2018 IL App (4th) 170688-U

NOS. 4-17-0688, 4-17-0689, 4-17-0690 cons.

FILED
January 18, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re C.H., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Logan County
Petitioner-Appellee,	)	No. 15JA3
v. (No. 4-17-0688)	)	
Joseph L. Huff,	)	
Respondent-Appellant).	)	
_____	)	
	)	No. 15JA6
In re L.C., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0689)	)	
Joseph L. Huff,	)	
Respondent-Appellant).	)	
_____	)	
	)	No. 15JA17
In re K.C., a Minor	)	
	)	
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v. (No. 4-17-0690)	)	
Joseph L. Huff,	)	Honorable
Respondent-Appellant).	)	William Workman,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: It is not against the manifest weight of the evidence that (1) respondent is an "unfit person" and (2) terminating his parental rights is in the children's best interests.

¶ 2 In these three cases, the Logan County circuit court terminated the parental rights of respondent, Joseph L. Huff, to his three children: C.H. (born March 23, 2014), L.C. (born April 15, 2015), and K.C. (born May 30, 2016). (The mother, who does not appeal, voluntarily surrendered her parental rights to the three children and consented to their adoption.) Respondent appeals in all three cases, and we have consolidated the appeals. In each case, the court found respondent was an "unfit person" within the meaning of section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)) and termination of parental rights would be in the child's best interests. Respondent challenges those findings, contending they are against the manifest weight of the evidence. From our review of the record, however, we cannot say it is manifest or clearly evident that the court should have made the opposite findings. Therefore, we affirm the judgments in the three cases.

¶ 3 I. BACKGROUND

¶ 4 A. The Fitness Hearing

¶ 5 In all three petitions for the termination of parental rights, the State alleged respondent was an "unfit person" in that he met the definition of "[d]epravity" in section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)). The State raised additional theories of unfitness in its petitions; however, at the beginning of the consolidated fitness hearing on August 24, 2017, the State announced it would proceed only on the theory that respondent was depraved in all three cases.

¶ 6 To that end, the State presented People's exhibit Nos. 1 to 6, certified court records. These records revealed that respondent had the following felony convictions.

¶ 7 In January 2016, in Macon County case No. 15-CF-822, he was sentenced for retail theft (720 ILCS 5/16-25(a)(1) (West 2014)). This offense was a Class 4 felony because he had a previous conviction of residential burglary. See 720 ILCS 5/16-25(f)(2) (West 2014).

¶ 8 In June 2011, in Logan County case No. 11-CF-24, he was sentenced for criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2010)), a Class 4 felony (720 ILCS 5/19-4(b)(2) (West 2010)).

¶ 9 Also in June 2011, in Logan County case No. 10-CF-88, he was sentenced for aggravated battery (720 ILCS 5/12-4(b)(8) (West 2010)), a Class 3 felony (720 ILCS 5/12-4(e)(1) (West 2010)).

¶ 10 In February 2007, in Logan County case No. 06-CF-149, he was sentenced for the unlawful use of a debit card, a Class 3 felony (720 ILCS 250/8 (West 2006)).

¶ 11 In June 2001, in DeWitt County case No. 01-CF-35, he was sentenced for residential burglary (720 ILCS 5/19-3(a) (West 2000)), a Class 1 felony (720 ILCS 5/19-3(b) (West 2000)).

¶ 12 In November 2000, in Logan County case No. 00-CF-217, he was sentenced for unlawful possession of cannabis with the intent to deliver it, a Class 3 felony (720 ILCS 550/5(d) (West 2000)).

¶ 13 After presenting the certified records of respondent's felony convictions, the State rested.

¶ 14 Respondent then took the stand and explained why, in his view, he was not depraved. He gave essentially nine reasons.

¶ 15 First, he considered himself to be a loving and forgiving person.

¶ 16 Second, he attended church.

¶ 17 Third, he had been employed for three or four weeks at McDonald's in Pekin, Illinois, when he was arrested for violating probation. He previously had worked in a variety of different jobs. He had worked in factories and in construction. He had done painting, carpeting, and roofing.

¶ 18 Fourth, he had forgiven his wife quite a few times for wronging him.

¶ 19 Fifth, he had lived with his wife and children for 10 months, and during that time, he enjoyed a close and loving relationship with them.

