No. 3--10--0769

Order Filed February 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re Adoption of G.M.F.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
a Minor	)	La Salle County, Illinois,
	)	
(The People of the State of Illinois,	)	No. 09--AD--1
	)	
Petitioner-Appellee,	)	
	)	
v.	)	
	)	
Calvin M.,	)	Honorable
	)	James A. Lanuti,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Wright specially concurred in the judgment, joined by Justice McDade.

ORDER

Held: Evidence was sufficient to establish that the father was unfit and the termination of the father's parental rights was in the best interest of the child. The adoption judgment is vacated and this cause is remanded for further proceeding on the adoption petition in light of an automatic stay of the termination order during the pendency of this appeal pursuant to Illinois Supreme Court Rule 305(e).

The respondent, Calvin M., appeals from the trial court's order terminating his parental rights to the minor, G.M.F., and granting the adoption petition of the petitioner, A.S. The trial court found that, pursuant to the Adoption Act (Act) (750 ILCS 50/0.01 *et seq.* (West 2008)), the respondent was unfit on the basis that he: (1) failed to maintain a reasonable degree of interest, concern or responsibility as to G.M.F.'s welfare (750 ILCS 50/1(D)(b) (West 2008)); (2) evidenced his intent to forego his parental rights as manifested by his failure to visit G.M.F., failure to communicate with G.M.F., or failure to maintain contact with or plan for her future although physically able to do so (750 ILCS 50/1(D)(n) (West 2008)); and (3) was depraved (750 ILCS 50/1(D)(i) (West 2008)). On appeal, the respondent argues that the trial court erred when it found that he was unfit and that it was in the best interest of G.M.F. to terminate his parental rights and grant the adoption petition. We affirm the trial court's termination of the respondent's parental rights and remand for furthering proceedings on the adoption petition.

FACTS

G.M.F. was born on August 7, 2007. When G.M.F. was two days old, her biological mother gave custody of her to A.S. On December 22, 2008, G.M.F.'s biological mother executed a consent to adoption because she was about to be incarcerated and had an ongoing drug addiction. On January 7, 2009, A.S. filed a

petition to adopt G.M.F., naming the respondent as G.M.F.'s biological father and requesting to terminate his parental rights because he was an unfit parent.

On April 6, 2009, the respondent filed his appearance and requested a paternity test. On January 22, 2010, the respondent was adjudicated the biological father of G.M.F. On February 5, 2009, the trial court entered an interim order, in which the court terminated the parental rights of G.M.F.'s biological mother based upon her valid consent, declared G.M.F. to be a ward of the court, gave temporary custody of G.M.F. to the petitioner, and appointed a guardian *ad litem* (GAL) and an investigator.

On March 1, 2010, A.S. filed an amended petition for adoption, alleging that the respondent was unfit in that he: (1) failed to demonstrate a reasonable degree of interest, concern or responsibility as to G.M.F. within the first 30 days after her birth; (2) failed to maintain a reasonable degree of interest, concern or responsibility for her welfare; (3) intended to forego his parental rights as manifested by his failure for a period in excess of 12 months to visit, communicate, or maintain contact with G.M.F. or plan for her future although physically able to do so; and (4) was depraved in that he was convicted in March 2008 of criminal drug conspiracy (Class X felony), in February 2008 of aggravated fleeing and attempting to elude a police officer, and on April 11, 2003, of unlawful delivery of a controlled substance

(Class 1 felony).

On March 16, 2010, the respondent registered with the Illinois Putative Father Registry as to G.M.F.

On September 20, 2010, the fitness hearing took place. The respondent testified that he had been arrested the day before G.M.F.'s birth and was in police custody until August 27, 2007. The evidence showed that the respondent visited with G.M.F. twice from the time of her birth on August 7, 2007, until he was incarcerated for criminal drug conspiracy on November 15, 2007.

