2019 IL App (4th) 190239-U

NO. 4-19-0239

FILED
August 28, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re J.T., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Logan County
Petitioner-Appellee,	)	No. 17JA36
v.	)	
Gerald T.,	)	Honorable
Respondent-Appellant).	)	William G. Workman,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Holder White and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in (1) finding respondent unfit and (2) terminating his parental rights.

¶ 2 In October 2017, the State filed a petition for adjudication of neglect with respect to J.T., the minor child of respondent, Gerald T. The trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In February 2019, the State filed a petition to terminate respondent's parental rights. The court found respondent unfit and determined it was in the minor's best interests that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding him unfit and (2) terminating his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2017, the State filed a petition for adjudication of neglect with respect

to J.T., born in October 2017, the minor child of respondent and Kayla G. The State alleged the minor was neglected pursuant to sections 2-3(1)(b) and (1)(c) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b), (c) (West 2016)) because (1) his environment was injurious to his welfare as evidenced by his mother's drug use and (2) he was a newborn infant whose blood, urine, or meconium contained any amount of a controlled substance or a metabolite of a controlled substance.

¶ 6 Following a shelter-care hearing, the trial court entered a temporary custody order, finding probable cause to believe J.T. was neglected due to being born with drugs in his body and his mother's positive drug test during her pregnancy. The court also found an immediate and urgent necessity to remove J.T. from the home, noting his mother's drug use and respondent's history with DCFS and domestic violence. The court granted temporary custody to DCFS.

¶ 7 In December 2017, Kayla G. admitted the second allegation of neglect relating to J.T. being born with drugs in his system. The trial court found J.T. neglected. In its January 2018 dispositional order, the court found respondent unfit to care for, protect, train, educate, supervise, or discipline the minor and placement with him would be contrary to the minor's health, safety, and best interests. The court noted respondent was incarcerated and in need of services. The court made the minor a ward of the court, placed custody and guardianship with DCFS, and stated visitation would be at the discretion of DCFS.

¶ 8 In February 2019, the State filed a petition to terminate respondent's parental rights. The State alleged respondent was unfit because (1) he is depraved (750 ILCS 50/1(D)(i) (West 2018)) and (2) the minor is in the temporary custody or guardianship of DCFS, respondent is incarcerated, he had been repeatedly incarcerated as a result of criminal convictions, and his

repeated incarceration has prevented him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2018)).

¶ 9 At the April 2019 unfitness hearing, the State presented certified copies of respondent's convictions, including (1) unlawful possession of a controlled substance (case No. 11-CF-31) (30 months in prison); (2) obstructing justice (case No. 12-CF-88) (18 months in prison); (3) three counts of unlawful delivery of a controlled substance (case No. 13-CF-153) (5½ years in prison); and (4) two counts of attempted first degree murder and one count of unlawful possession of a weapon by a felon (case No. 17-CF-202) (55 years, 21 years, and 10 years in prison, respectively). The State then rested.

¶ 10 Respondent's counsel objected to the use of the certified convictions in the determination of unfitness, arguing the State was seeking to terminate respondent's parental rights based on "older" convictions that occurred prior to J.T.'s neglect case.

¶ 11 The trial court found respondent unfit based on the allegations of depravity and repeated incarceration. The court noted respondent has been incarcerated for "almost the entire time of this child's life on the current charges that he is in the Department of Corrections for and is going to be there for some time, [and he is not going to] be able to fulfill the duties of a father on behalf of the child due to that incarceration."

¶ 12 Thereafter, the trial court conducted the best-interests hearing. The best-interests report indicated J.T. had resided in his current placement since October 2017. J.T. "appears to be healthy and enjoys living in his current placement." He is also up to date on his medical needs and is developmentally on track. The report indicated respondent had been asked to complete services relating to substance abuse, domestic violence, and anger management, as well as obtain/maintain a legal means of income and housing. Respondent did not complete any

services prior to his arrest in December 2017. He was later convicted of attempted first degree murder and unlawful possession of a weapon by a felon. His projected parole date is 2087. Since his arrest, respondent did not request visitation with J.T. and stated he did not want to see him while incarcerated.