¶ 20 Sixth, on occasion, he had given all his earnings to his wife when she and the children were in need. Also, if other family members needed help—if, for example, they had no food in the refrigerator—he helped them as much as he could.

¶ 21 Seventh, he loved his children and cared about their well-being. That was why, in December 2014, he reported his own wife to the Illinois Department of Children and Family Services when he learned she had been under the influence of narcotics while the children were in her care. At the time, he had been working full-time for Tyson Foods in Joslin, Illinois, and he was so concerned he quit his job, gave up his residence, and returned to Lincoln, Illinois, to rescue his children.

¶ 22 Eighth, while in prison, he had been attending church and the Fatherhood Initiative program. He had earned several certificates from the program (which he did not produce in the fitness hearing).

¶ 23 Ninth, after being released from prison and before being arrested a second time for violating probation, he abstained from alcohol until he was placed in a halfway house, which really was nothing but a "drug house." He took the initiative and called "the 800 number," begging to be taken out of the halfway house because, as a recovering alcoholic, he could not

risk being around cocaine, marijuana, and alcohol. He made this call even though he was intoxicated at the time, knowing that his consumption of alcohol could have landed him back in prison.

¶ 24 On cross-examination, respondent testified after he was released from prison on April 27, 2017, the probation officer, at the insistence of relatives, forbade him to have any further contact with his wife (other than talking with her about the children). On May 22, 2017, the probation officer "violated" him for being in a car with his wife, and he was returned to prison. In June 2017, respondent was released from prison again, but on August 16, 2017, he was arrested again for failing to check in with his probation officer and, again, for violating the no-contact order. Respondent explained he had omitted checking in with his probation officer because he foresaw that, the moment he checked in, he would be arrested for having contact with his wife.

¶ 25 Respondent's term of mandatory supervised release was scheduled to end on March 26, 2018, but he believed the Prisoner Review Board would release him earlier, either in late November 2017 or in the first half of December 2017.

¶ 26 Respondent rested.

¶ 27 After hearing arguments, the trial court ruled as follows:

> "THE COURT: The Court does find that the State has met its burden of proof by clear and convincing evidence that [respondent] is depraved. They have presented not three, which is the minimum, but six prior felony convictions, and this Court does not find that [respondent] has rebutted that presumption of depravity. In fact, even from his own words and testimony here today, he is still in the custody of the Department of Corrections. He has been released, has been

paroled; and despite the release, he has violated his parole by having contact with individuals that he was ordered not to have contact with.

He has relapsed on his alcoholism, alcohol problem. He knew that he was violated, went [AWOL], and he has continually violated his probation in the last year, which has landed him back in the Department of Corrections. The Court does find that for those reasons, [respondent] is depraved and is unfit."

¶ 28 B. The Hearing on the Children's Best Interests

¶ 29 On September 14, 2017, the trial court held a hearing on the best interests of the children. At the request of the State, the court took "judicial notice of the files containing the documents previously received," and the court also took judicial notice of the best-interest report, which was filed on September 8, 2017.

¶ 30 The authors of the report both worked for The Center for Youth and Family Solutions (Family Solutions). They were Leah Statler, a foster care family worker, and Jessica Laurence, a team supervisor.

¶ 31 They began their report by recounting the "Reason for Involvement." On May 2, 2015, the police in Lincoln, Illinois, went to the mother's residence to check on her well-being because she reportedly was having suicidal thoughts and " 'want[ed] to get rid of her children.' " The police took protective custody of 1-year-old C.H. and 16-day-old L.C. Afterward, on May 30, 2016, while those two children were in the care of the Illinois Department of Family Services, the mother gave birth to K.C. Cocaine was detected in the umbilical cord.

¶ 32 The report then summarized respondent's progress. The client service plans had recommended that he do the following: (1) enroll in, attend, and participate in a parenting class; (2) complete all recommended substance-abuse treatment, including negative drug screens and

abstention from drugs; (3) obtain and maintain housing and a legal means of income; (4) undergo a domestic-violence perpetrator assessment; and (5) undergo a mental-health evaluation.

¶ 33 On August 19, 2015, Family Solutions referred respondent to the Rock Island County Council on Addictions, in Moline, Illinois, for a domestic-violence assessment. He attended his first appointment there but afterward failed to complete the assessment.

