2019 IL App (4th) 190593-U

NOS. 4-19-0593, 4-19-0594 cons.

FILED
December 20, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re T.E., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Macon County
Petitioner-Appellee,	)	No. 17JA199
v.	)	
Antwon W.,	)	
Respondent-Appellant).	)	
_____	)	
In re X.E., a Minor	)	
	)	No. 17JA227
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	
v.	)	Honorable
Antwon W.,	)	Thomas E. Little,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Cavanagh and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings respondent was unfit under section 1(D)(i) of the Adoption Act and it was in the minor children's best interests to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 2 In September 2018, the State filed motions for the termination of the parental rights of respondent, Antwon W., as to his minor children, T.E. (born in July 2008) and X.E. (born in December 2010). After an April 2019 hearing, the Macon County circuit court found respondent unfit as alleged in the termination motions. At an August 2019 hearing, the court found it was in the minor children's best interests to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by (1) finding him unfit and (2) concluding it was in the minor children's best interests to terminate his parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 T.E. and X.E.'s mother is Dionica E., who is not a party to this appeal. In October 2017, the State filed petitions for the adjudication of wardship of the minor children. Those petitions alleged the minor children were neglected pursuant to sections 2-3(1)(b) and 2-3(1)(d) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b), 2-3(1)(d) (West 2016)) and abused under section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2016)). The allegations were based on a September 2, 2017, incident in which Dionica and her paramour, Michael D., were not supervising T.E. and X.E., and X.E. suffered second-degree burns over 32% of his body. T.E. witnessed the incident, and a passerby had to put out the fire on X.E. At the time of the incident, Dionica was on conditional discharge for a misdemeanor domestic battery. One of the requirements of her conditional discharge was to have no contact directly or indirectly with Michael or go to his residence. A safety plan had also been put into place with similar provisions. Despite the court order and safety plan, Dionica continued to have contact with Michael.

¶ 6 In T.E.'s case (case No. 17-JA-199), respondent and Dionica did not attend the October 2017 adjudicatory hearing, and the circuit court found them in default. The court entered a written adjudicatory order finding T.E. neglected and abused as alleged in the petition. It also entered a written dispositional order, in which it found respondent and Dionica were unfit and unable to care for T.E., made T.E. a ward of the court, and placed his custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 7 In X.E.'s case (case No. 17-JA-227), respondent did not attend the December 2017 adjudicatory hearing, but Dionica did. Dionica stipulated X.E. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2016)), and the circuit court dismissed the other two counts. The court entered a written adjudicatory order finding X.E. neglected. The court held the dispositional hearing in January 2018, and respondent again did not attend. After the hearing, the court entered a written dispositional order in which it found respondent and Dionica were unfit and unable to care for X.E., made X.E. a ward of the court, and placed his custody and guardianship with DCFS. The order noted respondent was on the Violent Offender Against Youth Registry for abusing X.E. and T.E.

¶ 8 In January 2019, the State filed motions to terminate respondent's parental rights to the minor children. The motions asserted respondent was unfit because he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor children's welfare (750 ILCS 50/1(D)(b) (West 2018)), (2) was depraved in that he had been convicted of aggravated battery of a child (750 ILCS 50/1(D)(i) (West 2018)), (3) was depraved because he had been convicted of three felonies (750 ILCS 50/1(D)(i) (West 2018)), (4) failed to make reasonable efforts to correct the conditions which were the basis for the removal of the minor children from him within nine months after the neglect and/or abuse adjudication (750 ILCS 50/1(D)(m)(i) (West 2018)), (5) failed to make reasonable progress toward the minor children's return to him within nine months after the neglect and/or abuse adjudication, specifically October 10, 2017, to July 10, 2018 (750 ILCS 50/1(D)(m)(ii) (West 2018)), and (6) failed to make reasonable progress toward the minor children's return to him within nine months after the neglect and/or abuse adjudication, specifically April 18, 2018, to January 18, 2019 (750 ILCS 50/1(D)(m)(ii) (West 2018)). The State also sought termination of Dionica's parental rights.

¶ 9 On April 15, 2019, the circuit court commenced the fitness hearing. The State presented the testimony of (1) Christina Walters, a DCFS Medicaid therapist for Youth Advocate; (2) Christine Foster, a parenting teacher for Youth Advocate; (3) Dawn McCoy, a supervised visits specialist and family interventionist with Youth Advocate; and (4) Lacey Smith, a DCFS child welfare specialist. The State also presented certified copies of respondent's three felony convictions, the most recent of which occurred in 2015.