¶ 13 Shannon Kennedy, a foster-care caseworker with the Center for Youth and Family Solutions (CYFS), testified she had been J.T.'s caseworker since April 2018. She asked respondent if he wanted visitation, but he stated he did not want his son to visit him in jail. Respondent receives updates about J.T. from the foster parents. Kennedy stated J.T. "is doing really well," and he has been placed with his half-sibling.

¶ 14 On cross-examination, Kennedy stated respondent asked how J.T. was doing and showed an interest in and concern for him. Respondent has been unable to comply with his service plan because the Logan County jail does not offer any services. Upon request, Kennedy stated CYFS could conduct quarterly visits at the prison. Kennedy noted respondent has not provided any type of financial support for J.T.

¶ 15 Respondent testified he has been in jail or prison since 2017. He has asked for and received reports on how J.T. is doing. Because he has "been going through the process of going back and forth from prison to prison," he has been unable to contact anyone regarding visitation with J.T. Respondent stated the Department of Corrections offers services relating to parenting, anger management, and psychological support, and he is willing to avail himself of those services. When asked if he could develop and maintain a relationship with J.T. while incarcerated, respondent stated it is not "what you can provide," but "[i]t is just being there period." He stated J.T. "needs his father in his life regardless of my situation." Respondent also noted he was wrongfully convicted and his conviction will be overturned.

¶ 16 On cross-examination, respondent stated he requested not to have visits with J.T. while in the county jail. In explanation, respondent said the visitors at the jail are behind glass and since J.T. was a toddler, he would not understand what was going on. Respondent also stated he had given "about a few thousand dollars" in financial support to J.T. while incarcerated.

¶ 17 In addressing the trial court about not asking for visitation while in jail, respondent stated he did not want J.T. to talk on "a phone that hundreds of other people's germs and bacteria" are on when J.T. "wouldn't even understand me." Now that he is in prison, respondent stated he could have "contact visits" with J.T. and could communicate with him.

¶ 18 The trial court stated J.T. "needs to have permanency in his life" and he is "thriving" in his present placement. Further, the court noted there was "no way" for respondent to undertake the duties of being a father due to his incarceration. The court found it in the minor's best interests that respondent's parental rights be terminated. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Unfitness Finding

¶ 21 Respondent argues the trial court's finding of unfitness was against the manifest weight of the evidence. We disagree.

¶ 22 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177-78 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal

unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. " 'A court's decision regarding a parent's fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.' " *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69 (quoting *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 517 (2005)).

¶ 23 In the case *sub judice*, the trial court found respondent unfit due to his depravity and his repeated incarceration. Initially, we note respondent has failed to set forth any case law pertaining to these two grounds of unfitness. He does not even use the words "depravity" or "repeated incarceration" in his argument. Supreme court rules governing the contents of appellate briefs are not mere suggestions. *Niewold v. Fry*, 306 Ill. App. 3d 735, 737, 714 N.E.2d 1082, 1084 (1999). "The purpose of the rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved. [Citation.]" (Internal quotation marks omitted.) *La Grange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876, 740 N.E.2d 21, 32 (2000) (quoting *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095, 618 N.E.2d 771, 776 (1993)).

¶ 24 Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) provides that an appellant's brief shall contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "Bare contentions without argument or citation to relevant authority do not merit consideration on appeal." *United Legal Foundation v. Pappas*, 2011 IL App (1st) 093470, ¶ 15, 952 N.E.2d 100; see also *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56, 4 N.E.3d 1 (stating the "[f]ailure to comply with the rule's requirements results in

forfeiture"). Thus, without any specific case law to support his argument, the issue of respondent's unfitness is forfeited.

¶ 25 Even if we were to consider respondent's claims pertaining to the two grounds of unfitness, we would find them without merit. Our supreme court has defined depravity as "an inherent deficiency of moral sense and rectitude." (Internal quotation marks omitted.) *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1952); see also *Donald A.G.*, 221 Ill. 2d at 240, 850 N.E.2d at 175. As to an allegation of depravity, section 1(D)(i) of the Adoption Act provides, in part, as follows:

> "There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights." 750 ILCS 50/1(D)(i) (West 2018).

¶ 26 A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003). "If respondent presents evidence contradicting the presumption, the presumption is removed and the issue is determined based on the evidence presented." *In re P.J.*, 2018 IL App (3d) 170539, ¶ 13, 101 N.E.3d 194; see also *In re J.A.*, 316 Ill. App. 3d 553, 562, 736 N.E.2d 678, 686 (2000) (stating once evidence rebutting the presumption is presented, the presumption ceases to operate and the issue is decided on the evidence as if no presumption had existed).

