2014 IL App (4th) 140311-U

NO. 4-14-0311

FILED
September 10, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: B.K., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 12JA62
RANDY ANDERSON,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in finding respondent father depraved and an unfit parent.

(2) The trial court did not err in rejecting respondent father's argument he was rehabilitated and no longer depraved.

(3) Respondent father failed to prove the trial court relied on improper case law.

¶ 2 Respondent father, Randy Anderson, appeals the orders finding him an unfit parent of B.K. (born October 5, 2009) and terminating his parental rights. Anderson contends the trial court erroneously concluded he was depraved and not rehabilitated. Anderson further argued the court erroneously relied on inapplicable and nonbinding case law. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In July 2012, the State filed a petition alleging B.K. was neglected because, while

residing with his mother or with Anderson, B.K. was in an environment injurious to his welfare (705 ILCS 405/2-3(1)(b) (West 2012)). The State alleged Anderson and B.K.'s mother had unresolved issues of domestic violence. In September 2012, the trial court found B.K. neglected after his mother, with whom B.K. resided, stipulated to an allegation of neglect. B.K.'s mother is not a party to this appeal.

¶ 5 In June 2013, the State filed a petition to terminate Anderson's parental rights to B.K. The State alleged Anderson was an unfit parent in that he was depraved (750 ILCS 50/1(D)(i) (West 2012)).

¶ 6 The fitness hearing was held in February and March 2014. The State moved to admit certified copies of 12 convictions for various felonies and misdemeanors. The State's exhibits included the docket sheets, the specific charges, the convictions, and the resulting sentences. The trial court asked the State to read the case numbers, dates of convictions, and charges into the record. The State read the following:

> "No. 1 is 11—certified copy of the 11-CF-396 charge, which was a conviction for domestic battery on [October 17, 2011], a Class 4 felony, to which Mr. Anderson was sentenced to 30 months of probation. In that record, on [April 23, 2012,] he admitted to one allegation contained in the first petition for revocation of probation that was filed March 16, 2012. And on June 15, 2012, his probation was revoked and he was sentenced to the Illinois Department of Corrections [(DOC)] for a term of three years.

Exhibit No. 2 is a certified copy of 03-CF-1172, which shows a conviction for aggravated battery, a Class 3 felony, on February 9, 2007, where he was sentenced to DOC for a term of four years and six months.

Exhibit No. 3 is a certified copy of 03-CF-250, which shows a conviction for forgery, a Class 3 felony. That conviction was entered on February 9, 2007, and he was sentenced to the [DOC] for a term of four years and six months.

Exhibit No. 4 is 01-CF-459, and it is a conviction for forgery, a Class 3 felony. That conviction was entered on June 29, 2001. Mr. Anderson was sentenced to the [DOC] for a term of three years.

The next is a certified copy of 99-CF-1487. It was a conviction for an order of—violation of order of protection, a subsequent offense, which is a Class 4 felony. He was sentenced to 30 months of probation. That conviction was entered on March 20, 2000. And on June 29 of 2001, he admitted the first petition for revocation of probation, which was filed October 10, 2000, and he was discharged unsuccessfully from probation.

The next will be 98-CF-417. He was convicted of battery, a Class A misdemeanor, and the charge was reduced from a felony. That conviction was entered on November 18, 1998. He was

sentenced to 18 months of conditional discharge.

The next is a certified copy of 99-CM-850, which is a conviction for domestic battery, a Class A misdemeanor, and endangering the life or health of a child, a Class A misdemeanor. Those convictions were entered on October 12, 1999.

The next is a certified copy of 99-CM-1343. It shows a conviction of possession of cannabis, 2.5 grams or less, a Class C misdemeanor. That conviction was entered October 12, 1999. State's Exhibit No. 9 is a certified copy of 99-CM-1916, which is a conviction for a violation of an order of protection, a Class A misdemeanor. That was entered on October 12, 1999. State's Exhibit No. 10 is 00-CM-1261, which is a conviction for resisting a peace officer, a Class A misdemeanor. That conviction was entered March 1, 2001.