The respondent's first visit with G.M.F. took place when she was a few weeks old. The visit occurred in A.S.'s home, with A.S., A.S.'s parents, G.M.F.'s mother, the respondent, and two of the respondent's friends present. At that time, the respondent knew he was possibly the father of G.M.F. A.S. and A.S.'s mother both testified that during the visit they spoke with the respondent about adopting G.M.F. The respondent took their telephone number and said he would contact them, but he never called.

The second visit occurred when G.M.F.'s biological mother brought her to a restaurant where she knew the respondent was eating with his friends. G.M.F.'s biological mother testified that the visit was not prearranged, and was "real quick," with her just going "in and out" with G.M.F. The respondent testified that he had not seen G.M.F. on any other occasions but had made

an offer to G.M.F.'s biological mother to take G.M.F. to Chicago to live with him. G.M.F.'s biological mother refused because A.S. was taking good care of G.M.F.

The respondent testified that he did not have any contact information for G.M.F.'s biological mother or A.S. to discuss G.M.F.'s needs or her well-being. Also, he could not contact G.M.F.'s biological mother after he was incarcerated because she was a witness against him on his drug conspiracy charge. After paternity of G.M.F. was confirmed during the pendency of this case, the respondent made offers through A.S.'s attorney and the GAL to provide support to A.S. for G.M.F., but his efforts were refused. He sent G.M.F. a birthday card through the GAL. The respondent's scheduled release date from prison is in 2017.

The petitioner's attorney introduced evidence of the respondent's felony convictions. In 2003, the respondent was convicted of unlawful delivery of a controlled substance, a Class 1 felony, and was placed on probation for 48 months. In 2007, the respondent was charged with a traffic offense and was later convicted of aggravated fleeing and attempting to elude a police officer, which was a felony. The respondent testified that despite his conviction he did not commit the crime. On August 21, 2008, the respondent was convicted of criminal drug conspiracy (720 ILCS 570/405.1 (West 2008)), for which he is currently in prison. The respondent testified that he was framed

in the criminal drug conspiracy.

Kwame Riddle, one of the respondent's codefendants in the criminal drug conspiracy case, testified for the respondent via evidence deposition due to being incarcerated. Riddle testified that G.M.F.'s biological mother told him that four different men could have been G.M.F.'s father. The respondent's brother, Paul Forbes, who was also incarcerated and one of the respondent's codefendants, testified via evidence deposition that G.M.F.'s biological mother told him that she thought either his friend or the respondent was the father of G.M.F.

The respondent's 24-year-old sister testified that the respondent had indicated to her shortly after G.M.F.'s birth that there was a possibility that G.M.F. was his daughter because she looked like their family. The respondent's sister had two children and was willing to care for G.M.F. until the respondent was released from prison.

The respondent and his witnesses testified that the respondent had three other children, with three other women. They testified that he took his other children to the malls, basketball courts, playgrounds, movies, and restaurants. The respondent did not expose the children to criminal activity. He supported them by giving their mothers money and buying them things. The respondent's witnesses also testified that the respondent's family and friends send him money for himself and

his other children. The respondent's three other children visited him in prison.

The trial court found that the respondent was unfit for failing to maintain a reasonable degree of interest, concern or responsibility for G.M.F.'s welfare and for evidencing an intent to forego his parental rights because he showed no interest in G.M.F. for 1½ years, from the time he was incarcerated on November 15, 2007, until he was served with the adoption petition in 2009. The circuit court also found that the respondent was depraved in that he had been convicted of three felonies, one of which involved a lengthy indictment that detailed "a series of criminal activities *** involving drug conspiracy and delivery of drugs which [wa]s just shocking to the Court."[1]

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[1] The indictment charged the respondent and 12 other individuals with committing multiple counts of unlawful possession of controlled substances with the intent to deliver heroin and cocaine, over the course of 1½ years, as part of a conspiracy to distribute cocaine and heroin in La Salle County. It was alleged that they used females to transport the drugs from Chicago to La Salle County and throughout La Salle County, having the females conceal the drugs in their vaginas. The indictment indicated that the respondent organized, directed, managed, controlled, and both supervised the distribution and distributed the drugs to individuals who distributed the drugs to users.