¶ 34 At some point earlier in the case, respondent requested to surrender his parental rights, and two hearings were scheduled for that purpose. On October 13, 2015, he appeared at the first hearing, but because he seemed to be under the influence of drugs, alcohol, or both, the hearing was continued. On October 22, 2015, he appeared at the second hearing and stated he did not want to surrender his parental rights after all.

¶ 35 From September to December 2015, he repeatedly changed residences, causing a significant delay in services.

¶ 36 On September 16, 2015, Family Solutions referred him for parenting classes in Rock Island, Illinois, but he did not attend any of those classes.

¶ 37 In February 2016, he was jailed in Logan County for retail theft, for which he was sentenced to imprisonment for 2 1/2 years. (Actually, according to court records, he was sentenced for this offense in January 2016.) As a result, he was unable to complete the Level I substance-abuse treatment he had begun in December 2015 at Tazwood Center for Wellness. While in prison, however, he completed a "90-minute Parental Rights and Responsibilities Seminar," an "18-Hour Faith Based Fatherhood Initiative Program," and an anger-management program.

¶ 38 On April 27, 2017, he was released from prison. That same day, Statler met with him to discuss services, and she added a mental-health evaluation to the list of recommended services. He told her he did not want to start services until his ankle monitor was removed.

¶ 39 Upon his release from prison, he was assigned a probation officer in McLean County. Because of respondent's history of being repeatedly arrested for domestic incidents, the probation officer prohibited him from having any further contact with his wife for the duration of the mandatory supervised release. He violated that order and consequently was returned to prison, where he remained from May 22 to June 23, 2017.

¶ 40 In July 2017, he was returned to prison for violating the no-contact order a second time and for failing to report to his probation officer. On August 16, 2017, he was transferred to Stateville Correctional Center, in Joliet, Illinois. His projected date of release was March 26, 2018.

¶ 41 After providing the foregoing summary of respondent's progress, the best-interest report discussed the three children.

¶ 42 Since May 6, 2016, C.H. and L.C. had resided with their maternal grandmother, Tena West, a licensed foster parent, who wanted to adopt them. C.H. had been receiving speech and occupational therapy and attended prekindergarten at Northwest Elementary School, in Lincoln. His teachers reported he was doing well in class and that his speech had improved. He also attended day care at Little Lambs Learning Center, which had not reported any concerns.

¶ 43 L.C. likewise attended Little Lambs Learning Center and received speech and occupational therapy. He had asthma and used a nebulizer.

¶ 44 K.C. resided in a different home, the same traditional foster home where she was placed on December 8, 2016. She "appear[ed] to be doing well in the home and [was] attached to

her caregivers." She "receive[d] Early Intervention services for feeding," and she also received occupational therapy. "She had an endoscopy performed to investigate her feeding needs[,] and her laryngeal cleft and adenoids were surgically repaired at that time." But she "still need[ed] intense monitoring while eating foods[,] and any liquids she consume[d] [had to] be thickened." The foster parents, Don and Jennifer Kellett, wanted to adopt her, and they understood and believed in the importance of maintaining sibling relationships. K.C. appeared to be attached to her foster parents.

¶ 45 In summary, Statler and Laurence offered the following assessment:

> "Early in this case[,] [respondent] expressed numerous times he was willing to complete services but did not follow through with attending appointments with service providers. [Respondent] has not made progress in any services and has been incarcerated for a majority of this case.
>
> With the lack of progress in this case[,] [Family Solutions] is requesting the Court terminate the parental rights of [respondent] and make the permanency goal adoption for [C.H., L.C., and K.C.] The children would benefit from a stable placement that will meet their needs as they grow. [C.H.] and [L.C.] have been in their placement for 16 months[,] and [K.C.] has been in her placement for 9 months. All the children are well[-]bonded to their respective caregivers[,] and the caregivers have demonstrated a willingness to foster the sibling relationship as the children grow."

¶ 46 After presenting the best-interest report, the State rested.

¶ 47 Respondent then took the stand and testified in his own behalf. He seemed to suggest his probation violations were largely the fault of his wife and his mother: his wife had

actively sought him out—had "got ahold of" him—and his mother, who suffered from cancer and dementia, had reported him to the police for every triviality. He testified before he was imprisoned, he bought food, clothes, and diapers for the children and during the periods when he was on mandatory supervised release, he quickly obtained full-time employment and a stable residence. He insisted he loved his children with all his heart. He sent them birthday cards while he was in prison, and he took parenting classes in order to become a better father.