Next would be State's Exhibit No. 11, which is a certified copy of 01-CM-593, which shows a conviction of escape, a Class A misdemeanor. That conviction was entered on June 18, 2001. And lastly is 02-CM-1366, which is State's Exhibit No. 12. It's a conviction for resisting a peace officer, a Class A misdemeanor. That conviction was entered [o]n October 15, 2002."

¶ 7 Anderson testified on his own behalf. According to Anderson, he was 35 years old and an inmate in the DOC, who would be released "within the next couple of weeks or so."

When not in prison, Anderson "made every attempt to cooperate with *** the service plan."

¶ 8 Anderson testified regarding each of his convictions. Regarding the October 2002 conviction for resisting a peace officer, Anderson explained he was driving with his younger brother when stopped by the police. Anderson's brother ran from the stopped car. Anderson followed. Anderson admitted he made "a really poor choice."

¶ 9 Regarding the June 2001 escape offense, Anderson testified, at that time, he was serving a sentence "to do weekends." Anderson was a day late returning for one weekend. While stating he had "no excuse," Anderson did not have a ride across town and did not want to walk.

¶ 10 Anderson testified his 1999 conviction for domestic battery involved an incident with his sister. Anderson's sister "snapped [his compact discs]." He chased her around the car. Because his sister was younger, "they said that's endangering the life of a child because she could have [fallen] and got[ten] hurt." Following this event, Anderson's parents, on the advice of the police, secured an order of protection against Anderson. Anderson testified he had a good relationship with his sister at the time of his testimony.

¶ 11 Anderson described the circumstances surrounding the March 2001 resisting offense. Even though the order of protection was in place, Anderson's parents authorized him to enter their garage. Anderson's parents regretted the protection order because it prohibited Anderson from visiting on the holidays and because of the time it would take to rescind the order. While in his parents' garage, the police arrived and surrounded it. Anderson fled.

¶ 12 Anderson further testified regarding two of his convictions for violations of the order of protection. In October 1999, he was wrapping presents for his daughter in his parents'

garage. A neighbor saw a light in the garage and called the police. Anderson was given a violation of the order of protection. The latter conviction, in March 2000, occurred after Anderson was found while putting a dirt bike into his parents' garage. Both times, Anderson testified he had permission from his parents to be in their garage.

¶ 13 Regarding the conviction for possession of cannabis, 2.5 grams or less, Anderson was found with "a little bitty piece of marijuana leaf in [his] shoe" when removing his shoes after an unrelated arrest.

¶ 14 Anderson explained his battery conviction resulted from an incident during which a man broke into his house and stole items. When the man returned, Anderson "kind of took things into [his] own hands and caught a battery charge."

¶ 15 Regarding his forgery convictions, Anderson explained he did not forge the checks. In June 2001, Anderson was at another's house when a pizza deliverer arrived. "They" gave him a check, which Anderson handed to the deliverer. Anderson did not know the check was forged. In 2007, Anderson testified he was with an individual who passed a stolen check at a Kroger's. Because that person testified Anderson knew the check was stolen and forged, he was convicted. Anderson denied signing or delivering the check and denied receiving any goods as a result of the transaction. When asked how he was convicted, Anderson stated the following: "Because I was with them and they assumed that I knew it. And actually it was part of an agreement, that if I didn't take that, they were going to give me this X amount of time for the aggravated battery. So it was pretty much, well you can take this and get this much time with this, or just sign for this and get a little less amount of time. That's really why I did it."

¶ 16 Anderson testified about the events underlying his February 2007 aggravated-

battery conviction. While Anderson was at a college party, a group of friends began fighting. The group began "beating up on this guy kind of bad." Anderson approached to "try to push him off." When he did, someone struck Anderson. Anderson hit the individual "back and caused great bodily harm or whatever."