¶ 10 Walters testified she was Dionica's therapist and did not have any contact with respondent. Foster and McCoy also testified they had no interaction with respondent.

¶ 11 Smith testified she had been the caseworker for the minor children's case since September 2017. Smith noted respondent did attend the shelter care hearing and was aware a case had been opened. Sometime before March 2018, Smith contacted respondent by telephone. Respondent was on parole at the time. He had been arrested and put on the Violent Offender Against Youth Registry. Respondent told Smith he believed he was not allowed to have any communication with T.E. and X.E. Respondent's parole ended in July 2018. After their conversation, Smith sent him letters notifying him of court dates and family meetings in this case. In the letters, she also asked respondent to contact her to set up a time to meet. Respondent did appear at the last court date where he was arraigned. Smith also spoke with respondent on February 14, 2019. He told her he had received the letters but was hesitant in reaching out to her because he did not want to mess up Dionica getting the children back. Respondent had yet to complete the integrated assessment, and thus Smith had been unable to assess the services he needed. Given respondent's history, Smith believed it would take longer than six to nine months for respondent to make satisfactory progress in the services for the minor children to be returned to him.

¶ 12 After hearing the parties' arguments, the circuit court found respondent unfit on all grounds alleged in the petition. The court also found Dionica unfit.

¶ 13 On August 26, 2019, the circuit court held the best-interests hearing. The State presented the testimony of Smith and Adrianna Stevenson, a caseworker at Camelot Care Centers. The guardian *ad litem* also called Smith as a witness. Additionally, the circuit court considered the best interest report filed in May 2019.

¶ 14 Smith testified DCFS had reached out to respondent throughout the case. However, respondent did not show any initiative to engage in services. Smith testified she believed respondent's parole prevented him from visiting the minor children and he had not seen them since they came into care. Smith also believed respondent had not seen the children for even longer because respondent had been incarcerated for abusing T.E. Smith had not observed any interaction between respondent and the minor children. She also testified respondent had not engaged in any services. Given the fact respondent was on a violent offender registry for his actions against T.E., Smith did not know how long it would take respondent to regain fitness if he immediately engaged in services.

¶ 15 Stevenson testified she was the caseworker for the minor children. X.E. was placed in a foster home with a half sibling, who is not part of this appeal, and T.E. was in a residential facility because of behavioral problems. T.E. exhibited severe physical and verbal aggression towards female staff and peers. He was receiving counseling and taking medication to address his behaviors. Stevenson had not seen T.E. act out against Dionica during visits with her. According to Stevenson, T.E. was doing better in treatment because he had fewer outbursts. He was also getting along better with his peers and adults and was using his coping skills. Stevenson and the treatment staff were discussing T.E.'s discharge from the facility. Stevenson

was working on a relative placement for T.E. upon discharge. The relative was a possible permanent placement for him. Stevenson noted the relative would need to obtain training on how to deal with children with behavioral problems.

¶ 16 X.E. was in a prospective adoptive placement and was doing well there. X.E. had been in the home for a year and half and was "well bonded" with his foster family. He attended church with his foster family and engaged in family activities such as vacations and outings.

¶ 17 As to respondent, Stevenson had not observed any visits between respondent and his children. She was unaware of any interaction between respondent and the minor children.

¶ 18 At the conclusion of the hearing, the circuit court found it was in the minor children's best interests to terminate respondent's parental rights. The court also terminated the parental rights of Dionica. On August 26, 2019, the court entered a written order terminating respondent's parental rights to the minor children.

¶ 19 On August 26, 2019, respondent filed notices of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases also govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of the appeals pursuant to Illinois Supreme Court Rule 307(a)(6) (eff. Nov. 1, 2017). On appeal, this court docketed the appeal in T.E.'s case as No. 4-19-0593 and the appeal in X.E.'s case as No. 4-19-0594. In September 2019, we granted respondent's motion to consolidate the two cases on appeal.

¶ 20 II. ANALYSIS

¶ 21 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2018)), the involuntary termination of parental rights involves a two-step process. First, the

State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2018)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the minor children's best interests that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 22 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interests determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re J.L.*, 236 Ill. 2d 329, 344, 924 N.E.2d 961, 970 (2010) (best-interests determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 23 A. Respondent's Fitness

¶ 24 Respondent contends the circuit court erred by finding him unfit. In this case, the circuit court found respondent unfit on all six grounds alleged in the petition. Two of the grounds were based on depravity under section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2018)). Illinois courts have held depravity may be shown "where a parent engages in a course of conduct indicating a moral deficiency and an inability to conform to

accepted morality." *In re J.V.*, 2018 IL App (1st) 171766, ¶ 179, 115 N.E.3d 1099. Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2018)) provides a rebuttable presumption a parent is depraved that can only be overcome by clear and convincing evidence if the parent has committed the offense of aggravated battery of a child. That section also provides a rebuttable presumption a parent is depraved if the parent has at least three felonies under the laws of Illinois and at least one of the convictions took place within five years of the filing of the petition for the termination of parental rights. 750 ILCS 50/1(D)(i) (West 2018).