¶ 48 On cross-examination, respondent admitted that C.H. had not resided with him for the past 2 1/2 years and that L.C. and K.C. had never resided with him. He added, though, that he had always shown his children love and affection whenever he saw them.

¶ 49 After hearing arguments, the trial court stated it had no doubt respondent loved his children. The court observed, however: "[I]t takes more than just saying that you love your children. There has to be an ability to provide for these children, to care for these children." Because of his repeated violations of probation and his insufficient interest in services during the periods when he was on mandatory supervised release, the court was skeptical respondent would follow through with his resolutions and put the best interests of the children first. The court did not believe, anytime in the near future, he would be able to provide the children a stable environment, including food, clothing, safety, and a home. Therefore, the court found, by a preponderance of the evidence, it would be in the children's best interests to terminate his parental rights, and the court did so.

¶ 50 II. ANALYSIS

¶ 51 A. The Finding of Parental Unfitness

¶ 52 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of

their parental rights and a consent to adoption, or, alternatively, it has been proved, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2016)); and (2) it has been proved, by a preponderance of the evidence, that it would be in the best interests of the child to terminate parental rights and to appoint a guardian and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2–29(2) (West 2016); *In re M.H.*, 2015 IL App (4th) 150397, ¶ 20.

¶ 53 In the present case, respondent did not surrender his parental rights to C.H., L.C., and K.C.; nor did he consent to their adoption. Therefore, the first prerequisite to the termination of his parental rights was a finding, by clear and convincing evidence, he was an "unfit person" within the meaning of section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2016)), the sole section on which the State relied in the fitness hearing. See *M.H.*, 2015 IL App (4th) 150397, ¶ 21. That section provides as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following ***:
>
> * * *
>
> (i) Depravity. ***
>
> There 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 ***; and at least one of these convictions took place within [five] years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2016).

¶ 54 The trial court found respondent was an "unfit person" within the meaning of the quoted statute. In other words, the court found he had "an inherent deficiency of moral sense and rectitude," as the supreme court has defined "depravity." (Internal quotation marks omitted.) *In re Abdullah*, 85 Ill. 2d 300, 305 (1981). We should reverse the finding of unfitness only if it is against the manifest weight of the evidence. See *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 22. "A determination of unfitness is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented." *Id.*

¶ 55 We do not understand respondent to argue it was arbitrary and unreasonable of the trial court to presume he was depraved. Indisputably, he has been "criminally convicted of at least [three] felonies under the laws of this State," and "at least one of these convictions took place within [five] years of the filing of the petition[s] *** seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2016). He argues, however, it was arbitrary and unreasonable of the court to find this presumption of depravity to be unrebutted.

¶ 56 In support of his argument, he recounts the instances, documented in the common-law record, when he participated in services. In the fitness hearing, however, the trial court was not asked to take judicial notice of the annual case reviews or any other document in the common-law record. Therefore, no judicial notice should be taken. See *Vulcan Materials Co. v. Bee Construction*, 96 Ill. 2d 159, 166 (1983). Instead, we should limit ourselves to the "evidence properly admitted at the unfitness hearing." *In re J.G.*, 298 Ill. App. 3d 617, 629 (1998).

¶ 57 Through his own testimony, respondent attempted to rebut the statutory presumption of depravity. The trial court was not obligated to believe everything he said.

Credibility determinations by the trial court deserve "great deference." *In re D.L.W.*, 226 Ill. App. 3d 805, 811 (1992). The court could have regarded respondent's rebuttal testimony as self-serving and unconvincing. Because he had twice the number of felony convictions necessary to raise a statutory presumption of depravity (see 750 ILCS 50/1(D)(i) (West 2016)), the court may well have required strong evidence in rebuttal, and the court could have reasonably regarded the uncorroborated parts of his testimony as insufficiently persuasive. See *Franciscan Sisters Health Care Corp v. Dean*, 95 Ill. 2d 452, 463 (1983) ("The amount of evidence that is required from an adversary to meet the presumption is not determined by any fixed rule. A party may simply have to respond with some evidence or may have to respond with substantial evidence. If a strong presumption arises, the weight of the evidence brought in to rebut it must be great.").

