2014 IL App (3d) 130943-U

Order filed April 17, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re K.B.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-13-0943
	)	Circuit No. 11-JA-170
v.	)	
	)	
Vincent B.,	)	
	)	The Honorable
Respondent-Appellant).	)	Mark E. Gilles,
	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the circuit court's rulings that the respondent-father was an unfit parent due to depravity and that it was in the best interest of the minor to terminate the respondent's parental rights.

¶ 2 The circuit court entered orders finding the respondent, Vincent B., to be an unfit parent and terminating the respondent's parental rights to the minor, K.B. On appeal, the respondent

argues that: (1) the court erred when it found him to be an unfit parent due to depravity; and (2) the court erred when it found that it was in the minor's best interest to terminate the respondent's parental rights. We affirm.

¶ 3 FACTS

¶ 4 On July 25, 2011, a juvenile petition was filed that alleged the minor (born July 20, 2011) was neglected by reason of an injurious environment. With regard to the respondent, the petition alleged that he had a criminal history that included several drug-related convictions as well as a pending three-count case stemming from three instances in 2010 in which the respondent sold cocaine to a police source and to police officers. The minor was taken into protective custody upon discharge from the hospital on July 25, 2011, and he was placed with the respondent's aunt in Calumet City. The minor was later placed in a different relative foster home in March 2012.

¶ 5 On September 16, 2011, the circuit court found the minor to be neglected. One week later, the court made the minor a ward of the court and found the mother to be unfit; however, no finding was made with regard to the respondent because the court lacked personal jurisdiction over him. After service was completed on the respondent and hearings were held, the court entered orders on August 8, 2012, that found the minor to be neglected, made the minor a ward of the court, and found the respondent to be an unfit parent based on his criminal history.

¶ 6 On April 22, 2013, the State filed a petition to terminate the respondent's parental rights, alleging that the respondent was depraved due to his criminal convictions.

¶ 7 While the termination petition was pending, on July 18, 2013, the minor's foster father was arrested and faced unspecified "weapons charges." Five days later, the foster mother reported that she was pursuing a divorce from the foster father. The foster mother wanted to

adopt the minor, like she had done with the minor's four siblings, and the agency would not allow that adoption unless she obtained the divorce.

¶ 8 On October 16, 2013, the circuit court held a hearing on the termination petition. The State introduced into evidence certified copies of the respondent's convictions, which consisted of: (1) a 2003 conviction for unlawful possession of a controlled substance (cocaine) with the intent to deliver (720 ILCS 570/401(d) (West 2002)) and unlawful possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2002)); (2) a 2004 conviction for unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(d) (West 2004)); and (3) a 2010 conviction for unlawful delivery of a controlled substance (cocaine) (720 ILCS 570/401(c)(2) (West 2010)).

¶ 9 The respondent also testified at the hearing on the termination petition. He stated that he had been in prison since May 2012. He said that he regretted his criminal behavior, that he had a clean disciplinary record while in prison, and that he had discussed his transgressions in classes offered in prison. Documents submitted into evidence indicated that the respondent had attended 24 "A.A./N.A." classes and had completed a "Healthy Relationships" class. He had also tried to enroll in four other classes, but he was denied entry due to space limitations.

¶ 10 At the close of the hearing, the circuit court found that the State had proven by clear and convincing evidence that the respondent was an unfit parent, and the case was scheduled for a best-interest hearing.

¶ 11 The agency that handled the minor's case prepared a best-interest hearing report in September 2013, which recommended that the circuit court terminate the respondent's parental rights. The report stated that the minor was 21 months old and was in excellent health. The minor had been placed in the home of his maternal great uncle, LaHarold W., who was married

to Michelle W. Due to the criminal charges LaHarold faced, he was prohibited from trying to adopt the minor. However, Michelle stated that she wanted to adopt the minor and that she was pursuing a divorce from LaHarold. Michelle had yet to file for separation, though, due to financial constraints. Michelle and the caseworker signed a protective plan in July 2013 whereby LaHarold was prohibited from being in the home and from having any contact with the minor.

¶ 12 Michelle had been meeting the minor's basic needs and the foster home was adequate. Further, the minor had a strong bond with Michelle and a strong relationship with his four siblings, whom the W.s had adopted previously and whom resided in the foster home. In contrast, the minor had no relationship with the respondent and had only seen the respondent twice (both times were in court) since the minor was placed in the W.'s home.

¶ 13 The report also noted that the minor's young age prevented him from having much of a connection to his community, although Michelle said she was aware of community programs in which she would involve the minor once he reached the appropriate age. The minor was attending a Head Start program.

