

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (3d) 140984-U

Order filed April 8, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2015

In the Interest of A.C. and T.C.)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	Appeal Nos. 3-14-0984
)	(cons. w/ 3-14-0985)
Petitioner-Appellee,)	Circuit Nos. 13-JA-299, 13-JA-300
)	
Christopher C.)	Honorable
)	David Dubicki,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding father was unfit based on depravity was not contrary to the manifest weight of the evidence and the evidence supported the trial court's finding that termination of father's parental rights was in the children's best interest.

¶ 2 The trial court found respondent father, Christopher C., to be unfit based on depravity.

750 ILCS 50/1(D)(i) (West 2012). Father's parental rights were terminated, and he appeals the finding of unfitness and the termination of his parental rights. We affirm.

¶ 3

FACTS

¶ 4

On November 6, 2013, the State filed shelter care petitions alleging T.C. (born August 22, 2003) and A.C. (born January 6, 2005) were neglected due to an environment injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2012).¹ The trial court granted the State's petition and placed the children with DCFS.

¶ 5

On February 18, 2014, the trial court entered an adjudicatory order finding the State proved by a preponderance of the evidence that the children were abused or neglected due to an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)) based on father's partial stipulation and his "Montana [criminal] records." On March 18, 2014, the trial court entered a dispositional order finding father unable to care for the children due to the "contents of [the] petition, including leaving the minors alone while he went to steal, got caught, and never returned; criminality." The trial court also ordered father to perform specified tasks upon his release from custody.

¶ 6

On July 30, 2014, the State filed a "Petition for Termination of Parental Rights," alleging father was depraved pursuant to section 50/1(D)(i) of the Adoption Act (the Act). 750 ILCS 50/1(D)(i) (West 2012). The petition alleged father had the following convictions out of Montana: (1) January 11, 2000 misdemeanor convictions for obstructing justice and possession of drug paraphernalia; (2) May 31, 2000 misdemeanor conviction for theft; (3) September 13, 2004 felony conviction for possession of dangerous drugs and misdemeanor conviction for drug paraphernalia; (4) June 14, 2005 felony conviction for possession of dangerous drugs. In addition, the petition alleged father had the following Illinois convictions: (1) felony convictions for possession of a controlled substance and retail theft in LaSalle County case No. 07-CF-289;

¹ The shelter care petitions also raised allegations against the children's mother. Our factual recitation omits information involving the children's mother unless it relates to father's assertions on appeal.

(2) felony conviction for possession of a controlled substance in Grundy County case No. 08-CF-171; (3) felony conviction for manufacture/delivery of a controlled substance in LaSalle County case No. 08-CF-648; (4) felony conviction for possession of a controlled substance in LaSalle County case No. 09-CF-294; (5) a DUI conviction in Mason County case No. 12-DT-38; (6) misdemeanor conviction for resisting a peace officer in Mason County case No. 12-CM-128; (7) misdemeanor conviction for possession of drug paraphernalia in Peoria County case No. 13-CM-244; (8) felony conviction for attempt to foil/defeat screen in Peoria County case No. 13-CF-700; and (9) felony conviction for retail theft in Tazewell County case No. 13-CF-592.

¶ 7 Father filed an answer on August 26, 2014, denying the allegations contained in the State's petition. Also on August 26, 2014, the trial court conducted a permanency review hearing and entered an order indicating the "court declines to make effort finding regarding father as he has been incarcerated whole period and has moved." The permanency goal for the children was to return them home within one year.

¶ 8 On October 1, 2014, the court granted the State's September 22, 2014, motion for leave to amend the July 30, 2014 petition to terminate parental rights. The amended petition struck the first four offenses, which occurred in the state of Montana. The amended petition added the following Cascade County, Montana convictions: (1) felony conviction for attempt criminal production/manufacture of dangerous drugs in case No. CDC-00-062; (2) felony convictions for production or manufacture of dangerous drugs and possession of dangerous drugs in case No. ADC-01-071-1; and (3) felony conviction for possession of dangerous drugs and misdemeanor conviction for criminal possession of drug paraphernalia in case No. ADC-04-127-1(d). Father denied the allegations contained in the amended petition.

¶ 9 That same date, on October 1, 2014, the matter proceeded to a fitness hearing. The State offered certified copies of father’s Montana convictions in case Nos. CDC-00-062, ADC-01-071-1, and ADC-04-127-1(d). In addition, the State offered certified copies of father’s Illinois convictions in Grundy County case No. 08-CF-171, LaSalle County case Nos. 07-CF-289, 08-CF-648, and 09-CF-294, Mason County case Nos. 12-DT-38 and 12-CM-128, Peoria County case Nos. 13-CM-244 and 13-CF-700, and Tazewell County case No. 13-CF-592.