¶ 58 In sum, the trial court found the State had proved, by clear and convincing evidence, that respondent was an "unfit person" within the meaning of section 1(D)(i) of the Adoption Act. We are unconvinced it is clearly evident, from the record of the fitness hearing, the State failed to carry its burden of proof. Therefore, we decline to overturn the finding of parental unfitness. See *Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 59 B. The Best Interests of the Children

¶ 60 Once the trial court finds a parent to be an "unfit person," the inquiry shifts to the best interests of the child. *In re D.T.*, 212 Ill. 2d 347, 364 (2004). "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." (Emphases in original.) *Id.* The State has the burden of proving, by a preponderance of the evidence, termination of parental rights would be in the child's best interests. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009).

¶ 61 In deciding whether termination of parental rights would be in the child's best-interests, the trial court must consider the following factors in the context of the child's age and developmental needs, to the extent the factors are relevant to the facts of the case:

"(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, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(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 2016).

¶ 62 It was up to the trial court to decide, under the facts of the case, how important one statutory factor was compared to another, and instead of reweighing the factors *de novo*, we should defer to the court's evaluation unless its evaluation was against the manifest weight of the evidence. See *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 55. We are merely a gatekeeper, not a fact finder. We will defer to the trial court unless it is *clearly apparent*, from the evidence adduced in the best-interests hearing, that the court should have found the termination of parental rights to be contrary to the children's best interests. See *id.* ¶ 53.

¶ 63 Respondent maintains the decision to terminate his parental rights is against the manifest weight of the evidence. He argues he can "aid in the identity of his children, particularly by ensuring their background and ties, including familial, cultural, and religious." See 705 ILCS 405/1-3(4.05)(b), (c) (West 2016). He deplores the splitting up of the children between different foster homes and worries "[t]he life they once knew as siblings is now potentially permanently fractured." The trial court was free to determine the validity of such a concern, considering C.H. and K.C. resided together in the same foster home and the foster parents of L.C., as well as the foster parent of C.H. and K.C., believed in preserving the sibling relationships. Also, it is unclear from the record how much the children identified with respondent compared to their foster parents.

¶ 64 Respondent also argues "[n]ow that [he] has been released from incarceration, he can likely provide the children with the food, shelter, clothing, and healthcare that was [*sic*] inhibited by his incarceration." See 705 ILCS 405/1-3(4.05)(a) (West 2016). At the time of the best-interests hearing, however, respondent was still in prison, and we must review the trial

court's decision in the context of the evidence presented in that hearing. Besides, respondent's assertion that, upon his release from prison, he could "likely provide the children with the food, shelter, clothing, and healthcare" they needed was speculation at best in light of his previous history. It is understandable if the court might prefer the foster parents' demonstrated performance over respondent's speculation.

¶ 65 Finally, respondent claims: "The children certainly feel a sense of attachment to their father, who loves them. There is no evidence in the record that respondent father does not love the children, nor is there any indication that that they did not reciprocally love him back." See 705 ILCS 405/1-3(4.05)(d)(i) (West 2016). Respondent provides no citation to the record when he asserts that "[t]he children certainly feel a sense of attachment to" him. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("citation of *** the pages of the record relied on"). After all, the question is "where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued)." 705 ILCS 405/1-3(4.05)(d)(i) (West 2016). Based upon this record, the trial court may well have believed Statler and Laurence, who reported the children were attached to their foster parents. See *id.*

¶ 66 Judging by the trial court's remarks at the conclusion of the best-interests hearing, the children's need for permanence, security, and stability was an especially important consideration in the court's analysis. See 705 ILCS 405/1-3(4.05)(g) (West 2016). Respondent's felony convictions and multiple parole violations are very disruptive. A parent undermines a child's sense of permanence, security, and stability by repeated periods of incarceration. Respondent has six felony convictions. One hopes that the sixth felony conviction is his last, but, arguably, the repeated violations of probation are not likely to inspire confidence. The court

could have reasonably concluded the children had a greater chance for permanence and stability in their foster homes than with respondent. The foster parents are willing to adopt the children and to maintain L.C.'s relationship with C.H. and K.C. Therefore, the record does not reveal it was against the manifest weight of the evidence to conclude preserving respondent's parental rights would not be in the children's best interests. See *Addison R.*, 2013 IL App (2d) 121318, ¶ 22.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgments in the three cases.

¶ 69 Affirmed.