On September 21, 2010, a best interest hearing took place. A.S. testified that she lived with her parents, her sister, and her sister's three children. G.M.F. was very close to all of them. G.M.F. called A.S. "mom" and A.S.'s parents "grandma" and "papa." A.S. worked at a Subway sandwich shop, where her mother was her boss. A.S.'s mother did the scheduling so that either A.S. or her mother could remain with G.M.F. at all times. A.S. enrolled G.M.F. in a head start program. A.S. received a workers' compensation settlement of $14,000 from a previous employer. She used the money to buy G.M.F. school supplies, clothes, and toys, and she paid off her car and put $600 in an account for G.M.F.

A.S. had dropped out of high school but intended to obtain her general educational development certificate and attend a certified nursing assistant program. A.S. gave a false address on her tax return so that she could claim head of household status. A.S. would like to adopt G.M.F. because she most likely cannot have children. A.S. planned to live in her parents' home indefinitely. She earned approximately $300 per week in gross salary.

The circuit court took judicial notice of the testimony at the fitness hearing.

The respondent testified that he did not want his children to want for anything. He believed his sister and the rest of his

family would raise G.M.F. properly. The respondent, his mother, and two of his brothers were incarcerated. The respondent's sister and the rest of his family had never met G.M.F.

The GAL opined that it would not be in G.M.F.'s best interest to remove her from A.S.'s care, as it was the only home she had known for three years.

The circuit court found that it was in G.M.F.'s best interest to terminate the respondent's parental rights and grant A.S.'s adoption petition. The respondent appealed.

ANALYSIS

On appeal, the respondent first argues that the circuit court's finding of unfitness was against the manifest weight of the evidence. We disagree.

A trial court's finding of unfitness is afforded great deference and will not be reversed on appeal unless it is against the manifest weight of the evidence, meaning that the correctness of the opposite conclusion is clearly evident from a review of the evidence. *In re D.F.*, 201 Ill. 2d 476 (2002). A finding of unfitness will stand if it is supported by one of the statutory grounds set forth in section 1(D) of the Act. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006).

Under section 1(D)(i) of the Act, in certain situations a presumption that a parent is depraved arises, which can be overcome only by clear and convincing evidence. 750 ILCS

50/1(D)(i) (West 2008). Section 1(D)(i) provides:

> "[t]here 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 *** 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 2008).

However, because the presumption is rebuttable, a parent may present evidence that, despite his or her convictions, he or she is not depraved. *In re A.M.*, 358 Ill. App. 3d 247 (2005).

Depravity has been defined by our supreme court as " 'an inherent deficiency of moral sense and rectitude.' " *In re Abdullah*, 85 Ill. 2d 300, 305 (1981), quoting *Stadler v. Stone*, 412 Ill. 488, 498 (1952). Depravity also concerns a respondent's conduct that is of sufficient duration and repetition to establish 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 (2000). The statutory ground of depravity requires that the trier of fact closely scrutinize the character and credibility of the parent, to which a reviewing court will give deference. *In re J.A.*, 316 Ill. App. 3d 553.

In this case, the State presented sufficient evidence of the respondent's three felony convictions, one of which took place five years within the filing of the adoption petition, to give

rise to the rebuttable presumption that he is depraved. The respondent presented evidence that he spent time with and financially supported his other children. Also, the respondent testified that despite his convictions, he did not commit the crime of fleeing and eluding police and he was framed in the case of his criminal drug conspiracy conviction.

However, the respondent has not successfully rebutted the presumption of depravity by clear and convincing evidence. Between the ages of 20 and 25, the respondent was convicted of three felonies, one of which was for organizing a drug conspiracy involving various criminal activities of a dozen individuals. We defer to the trial court's scrutiny of the respondent's character and credibility and the weight to be given to the testimony of his siblings and incarcerated codefendants, who testified in regard to his parenting and financial support of his other children. Therefore, the trial court's finding that the respondent was an unfit parent on the grounds of depravity was not against the manifest weight of the evidence.

