶ 29

In this case, the trial court found that the respondent was unfit on the basis that she was depraved (750 ILCS 50/1(D)(i) (West 2016)). Our supreme court has defined depravity as “an inherent deficiency of moral sense and rectitude.” (Internal quotation marks omitted.) *In re Abdullah*, 85 Ill. 2d 300, 305 (1981). The Adoption Act provides that a rebuttable presumption exists that a parent is depraved if the parent has been convicted of at least three felonies and at least one of those convictions took place within five years of the filing of the petition seeking termination of parental rights. 750 ILCS 50/1(D)(i) (West 2016). Since a showing of the requisite convictions creates a rebuttable presumption, the parent is still able to present evidence showing, that despite her convictions, she is not depraved. *In re A.M.* 358 Ill. App. 3d 247, 253 (2005). If the respondent presents evidence contradicting the presumption, the presumption is removed and the issue is determined based on the evidence presented. *In re J.A.*, 316 Ill. App. 3d 553, 562 (2000). The burden of proving by clear and convincing evidence that the respondent is depraved

remains with the State. *A.M.*, 358 Ill. App. 3d at 254.

¶ 30 The respondent concedes that she had the requisite number of criminal convictions and one felony conviction within the specified five-year period, but argues that the evidence presented demonstrated that she was not depraved. She relies on her participation in the Wells program, completion of a psychological evaluation, completion of two parenting classes in 2016, completion of anger management in 2016, completion of the “Seeking Safety” class in 2016, completion of the bible-based job training program, anticipated employment and housing upon her release, negative drug drops while on parole following her June 2017 release from prison, and goals of starting programs called “Beauty Inside Out” and “Youth to Me” to help women.

¶ 31 We first address the respondent’s participation in various programs. As the State points out, the majority of the evidence regarding the respondent’s participation in these programs was from the respondent’s own testimony. Rashid testified that she kept in close contact with the DCFS liaison at the prison and only received a certificate for a parenting class. The respondent failed to provide any evidence of the other programs she claimed to complete while incarcerated. Additionally, the respondent testified that she did not complete the Wells program, which had elements of drug treatment and mental health counseling. She was unable to complete the program because she was placed in segregation and eventually kicked out of the program, which she claimed was her roommate’s fault. However, Rashid testified that prison personnel informed her that the respondent was placed in segregation due to her own behavior.

¶ 32 Second, the record is replete of the respondent’s criminal history. The respondent has 14 convictions, six of which are felonies, from 2009 to 2015. The respondent was approximately 20 years old when she received her first conviction and has been incarcerated multiple times since then and during the majority of L.O’s life. In July 2017, one month after she was released from

prison, she was charged for felony retail theft that occurred on July 30, 2017. Although, we note that at the time of these proceedings, the felony retail theft charge was still pending and the respondent was not convicted. The record also demonstrates, that after her June 2017 release, she was arrested for multiple warrants and held in four different county jails. She failed to attend a psychological evaluation arranged by Rashid because she claimed that she was unaware of it. However, Rashid testified that she notified the respondent of her appointment both in person and in writing. The respondent also missed a court date in October 2017, resulting in a warrant for her arrest and her incarceration during the fitness hearing. Last, the respondent expressed her desire to start programs to women, but failed to take any action toward these goals.

¶ 33 Based on the foregoing, we cannot say that an opposite conclusion is clearly evident. As such, the trial court's fitness finding was not against the manifest weight of the evidence.

¶ 34 II. Best Interest

¶ 35 Once the trial court finds a parent unfit, all further considerations must yield to the child's best interest. *In re D.M.*, 298 Ill. App. 3d 574, 581 (1998). In this case, the court determined that L.O.'s best interest favored terminating the respondent's parental rights. A reviewing court reviews a trial court's best interest determination under the manifest weight of the evidence standard. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 36 In making a best interest determination, the trial court must consider the following factors in the context of the child's age and developmental needs: the child's physical safety and welfare; development of the child's identity; the child's background; the child's attachments; the child's wishes and long-term goals; the child's community ties; the child's needs for permanence; the uniqueness of every family and child; the risks inherent to substitute care; and the preferences of the people available to care for the child. 705 ILCS 405/1-3(4.05) (West

2016). It is not in any child's best interest to remain without a permanent home for an extended period of time. *In re D.L.*, 191 Ill. 2d 1, 13 (2000).

¶ 37 The evidence demonstrated that the physical safety and welfare of L.O., including food, shelter, clothing, and health were met by the foster family. L.O. had met her development milestones with the foster family. With her foster family, L.O. was involved in the community, attended her sister's sports games, had contact with extended family, and was raised in a church where her foster father is the pastor. L.O. had a stronger bond with her foster family than with the respondent and specifically looked to her foster parents for her needs. L.O. attended daycare while her foster parents were working. L.O. had lived with her foster parents since she was about two months old and she was two and a half years old at the time of the termination hearing.

¶ 38 Although the respondent expressed a desire to meet L.O.'s needs, uncertainty existed as to whether she would ever be able to meet the requirements to care for L.O. In contrast, L.O. was in a stable, loving environment with her foster parents and they wished to provide her permanence through adoption. The respondent's testimony was confusing and inconsistent, and she failed to take responsibility for her acts and omissions throughout this case. Her criminal history and multiple incarcerations created an unstable and unsafe environment for L.O. Based on the foregoing, we cannot say that an opposite conclusion is clearly evident. Accordingly, the trial court's best interest determination was not against the manifest weight of the evidence.

¶ 39 CONCLUSION

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

¶ 41 Affirmed.