¶ 10 After the State rested, father testified on his own behalf and stated he had been at the Sheridan Correctional Center (Sheridan) for the past three months, and prior to Sheridan, he was in custody in the Tazewell County jail for approximately seven months. According to father, he had been sober for nearly one year while in custody. Father introduced an exhibit showing his attendance since August 5, 2014, in the Alcoholics Anonymous class at Sheridan. Father also introduced an exhibit documenting his enrollment in a “drug awareness” class at Sheridan, which began on October 6, 2014 and would be completed on January 2, 2015. In addition, father was on the waitlist for a welding class and wanted to enroll in a parenting class. Father expected to be released from incarceration on October 24, 2015.

¶ 11 After arguments, the trial court found the State proved the allegations contained in the amended petition by clear and convincing evidence. The court specifically found that father “started to address services that I think are directed entirely to what he perceives to be an addiction.” However, the court found that in spite of these recent efforts, father was unable to rebut the presumption of depravity.

¶ 12 Next, the trial court announced “an alternative finding” without considering the presumption of depravity. The trial court focused on father’s “long history of convictions *** dating back to occurrences I believe that took place in 2000 or 2001 starting in Montana and

culminating in the most recent Tazewell County felony of 2013.” After observing that once “some evidence” is introduced by the parent, the presumption of depravity “ceases to operate” and the court recognized the issue of a parent’s depravity should be determined by the trial court “on the basis of the evidence adduced at trial if no presumption had ever existed. My alternative finding is that the State has, without regard to the presumption, that the State has carried its burden of proving by clear and convincing evidence that [father] is depraved.” After announcing the finding that father was unfit based on depravity, the court scheduled the matter for a best interest hearing on December 3, 2014.

¶ 13 Before the hearing date, a best interest report, prepared by the Center for Youth and Family Solutions, was submitted to the court on November 25, 2014, for each child, which indicated the foster parents were willing and able to adopt the children. The best interest hearing took place on December 3, 2014, and the parties agreed the court could consider father’s testimony from the fitness hearing for purposes of the best interest hearing.

¶ 14 Ryan Foster, a caseworker from the Center for Youth and Family Services, informally testified before the court. According to caseworker Foster, the children expressed that they love their father and do not want their father to lose his parental rights, but they are “upset” and “disappointed” with their father for his incarceration. The caseworker stated that the children initially visited their father at the Tazewell County jail, but recently began refusing to attend visits with their father at the correctional center. The agency did not pull the children from school to compel them to attend visitation at Sheridan.

¶ 15 According to the caseworker, T.C. was having defiance and disruption issues, but the school recently reported that the school administrators were “very happy and very pleased” with

the improvement in T.C.'s behavior. The caseworker explained that although T.C.'s behavioral issues were stressful, his foster parents were "continuously working with him and not giving up."

¶ 16 The caseworker testified that A.C. was doing "great" academically, but was being picked on by other students for being a foster child. During a recent visit with the children and their foster parents, the caseworker observed "a lot of hugging *** playful behaviors, tickling, *** [and] I love you." Despite his difficulties, T.C. had a strong bond with his foster father and T.C. called his foster mother "mom."

¶ 17 After the State rested, father testified on his own behalf. Father explained he had not seen the children since May 2014, despite his efforts to encourage the children to visit. According to father, he wrote five or six letters to the children during his incarceration. Father testified he had a "good" relationship with the children prior to his incarceration. Father informed the court that, upon his anticipated release on October 24, 2015, he planned to "start the programs and do the drops."

¶ 18 On cross-examination, father explained, that prior to his incarceration, he last saw the children on November 1, 2013, when he left the house, telling the children he would return in a couple of hours. Upon leaving the house, father committed a crime and the children remained home alone until they walked to a neighbor's house.

¶ 19 The guardian *ad litem* (GAL) informed the court that both of the children have expressed that they are happy "where they are." The GAL explained the children felt safe and "taken care of." A.C. expressed to the GAL that she was happy she would not have to live with her father and her father's girlfriend because his girlfriend was "not very nice."

¶ 20 Darcy and Chris Ewing² testified that they had been the foster parents for the children for a little over one year. Darcy explained that the children would sit down to write letters to their father, but did not send them. Chris believed the children deserved a better start to life than they had been given.

¶ 21 After hearing arguments, the court indicated it considered the best interest factors contained in section 405/1-3(4.05) of the Juvenile Court Act of 1987. 705 ILCS 405/1-3(4.05) (West 2012). The court noted that it did not “discount the father’s expressions of love and concern for his children *** or that the children care for their dad.” The court found father was not in a position to provide food, shelter, health, or clothing for the children, presumably due to his frequent periods of incarceration. The court indicated that the children were “realistic” and “upset” about their father’s recent arrest, but the children hoped their father would become “the type of dad that they would want him to be.”