¶ 27 Here, the evidence showed respondent has eight felony convictions, including unlawful possession of a controlled substance (2011), obstructing justice (2013), three counts of unlawful delivery of a controlled substance (2014), two counts of attempted first degree murder (2019), and unlawful possession of a weapon by a felon (2019). Given that respondent has been convicted of at least three felonies and one of those convictions took place within five years of the filing of the 2019 petition to terminate his parental rights, the State's evidence created a rebuttable presumption of his depravity. See *In re A.H.*, 359 Ill. App. 3d 173, 180, 833 N.E.2d 915, 921 (2005) ("Certified copies of the requisite convictions create a *prima facie* showing of depravity ***.").

¶ 28 In an apparent attempt on appeal to rebut the presumption, respondent argues three of the State's exhibits concerned felony convictions committed prior to the State filing its petition for adjudication of wardship. However, the Adoption Act specifically allows for prior convictions to establish a rebuttable presumption of depravity even if they occurred prior to the commencement of the juvenile case, so long as one conviction occurred within five years of the petition to terminate parental rights. 750 ILCS 50/1(D)(i) (West 2018). Moreover, respondent's pattern of criminality constitutes a " 'course of conduct that indicates a moral deficiency and an inability to conform to accepted moral standards.' " *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 22, 73 N.E.3d 616 (quoting *In re J'America B.*, 346 Ill. App. 3d 1034, 1047, 806 N.E.2d 292, 304 (2004)). While respondent claims he is innocent of the 2019 felony convictions and notes his case is pending on appeal, our supreme court has found "the Adoption Act does not call for courts to reserve ruling on findings of unfitness which are related to criminal matters until the appellate process in the underlying cause has been exhausted." *Donald A.G.*, 221 Ill. 2d at 254, 850 N.E.2d at 183.

¶ 29 Respondent also argues he could not make reasonable progress toward the completion of recommended services because they were not offered to him while he resided in the county jail. However, the trial court found him unfit on the ground of depravity, not for failing to make reasonable progress toward the return of the minor after the adjudication of neglect. At any rate, being incarcerated does not give respondent a pass when it comes to complying with his service plan. See *In re J.L.*, 236 Ill. 2d 329, 340, 924 N.E.2d 961, 967 (2010) (stating the reasonable progress ground of unfitness does not contain an "exception for time spent in prison"). We note respondent presented no evidence at the unfitness hearing and thus failed to rebut the presumption of depravity. See *In re Gwynne P.*, 346 Ill. App. 3d 584, 599, 805 N.E.2d 329, 341-42 (2004) (finding the presumption of depravity was not rebutted where the respondent's convictions included seven felonies and he failed to complete any of the services required by his service plans). As respondent meets the statutory definition of an unfit person based on depravity, the court's finding of unfitness on this ground was not against the manifest weight of the evidence.

¶ 30 Although not mentioned in respondent's statement of facts, the trial court also found him unfit based on his repeated incarceration. Section 1(D)(s) of the Adoption Act provides as a ground for parental unfitness as follows:

> "The child is in the temporary custody or guardianship of [DCFS], the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child." 750

ILCS 50/1(D)(s) (West 2018).

¶ 31 In *In re D.D.*, 196 Ill. 2d 405, 419, 752 N.E.2d 1112, 1120 (2001), our supreme court found section 1(D)(s) does not require the repeated incarceration to take place during the child's lifetime. Courts are to " 'consider the overall impact that repeated incarceration may have on the parent's ability to discharge his or her parental responsibilities ***, such as the diminished capacity to provide financial, physical, and emotional support for the child.' " *Gwynne P.*, 215 Ill. 2d at 356, 830 N.E.2d at 517 (quoting *D.D.*, 196 Ill. 2d at 421, 752 N.E.2d at 1121). "Incarceration that predates the child's birth can also be considered under section 1(D)(s) if it has impeded a parent's ability to acquire appropriate life skills or provide the types of physical, mental, moral, material and emotional support children require." *Gwynne P.*, 215 Ill. 2d at 356, 830 N.E.2d at 517-18.