Having found that the ground of depravity was proven, we hold that the respondent's arguments pertaining to the lower court's findings of unfitness on other grounds are moot and we need not address them. See *In re Donald A.G.*, 221 Ill. 2d 234 (2006) (any one ground that is properly proven is sufficient to enter a finding of unfitness).

Next, we address the respondent's argument that the trial court erred when it found that it was in G.M.F.'s best interest to terminate his parental rights. In determining whether a decision to terminate a parent's rights is in the best interest of the child, the court's decision requires consideration of statutory factors, including: (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 attachment, including love, security, familiarity, and continuity of relationships with parental figures; (5) the risks related to substitute care; and (6) the preferences of persons available to care for the child. 705 ILCS 405/1--3(4.05) (West 2008). On review, the trial court's determination will not be disturbed unless it is contrary to the manifest weight of the evidence. In re Austin W., 214 Ill. 2d 31, 823 N.E.2d 572 (2005).

Here, the evidence presented at the best interest hearing was sufficient to support the trial court's determination that terminating the respondent's parental rights was in G.M.F.'s best interest. G.M.F. has lived with A.S. since she was two days old. G.M.F. refers to A.S. as "mom" and to A.S.'s parents as "grandma" and "papa." G.M.F. is clearly bonded to A.S. and A.S.'s extended family. A.S. and her parents have been the providers of G.M.F.'s basic needs for her entire life. G.M.F. has only met the

respondent twice and has never met his sister, who would have been G.M.F.'s sole caregiver if the respondent's parental rights had not been terminated.

Accordingly, the trial court's decision to terminate the respondent's parental rights was not against the manifest weight of the evidence. As such, the respondent had no standing to raise any concerns or state any preferences regarding the ultimate placement of G.M.F. for adoption. See *In re C.B.*, 221 Ill. App. 3d 686 (1991) (holding that after parental rights are terminated under the Act, parents have no remaining residual rights of any kind, and have no standing to raise any concerns or state any preferences as to the ultimate placement of their child for adoption).

However, we note that the GAL was not authorized to consent to G.M.F.'s adoption and the trial court was not authorized to grant the adoption petition on the same day that it terminated the respondent's parental rights. Illinois Supreme Court Rule 305(e) provides that an order terminating parental rights is automatically stayed for 60 days, and upon the filing of a timely notice of appeal shall continue until the appeal is completed, to the extent that it would permit entry of an order of adoption without the parent's consent or surrender. Ill. S. Ct. R. 305(e) (eff Jan. 1, 2004). Rule 305(e) also operates to stay the termination order with respect to any power granted to a person

or agency to consent to the child's adoption.

Therefore, we affirm the termination of the respondent's parental rights, vacate the adoption judgment, and remand this cause for further proceeding on the adoption petition.

CONCLUSION

The judgment of the circuit court of La Salle County is affirmed in part and vacated in part, with this cause remanded.

Affirmed in part and vacated in part; cause remanded.

JUSTICE WRIGHT, specially concurring, joined by Justice McDade:

In this case, I agree that the evidence established the biological father’s parental rights should be terminated based on allegations of his depravity. I also strongly agree that the judgment of adoption cannot stand and must be vacated for several reasons in addition to the procedural concerns aptly addressed by the majority. I write separately to highlight some disturbing circumstances which should be cautiously considered by the next judge on remand following our decision to vacate the judgment of adoption.

The record reveals unusual circumstances which are the cause for my concerns. The testimony during the termination hearing established that biological mother was incarcerated during the late stages of her pregnancy with this child. The record also

shows that biological mother was uncertain who the father might have been and she stated that she might be able to make that determination based on the race of her newborn child.