¶ 17 Regarding the October 2011 domestic-battery conviction, Anderson testified the victim was his ex-wife. According to Anderson, his ex-wife suffered no injury. Anderson denied pushing or pulling her. Anderson explained the events:

> "At first, it was her sister and her friend that were there. And when the cops came, everybody was worked up and everybody gave a different story. And then while I was in there, my daughter was born. And my attorney really didn't—she didn't know anything about my case the day that we had to pick the jury trial out. And she was a prosecutor in my past, and I said I'm not really feeling safe with you because you don't even know what I'm here for. And she said, well, how about we do this; how about you plead guilty today to the domestic battery, and we'll have it amended to a misdemeanor. And then when you get out, we'll file a motion to withdraw your plea. Then you can go get a lawyer and go back to trial. Because the witness had come forth and said, look, this never happened. In fact, when this was reported to the police, she actually went to the police station the next day and said, I don't know what's going on but you need to take pictures of me

> because this didn't happen. She went the following day and she signed an affidavit. And they said, well, you don't even need to come here, you said it didn't happen. Why do you keep coming here? Four and a half months later, they come and arrest me on it. So in the process of that, that's when I signed for the domestic, thinking now that I was going to get to have my motion to withdraw[] my plea and be able to go to trial and actually prove my innocence for not being guilty."

¶ 18 Anderson further testified he served in the United States Navy for three years. During this time, Anderson served on an aircraft carrier as a damage patrol crash and rescue worker. Anderson's initial rank was "E1," but by the end of his time with the Navy, Anderson rose to "E4," third-class petty officer. He also received several medals for serving in hostile waters and saving the lives of a couple of shipmates. Anderson was discharged honorably from the Navy.

¶ 19 Anderson owned his own business for approximately three years—selling clothes for Hot Bodies Dancewear in Creve Coeur, Illinois. Anderson also worked in construction, custodial maintenance, and barbering. In construction, he participated in roofing, laying foundation, siding installation, and masonry "off and on" for about 20 years. He performed commercial custodial work at a mall for approximately six months. As a barber, he cut hair but did not have a barber shop.

¶ 20 Anderson testified he had a 14-year-old daughter. His daughter was adopted by his mother. Because Anderson made poor choices when he was younger, he participated in

counseling and parenting classes. He was also involved with "pretty good social groups" to help him understand her since he had been away from her at times. Anderson and his daughter bonded. Anderson stated his daughter "immediately just became attached to me."

¶ 21 Anderson stated he attended counseling through multiple programs through the DOC, Chestnut Health Systems, and his church. In counseling, he worked on his problems with abandonment and learned how to be a parent. Anderson was adopted and never knew his "real family." He wanted to prevent his children from feeling as he did. While incarcerated, Anderson attended a three-month-long parenting class, which met five days a week. Anderson's worst fear was losing his children.

¶ 22 In 2009, Anderson attended a prison-fellowship class at Lincoln Christian University for one semester. Anderson was a member of Eastview Christian Church, which he began attending in 2007 or 2008. Church provided him with a different social group and friends. He was no longer part "of the old kind of crowd I used to hang with."

¶ 23 Regarding his service plan, Anderson testified he was working on making reasonable progress toward the return of his son. He completed the domestic-violence assessment and had taken violence-prevention classes. Anderson "had taken anger management." Anderson never had a substance-abuse problem. He gained employment with LoBianco Cleaning. For LoBianco, Anderson performed commercial custodial maintenance for approximately three weeks, but his employer, LoBianco Cleaning, paid him with cash. His parole officer stated he must be paid with a corporate check; Anderson had to leave LoBianco.

¶ 24 Anderson testified he paid what he could for child support for B.K., estimating, over three years, he paid $1,000 to B.K.'s mother. Anderson also sent gifts on birthdays and

holidays. A couple of times he was asked to bring diapers and other items, and Anderson complied.

¶ 25 On cross-examination, Anderson testified he was in the Navy after high school, from 1996 to 1999. Anderson stopped attending Lincoln Christian University because he did not have a vehicle and was unable to pay the loan for the first semester.

