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2014 IL App (3d) 140505-U

Order filed October 22, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> S.B.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor)	Knox County, Illinois.
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-14-0505
Petitioner-Appellee,)	Circuit No. 12-JA-11
)	
v.)	
)	
Calvin J. W.,)	The Honorable
)	James R. Standard,
Respondent-Appellant).)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* In a proceeding to terminate parental rights, the trial court's finding that the biological father of the minor child was unfit based on depravity was not against the manifest weight of the evidence. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 In the context of a juvenile-neglect proceeding, the State filed a petition to involuntarily terminate respondent's parental rights to his minor child, S.B. After an evidentiary hearing on

the matter, the trial court found that respondent was an unfit person and, based upon the best interests of S.B., subsequently terminated respondent's parental rights. Respondent appeals, challenging only the finding of parental unfitness. We affirm the trial court's judgment.

¶ 3

FACTS

¶ 4

Respondent and Angel H. were the biological parents of the minor child, S.B., who was born in March 2011. In April 2012, the State filed a juvenile petition, which it later amended, alleging that S.B. and several of her half-siblings were neglected because they had been subjected to an injurious environment. More specifically, the petition alleged, among other things, that respondent, who was Angel H.'s live-in boyfriend and S.B.'s father, had sexually abused one of S.B.'s half-siblings, S.H. The petition alleged further that S.H. had told her mother, Angel H., about the sexual abuse, but that Angel H. did not believe the allegation. The Department of Children and Family Services (DCFS) took protective custody of all of the children after DCFS found out that Angel H. was in the process of moving out of her residence with the children, without first notifying DCFS or the police, despite a Safety Plan being in place for the protection of the children. Most of the children were placed in separate foster homes, although some of the children were placed together.

¶ 5

Defendant and Angel H. were charged with criminal offenses related to the sexual abuse of S.H. Defendant reportedly fled to Chicago to evade the charges but eventually turned himself in to police. After a bench trial on the matter, defendant was convicted of two counts of predatory criminal sexual assault of a child (the predatory charge or charges) and of one count of aggravated criminal sexual abuse (the sexual abuse charge).

¶ 6 At an adjudicatory hearing in September 2012, respondent and Angel H. stipulated to the juvenile neglect petition as amended and all of the children were found to be neglected.¹ After a dispositional hearing the following month, all of the children were made wards of the court, respondent and Angel H. were found to be unfit parents, and DCFS was named guardian of the children. As part of the trial court's ruling at the dispositional hearing, respondent was ordered to, among other things, obtain a sex offender assessment, a domestic violence assessment, and a substance abuse assessment; to comply with all of the recommendations contained therein; and to participate in parental services. In addition, it was recommended in the dispositional order that respondent not be allowed visitation with S.B. at that time. Permanency review hearings were held in April and October 2013, after both of which, the trial court found that no parent had made reasonable progress or efforts toward the return of the children home. In the permanency review orders, it was again specified that respondent would not be allowed to have visitation with S.B. at that time.

¶ 7 In November 2013, the State filed a petition, which was later amended (collectively referred to as the termination petition), to terminate respondent's parental rights to S.B.² The termination petition alleged that respondent was an unfit person as defined in the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2012)) because respondent: (1) had failed to make reasonable efforts to correct the conditions which were the basis for removal of S.B. (750 ILCS 501(D)(m)(i) (West 2012)); (2) had failed to make reasonable progress toward the return of S.B. to parental custody within the first nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) had been convicted of predatory criminal sexual assault of a

¹ One child who was named in the initial neglect petition was released to the custody of his biological father and was not named in the later amended neglect petition.

² The State also sought to terminate the parental rights of S.B.'s mother, Angel H.

child in the specified case (750 ILCS 50/1(D)(i) (West 2012)); and (4) had failed to maintain a reasonable degree of interest, concern, or responsibility as to S.B.'s welfare (750 ILCS 50/1(D)(b) (West 2012)). The termination petition alleged further that it was in the best interest of S.B. for respondent's parental rights to be terminated.