¶ 22 The court observed that the children’s foster parents were doing “everything possible to address any difficulties that the children might have.” The court found that the development of the children’s identities, their background and ties, sense of attachment and security, and continuity of affection favored placement with the foster parents. The court believed the children had been placed in a good, stable foster home for the past 13 months, where the children were much more likely to realize their long-term goals than if they remained with their father. The court noted that both children had good relationships with their foster parents.

¶ 23 Further, the court commented on the importance of the children’s need for permanence and stability. Finally, the court emphasized that the petition to terminate father’s parental rights overwhelmingly showed father’s depravity with respect to his criminal history. Accordingly, the court found the State carried its burden of proof and entered an order finding it to be in the best

² The foster parents are father and daughter.

interest of the children to terminate father's parental rights. The court entered a "Dispositional Order Terminating Parental Rights" of father on December 8, 2014. Father appealed.

¶ 24

ANALYSIS

¶ 25

On appeal, father argues the trial court's finding of unfitness for purposes of termination was contrary to the manifest weight of the evidence. Father also challenges the court's finding that it was in the best interest of the children to terminate father's parental rights. The State responds that the trial court properly found father unfit based on depravity and then properly determined it was in the best interest of each child to terminate father's parental rights.

¶ 26

The case law provides that the State must prove the allegations of unfitness contained in a petition to terminate a parent's parental rights by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). This court will not reverse the trial court's decision finding a parent is unfit unless it is against the manifest weight of the evidence. *Id.* at 498. A trial court's decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result. *In re J.A.*, 316 Ill. App. 3d 553, 561 (2000).

¶ 27

In this case, the State's petition alleged father was unfit and requested the court to terminate father's parental rights on the grounds of depravity. According to section 1(D)(i), "[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 or any other 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). 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 at 561 (citing *In re Adoption of Kleba*, 37 Ill. App. 3d 163, 166 (1976)).

¶ 28 The record reveals father's first felony convictions occurred in Montana in 2001. Later, in 2004, after the birth of T.C. in 2003, father was convicted of two drug-related felonies and misdemeanor possession of drug paraphernalia. Father's criminal pattern continued after A.C.'s birth in 2005, with felony convictions in 2007, 2008, and 2009, in Illinois. In 2009, father was sentenced to four years' imprisonment in the Illinois Department of Corrections. Then, in 2012, father was convicted of driving under the influence and resisting a peace officer. In 2013, father was convicted of misdemeanor possession of drug paraphernalia and, in 2014, father was convicted of two felonies, which resulted in father's incarceration at the time of the proceedings in the instant case. The nature of these convictions and father's pattern of recurring criminal misconduct extending over a 13-year period, supports the view that father was either unwilling or unable to conform to accepted morality. Therefore, the State's evidence created a rebuttable presumption that father was depraved.

¶ 29 In an attempt to rebut this presumption of depravity based on his criminal history, father offered proof documenting his attendance at Alcoholics Anonymous classes and a printout showing his enrollment in a "drug awareness" program during his incarceration. However, enrollment and completion of classes in prison, while commendable, does not show rehabilitation. *In re A.M.*, 358 Ill. App. 3d 247, 254 (2005). The trial court concluded father's evidence was insufficient to rebut the presumption of depravity based on his recent efforts to attend programs that would provide father with the tools to potentially modify his alcohol and illegal drug habits following his release. This finding is supported by the record. Consequently, we affirm the trial court's finding of unfitness on the basis of depravity.

¶ 30 Next, father contends the trial court's finding that it was in the children's best interest to terminate his parental rights was against the manifest weight of the evidence. The State has the

burden of proving by a preponderance of the evidence that termination of a parent's rights is in the best interest of the children. *In re D.T.*, 338 Ill. App. 3d 133, 154 (2003). After the trial court has found a parent to be unfit, all considerations must yield to the best interest of the children. *In re A.M.*, 358 Ill. App. 3d at 255. The trial court's determination that it is in the best interest of the children to terminate parental rights is given great deference and will not be reversed unless it is contrary to the manifest weight of the evidence. *In Interest of D.M.*, 298 Ill. App. 3d 574, 581 (1998).

¶ 31 Father contends the trial court should have provided him with another opportunity to be reunited with his children following his release from prison in October 2015. Focusing on the best interests of each child, the court found that the foster parents were providing a stable, permanent home for the children, where the foster parents were meeting the physical and emotional needs of the children. The court considered the progress each child was making in school and the strong relationship each child had formed with their foster parents. The record reveals the trial court carefully considered each of the statutory factors when determining it was in the best interest of the children to terminate father's parental rights. For these reasons, we affirm the trial court's decision to terminate father's parental rights.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the decision of the circuit court of Peoria County is affirmed.

¶ 34 Affirmed.