Biological mother's live-in boyfriend, a Caucasian man named Robert, was one potential biological father. Just prior to the birth, Robert contacted A.S.'s sister to determine if she would "consider taking" the newborn baby.

As the child's due date approached, biological mother feared that, if she gave birth to her child while incarcerated, DCFS would take custody of the newborn baby. Biological mother testified that A.S.'s family contacted her in the jail. Shortly before the birth, biological mother wrote A.S. a letter "about adopting or having [the child]." Thereafter, when biological mother went into labor, arrangements were made for A.S. and her family to provide bond money and assume the care of the baby once she was born. As planned, after A.S.'s family provided funds to post mother's bond, A.S. and her family followed biological mother, who was transported by her own mother, directly from the jail to the hospital, where A.S. was present during the child's birth.

After giving birth, on August 7, 2007, and now free on bond and not subject to DCFS's involvement, biological mother walked away from her role as parent by delivering her two-day old baby into the arms of A.S. In spite of these circumstances, the

mother's placement decision has ultimately dictated the outcome of the adoption proceedings initiated by A.S. 18 months after the child's birth.

It is undisputed that A.S. is unrelated to the minor. With the exception of attending grade school with biological mother, A.S. had no ongoing relationship with biological mother at the time of the child's birth. The record reveals that one of the four potential fathers, Robert, initiated a request for A.S.'s sister to "consider taking" the child. However, after the birth, the physical characteristics of the child caused biological mother to believe Robert was not the biological father, and he no longer played a role in making arrangements for the child's care.

Biological mother executed a consent to adoption on December 22, 2008, because she again was about to be incarcerated for three months for a retail theft charge. A.S. did not file a petition for adoption until January 7, 2009. This adoption petition alleges that "no [o]rders have heretofore been entered in any Court affecting the custody, adoption, or parental rights of the Petitioner [A.S.] to the minor; or the custody, adoption, or parental rights of the child." Therefore, it appears from the record that, while G.M.F. was housed by A.S. from August 9, 2007, until February 5, 2009, the child had no legal guardian acting in her best interest or authorized to consent to her medical care or other needs.

Once the adoption petition was filed, on February 5, 2009, the court appointed a guardian *ad litem* for the child, who was now 18 months old. The court also made the minor a ward of the court. What I find very difficult to understand, with regard to this unrelated person's adoption petition, is what next occurred. For some reason undisclosed by this record, the court placed the minor with A.S. without first considering or requiring an investigation of the suitability of A.S. by any social service agency prior to placement. Further, the court did not require A.S. to be supervised by any social service agency, during this interim placement, to insure the well being of the ward of the court.

Even though the minor became a ward of the court, this placement with A.S. continued for nearly 19 months without the supervision of any social service agency or input from the guardian *ad litem,* from February 5, 2009, until September 20, 2010, when the fitness hearing began. Fortunately, even though A.S.'s living arrangements raise significant concerns, the minor apparently did not suffer any adverse consequences resulting from this placement.

On September 20, 2010, during the termination hearing, the court heard testimony from biological mother, who was then in custody on charges of drug-induced homicide. Mother testified concerning the unusual financial circumstances that brought the

child into A.S.'s care. The court also received A.S.'s testimony wherein she admitted that she falsified her address on her tax return in order to falsely claim head of household status at an address where she and the child had never resided on their own. Moreover, the court received the tax return itself, prepared in 2008, before the adoption proceedings began. This tax return, an exhibit to the report prepared by a probation officer, not only declares A.S. resided at an address which was false, it declared G.F.M to be Ashley's "daughter." In spite of this testimony and this exhibit, the court found A.S. to be a reputable person.

Regarding A.S.'s current financial ability to support the child, the testimony established A.S. relied on her own parents to provide a roof over her head, had never lived independently from her parents, and relied on her parents for financial resources. At the best interests hearing, held the next day, the evidence showed that A.S. had dropped out of high school but intended to obtain her general educational development certificate and attend a certified nursing assistant program. A.S. planned to live in her parents' home indefinitely and currently earned approximately $300 per week in gross salary. In spite of this information, the court found A.S. had the means to support this child.