¶ 32 In this case, respondent was in prison at the time of the State's February 2019 petition to terminate parental rights and had been in custody since his arrest on his most recent charges in December 2017. J.T. was born in October 2017. Prior to J.T.'s birth, respondent had been repeatedly incarcerated since 2011 after committing crimes involving illicit drugs and unlawful weapons. He will continue to be incarcerated until his projected parole date in July 2087. See *In re Brandon A.*, 395 Ill. App. 3d 224, 239, 916 N.E.2d 890, 903 (2009) (stating this court may take judicial notice of a respondent's scheduled release date from prison).

¶ 33 Respondent has been incarcerated for most of J.T.'s young life. He has not provided the financial, physical, or emotional support J.T. needs and deserves. His incarceration has prevented him from not only completing his service plan goals but also discharging his parental responsibilities. Moreover, his criminal history and repeated incarceration raise the inference he "will continue to be unavailable and inadequate as a parent." *In re M.M.J.*, 313 Ill.

App. 3d 352, 355, 728 N.E.2d 1237, 1240 (2000). The trial court's finding of unfitness on this ground was not against the manifest weight of the evidence.

¶ 34 B. Best-Interests Finding

¶ 35 Respondent argues the trial court's finding it was in the minor's best interests for his parental rights to be terminated was against the manifest weight of the evidence. We disagree.

¶ 36 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). "[A]t a best-interests hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004); see also *In re Julian K.*, 2012 IL App (1st) 112841, ¶ 80, 966 N.E.2d 1107 (stating once the trial court finds the parent unfit, "all considerations, including the parent's rights, yield to the best interests of the child"). When considering whether termination of parental rights is in a child's best interests, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2018). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for

> permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2018).

¶ 37 A trial court's finding that termination of parental rights is in a child's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Dal. D.*, 2017 IL App (4th) 160893, ¶ 53, 74 N.E.3d 1185. The court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable, arbitrary, or not based on the evidence." *Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616.

¶ 38 In this case, the best-interests report indicated J.T. has been in his current placement since October 2017 and he resides with his half-sibling. The report stated he "appears to be healthy and enjoys living in his current placement," is up date on his medical needs, and is developmentally on track. Given his incarceration, respondent failed to complete any of the services required in his service plan. He has not had visits with J.T. while incarcerated, and he is scheduled to remain in prison until 2087.

¶ 39 On appeal, respondent makes several arguments, all of them without citation to authority, and the failure to do so results in forfeiture. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); *Republic Bancorp Co. v. Beard*, 2018 IL App (2d) 170350, ¶ 22, 107 N.E.3d 423 (stating "[t]he failure to cite authority forfeits the contention"). Respondent contends the State did not

file a petition for adjudication of wardship alleging J.T. was neglected due to respondent's depravity. However, at the adjudicatory hearing, the trial court determines "whether the child is neglected, and not whether the parents are neglectful." *In re Arthur H.*, 212 Ill. 2d 441, 467, 819 N.E.2d 734, 749 (2004). Thus, the State need not have alleged respondent was responsible for the neglect. See *In re A.P.*, 2013 IL App (3d) 120672, ¶ 18, 988 N.E.2d 221 (stating the juvenile "petition put respondent on notice that his fitness would be at issue at the combined adjudication and dispositional hearing").

¶ 40 Respondent also argues his parental rights should not have been terminated because the State did not petition to terminate the parental rights of J.T.'s mother at the same time. Respondent offers no case law to support his claim, and we find it without merit. See *In re L.B.*, 2015 IL App (3d) 150023, ¶ 17, 36 N.E.3d 260 (stating the trial court's finding that the child's father was fit did not preclude a petition to terminate the respondent mother's parental rights but is a factor to consider at the best-interests hearing).

¶ 41 At the best-interests hearing, the trial court stated J.T. "needs to have permanency in his life" and is "thriving" in his current location. The evidence indicates J.T. is in a good home, his needs are being met, and his current caregivers are willing to provide permanency through adoption if the situation arises. On the other hand, respondent has been in prison since shortly after J.T.'s birth, and given his criminal history and lengthy prison sentences, nothing indicates he will be able to provide for J.T. in the near future. Considering the evidence and the best interests of the minor, we find the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the trial court's judgment.

¶ 44 Affirmed.