¶ 8 An evidentiary hearing on the parental fitness portion of the termination petition (the parental fitness hearing) was held over several days in February, March, and April 2014. Respondent was present for the hearing in custody and was represented by counsel. The evidence presented at the hearing relative to respondent can be summarized as follows. By agreement of the parties, the transcripts from the bench trial and sentencing hearing in respondent's criminal case were admitted into evidence, along with a copy of respondent's convictions for two counts of predatory criminal sexual assault and one count of aggravated criminal sexual abuse, all three of which arose out of the allegations in this case. Testimony was presented by the State from both the DCFS investigator who had investigated the allegation of sexual abuse and from the DCFS caseworker, who had been the caseworker for the instant case. Of relevance to this appeal, the caseworker testified that respondent had failed to obtain a substance abuse assessment and a domestic violence assessment and had not obtained any treatment in those two areas. Respondent had obtained a sex offender assessment at some point in 2013 but had not allowed the caseworker to have access to that assessment while his criminal case was pending. The caseworker was, therefore, unaware of whether respondent had followed any of the treatment recommendations from that assessment. Respondent was in jail on the sexual abuse charges during the entire time period and because of that, the caseworker had not given respondent an evaluation. The caseworker testified further that respondent could not complete any of the recommended services because he was not given an assessment.

¶ 9 The only evidence that respondent presented at the parental fitness hearing was the evidence that the respondent agreed with the State to have jointly admitted—the criminal trial and sentencing transcripts and the conviction document.³ The criminal trial and sentencing transcripts showed that respondent maintained his innocence throughout the trial, the sentencing, and his sex offender evaluation. During his statement in allocution at sentencing, respondent stated that he could not express remorse for a crime that he did not commit and told the trial court that he was fighting not only for his life and his future but for his daughter's life and future and for his parental rights as well. The sentencing documents indicated that respondent was sentenced to a total of 24 years in prison—10 years for one of the predatory charges, 10 years for the other predatory charge, and 4 years for the sexual abuse charge, with all three charges to be served consecutively and with the sentences on the two predatory charges to be served at 85%.

¶ 10 At the conclusion of the parental fitness hearing, the trial court found that all four of the grounds of parental unfitness alleged in the termination petition had been proven by the State by clear and convincing evidence. The trial court concluded, therefore, that respondent was an unfit person.⁴

¶ 11 In May 2014, a hearing was held on the best interest portion of the termination petition. Respondent was present at the hearing in custody and was represented by counsel, although he did not present any evidence on his own behalf. At the conclusion of the hearing, the trial court took the case under advisement and later issued a written ruling finding that it was in S.B.'s best

³ Additional evidence was presented relative to Angel H.'s parental fitness.

⁴ The trial court also found that Angel H. was an unfit person.

interest to terminate respondent's parental rights.⁵ The trial court terminated respondent's parental rights and kept DCFS as the guardian of S.B. Respondent appealed.

¶ 12

ANALYSIS

¶ 13

On appeal, respondent only challenges the finding of parental unfitness. Respondent asserts that the finding was against the manifest weight of the evidence as to all four grounds of unfitness alleged in the termination petition and asks that we reverse the finding and the order terminating his parental rights. Although respondent presents arguments as to all four grounds of unfitness, we will address only the ground of depravity because it is dispositive of the issue before us. See 750 ILCS 50/1(D) (West 2012); *In re C.W.*, 199 Ill. 2d 198, 210 (2002) (regardless of the number of grounds alleged, proof of a single statutory ground is sufficient for a finding of parental unfitness). As to that specific ground, respondent asserts that the trial court's determination was against the manifest weight of the evidence because the State failed to establish that respondent was depraved at the time the petition was filed. The State disagrees with that assertion and argues that the trial court's ruling was proper and should be affirmed.