Additionally, according to the probation officer's report, A.S.'s parents' house was very cluttered during visits and four

adults and four children were residing at A.S.'s parents' three-bedroom, one-story house at the time of the hearing. The report indicates five additional children were also simultaneously at A.S.'s parents' house during the summer for whom A.S.'s sister regularly provided babysitting services. The record shows no evidence that the court considered these living arrangements or required any information regarding the backgrounds of others living at this house before deciding the child's best interests. The only facts the court seemed to rely upon in determining the child's best interests were that G.M.F. lived with A.S. since she was two days old; G.M.F. referred to A.S. as "mom" and to A.S.'s parents as "grandma" and "papa;" and that, because of those facts, G.M.F. was clearly bonded to A.S. and A.S.'s extended family.

In addition, our legislators have also taken great care to insure that biological mothers do not surrender children to unrelated persons based on the direct or indirect transfer of monetary consideration in anticipation of adoptive placement. These same concerns continue to re-surface in my mind as I review this record. Section 14(a) of the Adoption Act provides:

> "Prior to the entry of the judgment for order of adoption in any case other than an adoption of a related child or of an adult, each **petitioner** and each person, agency, association, corporation, institution, society or

> organization involved in the adoption of the child, except a child welfare agency, **shall execute an affidavit setting forth** the hospital and medical costs, legal fees, counseling fees, and **any other fees or expenditures paid** in accordance with the Adoption Compensation Prohibition Act [720 ILCS 525/0.01 *et seq.* (West 2008)]." (Emphasis added.) 750 ILCS 50/14(a) (West 2008).

To insure these concerns are considered, the statute prevents a court from entering a judgment of adoption without first requiring the adoptive parent or parents to complete an affidavit. 750 ILCS 50/14(a) (West 2008). The record in this case does not contain such an affidavit.

It is troubling that the testimony of biological mother reveals that A.S.'s family posted bond for biological mother to allow her to give birth to the child outside of the jail and, thereafter, mother placed the child with A.S. and her family. According to A.S.'s testimony, within weeks, the family spoke to the biological father about adopting the child. These circumstances suggest that A.S.'s family would not have acquired possession of this infant, but for their decision to provide bail, a thing of value, for biological mother which allowed her to avoid the protective intervention of DCFS.

Yet, in spite of multiple red flags, the placement arranged by a mother, to avoid intervention by DCFS on the child's

behalf, prevailed over a placement supervised by a social service agency designated by the court or the biological father's desire to have his child placed with a relative.

The guardian *ad litem* did not object to the adoption apparently because this was the only home known to the child, three years later, when the adoption hearing occurred. Employing this rationale, most adoption hearings would become mere formalities. The only home a child knows is not necessarily a suitable home for the child and it is the role of the court to insure that the minor is not placed into poverty, overcrowding, or circumstances that may contribute to future neglect or potential abuse. We should require more information before approving a biological parent's decision to place a child with non-relatives for the purpose of avoiding DCFS involvement. The reality is that the minor's biological mother and father no longer have the ability to exercise parental control and the minor has been named a ward of the court, so she is dependent upon the court for protection.

I would respectfully suggest that, since the minor has been declared to be a ward of the court, on remand, perhaps the court should designate DCFS as the temporary guardian of this child with the power to continue placement with A.S. only after investigating whether A.S. is a suitable placement pending the best interest hearing. In addition, the court should require

A.S. to prepare and submit the affidavit required by Section 14(a) of the Adoption Act (750 ILCS 50/14(a) (West 2008)) and cooperate with DCFS as required by the court. Finally, the court may wish to consider requesting DCFS to prepare another investigative report that investigates the backgrounds of all adults in A.S.'s household and other matters regarding the best interest of this child who is now approaching four years of age.