¶ 14 On November 13, 2013, the circuit court held the best-interest hearing. Preliminarily, the matter involving the foster father's criminal charges was discussed. At the time of the hearing, the six-month waiting period to obtain a no-fault divorce had not yet lapsed. During the hearing, the respondent testified that he saw the minor daily from July to December 2011 while the minor was placed with the respondent's aunt.[1] On cross-examination, the respondent admitted that a

[1] The respondent claimed that he did not live with his aunt and the minor during this time. The best-interest hearing report stated that the respondent lived in that foster home with the minor during that time.

warrant had been issued on May 27, 2010, for his arrest in Peoria County and that he was not arrested until March 2012, as he had been in Chicago. He also stated that he was unaware that his aunt was not supposed to let him see the minor during that time due to the outstanding warrant. At the close of the hearing, the circuit court found that it was in the minor's best interest to terminate the respondent's parental rights. The court entered its written order two days later, and the respondent appealed.

¶ 15 ANALYSIS

¶ 16 The respondent's first argument on appeal is that the circuit court erred when it found him to be an unfit parent.

¶ 17 The State has the burden of proving parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29(2), (4) (West 2012); 750 ILCS 50/1(D) (West 2012); *In re J.L.*, 236 Ill. 2d 329, 337 (2010). Only one statutory ground is necessary to prove that a parent is unfit. 750 ILCS 50/1(D) (West 2012); *In re H.D.*, 343 Ill. App. 3d 483, 493 (2003). One such ground is a parent's depravity:

> "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 *** 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 2012).

We will not disturb a circuit court's unfitness determination unless it was contrary to the manifest weight of the evidence, which occurs when "the opposite conclusion is clearly apparent." *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005).

¶ 18 The presumption of depravity ceases to operate once a respondent brings forth opposing evidence, and the issue of depravity is then decided based on the evidence presented at the hearing. *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005). Depravity is not defined in the aforementioned statute, but has been defined through case law as "an inherent deficiency of moral sense and rectitude" (*Stalder v. Stone*, 412 Ill. 488, 498 (1952)). Evidence of depravity "must be shown to exist at the time of the petition, and the 'acts constituting depravity *** must be of sufficient duration and of sufficient 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, 561 (2000) (citing *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166 (1976)).

¶ 19 Our review of the record in this case reveals no error in the circuit court's unfitness determination. In his attempt to show that he was not depraved, the respondent presented evidence that he had completed a relationships class and had attended 24 "A.A./N.A." meetings. However, case law is clear that a parent's completion of some classes while in prison does not show rehabilitation. *See, e.g.*, *In re Shanna W.*, 343 Ill. App. 3d 1155, 1167 (2003) (also commenting that rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely"); *In re Addison R.*, 2013 IL App (2d) 121318, ¶ 30.

¶ 20 The evidence showed that the respondent had three felony drug convictions, all of which involved possession with the intent to deliver or actual delivery. These convictions, which occurred in 2003, 2004, and 2010, showed that the respondent resumed selling drugs each time despite his arrests and incarcerations. Such evidence was sufficient to show a deficient moral sense and an unwillingness to conform to accepted morality. See *J.A.*, 316 Ill. App. 3d at 561. Under these circumstances, we hold that the circuit court's decision that the respondent was

depraved was not contrary to the manifest weight of the evidence. Accordingly, we hold that the court did not err when it found the respondent to be an unfit parent.

¶ 21 The respondent's second argument on appeal is that the circuit court erred when it found that it was in the minor's best interest to terminate his parental rights.

¶ 22 At a best-interest hearing, the circuit court is tasked with determining whether it is in the minor's best interest to terminate parental rights (705 ILCS 405/2-29(2) (West 2012)). Section 1-3(4.05) of the Juvenile Court Act of 1987 provides:

> "Whenever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:
>
> (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 2012).

¶ 23 "[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 (2004). A reviewing court will not disturb the circuit court's best-interest ruling unless it was contrary to the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3d) 110184, ¶ 33.

¶ 24 Our review of the record in this case reveals no error in the circuit court's best-interest determination. Here, the evidence showed that the minor's needs were being met by Michelle. The minor had a bond with Michelle and strong relationships with his siblings. There was no bond or relationship with the respondent, who last had meaningful contact with the minor at five months of age. While there certainly was an issue with LaHarold's unspecified criminal charges, the evidence also indicated that there was a plan in place to secure the minor's future via adoption by Michelle, which included no contact with LaHarold. Under these circumstances, we hold that the circuit court's best-interest determination was not contrary to the manifest weight of the evidence. Accordingly, we hold that the court did not err when it terminated the respondent's parental rights.

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Peoria County is affirmed.

¶ 27 Affirmed.