¶ 14

In a proceeding to terminate parental rights, the State has the burden in the trial court to prove the alleged ground of parental unfitness by clear and convincing evidence. See 705 ILCS 405/2-29(2) (West 2012); *C.W.*, 199 Ill. 2d at 210. The proof of any single statutory ground will suffice. 750 ILCS 50/1(D) (West 2012); *C.W.*, 199 Ill. 2d at 210. A trial court's finding of parental unfitness is given great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence; that is, unless it is clearly apparent from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re A.M.*, 358 Ill. App. 3d 247, 252-53 (2005).

⁵ Angel H.'s parental rights to S.B. were also terminated.

¶ 15 As noted above, one of the statutory grounds of parental unfitness that was alleged and proven in this case was depravity. The term "depravity" is not defined in the Adoption Act but has been defined by our supreme court to mean an " 'inherent deficiency of moral sense and rectitude.' " *In re Abdullah*, 85 Ill. 2d 300, 305 (1981) (quoting *Stalder v. Stone*, 412 Ill. 488, 498 (1952)). When depravity is alleged as a ground of parental unfitness, the trial judge is called upon to closely scrutinize the character and credibility of the particular parent in question. See *In re Yasmine P.*, 328 Ill. App. 3d 1005, 1011 (2002). The parent's depravity must be shown to exist at the time of the termination petition, and the acts constituting depravity must be of sufficient duration and repetition to establish that the parent in question has a deficiency in moral sense and either an inability or an unwillingness to conform to accepted morality. *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000); *A.M.*, 358 Ill. App. 3d at 253.

¶ 16 Under the Adoption Act, a conviction of predatory criminal sexual assault of a child creates a rebuttal presumption that the convicted parent is depraved, which can only be overcome by clear and convincing evidence to the contrary—that despite the conviction, the parent is not depraved. See 750 ILCS 50/1(D)(i) (West 2012); *J.A.*, 316 Ill. App. 3d at 562-63; *A.M.*, 358 Ill. App. 3d at 253. When a rebuttable presumption arises, such as the one in the present case on depravity, it establishes the State's *prima facie* case and requires the respondent to come forward with sufficient evidence to rebut the presumption. See *J.A.*, 316 Ill. App. 3d at 562-63; *A.M.*, 358 Ill. App. 3d at 253. The burden of proof, however, does not shift to the respondent but, rather, remains with the State. *Id.* If the respondent fails to rebut the presumption, the State's *prima facie* case will prevail. *Id.*

¶ 17 In the present case, respondent conceded that the State presented sufficient evidence to give rise to a rebuttable presumption of depravity. See 750 ILCS 50/1(D)(i) (West 2012); *J.A.*,

316 Ill. App. 3d at 562-63; *A.M.*, 358 Ill. App. 3d at 253. The only evidence that respondent arguably presented to rebut that presumption was the transcripts from his criminal trial and sentencing hearing and his conviction records, which showed the length of respondent's prison term. That evidence was not sufficient to establish in a clear and convincing manner that respondent was no longer depraved. Therefore, the State's *prima facie* case of depravity prevailed. See *J.A.*, 316 Ill. App. 3d at 562-63; *A.M.*, 358 Ill. App. 3d at 253.

¶ 18 Respondent's assertion—that the State failed to establish that he was depraved as of the filing of the termination petition—has no support in the facts of this case or in the law on depravity. See 750 ILCS 50/1(D)(i) (West 2012); *J.A.*, 316 Ill. App. 3d at 562-63; *A.M.*, 358 Ill. App. 3d at 253. Although the termination petition was filed 1½ to 2 years after the sexual abuse occurred, that time frame, in and of itself, does not defeat the validity of the presumption. Indeed, respondent has not cited any case on point in which a court has drawn that conclusion. We, therefore, reject respondent's assertion on this issue and affirm the trial court's ruling.

¶ 19 Since we have determined that the trial court's finding of depravity was not against the manifest weight of the evidence, we need not address the trial court's findings as to the three remaining grounds of parental unfitness. 750 ILCS 50/1(D) (West 2012); *C.W.*, 199 Ill. 2d at 210.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Knox County.

¶ 22 Affirmed.