¶ 25 A rebuttable presumption has been explained as follows:

> "A rebuttable presumption creates a *prima facie* case as to the particular issue in question and thus has the practical effect of requiring the party against whom it operates to come forward with evidence to meet the presumption. [Citation.] The only effect of the rebuttable presumption is to create the necessity of evidence to meet the *prima facie* case created thereby, and which, if no proof to the contrary is offered, will prevail. [Citation.] If evidence opposing the presumption is presented, the presumption ceases to operate, and the case is determined on the basis of the evidence presented, as if the presumption never existed. [Citation.] There is no fixed rule as to how much evidence is required to meet the presumption: the stronger the presumption, the greater the amount of evidence is required to rebut it." (Internal quotation marks omitted). *J.V.*, 2018 IL App (1st) 171766, ¶180 (quoting *In re J.A.*, 316 Ill. App. 3d 553, 562-63, 736 N.E.2d 678, 686 (2000)).

¶ 26 Here, respondent does not dispute the State established the presumption of depravity based on his conviction for aggravated battery of a child. He contends he overcame

the presumption because he had not violated his parole and had not violated the Violent Offender Against Youth Registry. Respondent also noted he had not contacted his minor children, which showed he had been following the rules placed on him. However, respondent presented no evidence at the fitness hearing. The only evidence regarding respondent's parole came from Smith, the State's witness. She did testify respondent stated he was complying with his parole by not contacting his minor children. However, no evidence was presented respondent had complied with all aspects of his parole and was addressing his problems that led to him committing aggravated battery against T.E. In fact, no evidence was presented as to what respondent had been doing since he was released from incarceration. Thus, we agree with the State respondent failed to present clear and convincing evidence overcoming the presumption of depravity based on respondent's conviction for aggravated battery of child.

¶ 27 Accordingly, we conclude the circuit court's finding respondent unfit based on depravity pursuant to section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2018)) was not against the manifest weight of the evidence.

¶ 28 Since we have upheld the circuit court's determination respondent met the statutory definition of an "unfit person" on the basis of depravity related to his conviction for aggravated battery of a child (750 ILCS 50/1(D)(i) (West 2018)), we do not address the other bases for respondent's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 29 B. Minor Children's Best Interests

¶ 30 Respondent also challenges the circuit court's finding it was in the minor children's best interests to terminate his parental rights. The State disagrees and contends the court's finding was proper.

¶ 31 During the best-interests hearing, the circuit court focuses on "the child[ren]'s welfare and whether termination would improve the child[ren]'s future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2018)) in the context of the children's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the children's physical safety and welfare; the development of the children's identity; the children's family, cultural, and religious background and ties; the children's sense of attachments, including continuity of affection for the children, the children's feelings of love, being valued, security, and familiarity, and taking into account the least disruptive placement for the children; the children's own wishes and long-term goals; the children's community ties, including church, school, and friends; the children's need for permanence, which includes the children's need for stability and continuity of relationships with parent figures, siblings, and other relatives; the uniqueness of every family and each child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the children. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 32 We note a parent's unfitness to have custody of his or her children does not automatically result in the termination of the parent's legal relationship with the children. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor children's best interests. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 33 A review of the best-interests factors overwhelmingly favors the termination of respondent's parental rights. X.E. had lived in his foster home for a year and a half and was doing well there. One of his half siblings also lived there. X.E. was bonded with his foster family. He was involved in family activities and attended church. His foster parents were willing to provide him permanence through adoption. T.E. was making improvements with his behavioral problems in a residential facility, and his caseworker was working with a relative, who was a possible permanent placement for T.E. Respondent had not seen the minor children since they had come into care, and it was unclear if and when he could see them based on respondent's placement on the Violent Offender Against Youth Registry. No evidence was presented a bond existed between respondent and the minor children, and T.E. was the victim in respondent's aggravated battery of child conviction.

¶ 34 Accordingly, we find the circuit court's conclusion it was in the minor children's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the Macon County circuit court's judgment.

¶ 37 Affirmed.