¶ 26 Anderson testified he was incarcerated when B.K. was taken into care in July 2012. He was released from custody on September 4, 2013. His parole was revoked on November 18, 2013, for failure to comply with the terms of parole. Anderson acknowledged from 2003, he was not in custody for three or four years. During this time period, Anderson's mother adopted Anderson's daughter.

¶ 27 The trial court found the State met its burden of proving Anderson to be depraved. The court observed the presumption of depravity is created when the State introduces evidence of three felony convictions, with one occurring within five years of the filing of the petition to terminate. The court found, once the parent introduced some evidence to rebut depravity, the presumption disappeared. The court cited *In re A.M.*, 358 Ill. App. 3d 247, 831 N.E.2d 648 (2005), and found it "the closest case on point." The court believed, in considering depravity, it was to focus on the parent's accomplishments after the parent's release from prison. The court observed Anderson had five felony convictions after his discharge from the Navy. The court held the following:

> "I think his service to the country is certainly commendable. But I think the case law is pretty clear you got to look at what occurred after the criminal act takes place, not what took place before. And

either there was a gap in the filing of charges between [2003] and 2011—both Exhibits 2 and 3 had the act had occurred in 2003, but Mr. Anderson then failed to appear and there was a warrant issued. And he didn't get picked up on those warrants until [2006], and he didn't plead until [2007]. So there was, looks like more of a gap of non-criminal behavior. That really was because he was a fugitive at that time. And when he was then finally captured or was picked up on the warrant, he was sentenced in February of [2007] to four and a half years in the [DOC]. Then he got out and committed the offense of the domestic battery ***. And then on that offense, he was released, I think, in July [2012]. In custody July 12 and then released September 13. And then his parole was revoked on November 18 and only recently been released again from the [DOC] and has not had any opportunity to demonstrate a crime [-]free lifestyle and one that has showed that he is no longer depraved. So I take that *AM* case as standing for a proposition that once—And, and the cases that talk about that once the case, once the State has demonstrated three convictions, one within five years, that is sufficient to show depravity by clear and convincing evidence. Then, if it's rebutted, then you weigh that evidence against what the parent has provided in terms of no longer being depraved. And based on what I believe the standard to be, Mr.

Anderson's continued criminal lifestyle and only having been recently released, I think the State has proven the depravity by clear and convincing evidence ***."

¶ 28 In March 2014, after a hearing on the best interests of the child, the trial court terminated Anderson's parental rights to B.K. This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A parent will be found unfit if the State proves by clear and convincing evidence the parent is depraved. 750 ILCS 50/1(D)(i) (West 2012). A parent is depraved if he or she possesses an inherent deficiency of moral sense and rectitude (*In re J.B.*, 298 Ill. App. 3d 250, 254, 698 N.E.2d 550, 552 (1998)) or demonstrates an unwillingness to conform to acceptable morality (*A.M.*, 358 Ill. App. 3d at 256, 831 N.E.2d at 656). Section 1(D)(i) of the Adoption Act (750 ILCS 50/1(D)(i) (West 2012) creates a presumption a parent is depraved if that parent was criminally convicted of at least three felonies and at least one of the convictions took place within 5 years of the filing of the motion seeking the termination of parental rights.

¶ 31 The presumption of depravity is rebuttable. One may rebut the depravity presumption with evidence of rehabilitation or by showing the circumstances surrounding the offenses did not result from depravity. *In re T.T.*, 322 Ill. App. 3d 462, 466, 749 N.E.2d 1043, 1046 (2001). Once evidence opposing the presumption is presented, the presumption ceases to operate and the issue is decided on the evidence as if no presumption had existed. See *In re J.A.*, 316 Ill. App. 3d 553, 562, 736 N.E.2d 678, 686 (2000). This court will not overturn a trial court's determination on parental fitness unless that determination is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a

review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 32 Anderson concedes, given his felony convictions, the statutory presumption applies. Anderson first contends, however, he presented sufficient evidence to rebut the statutory presumption of depravity.

¶ 33 We need not resolve Anderson's first contention he presented sufficient evidence to rebut the statutory presumption. The trial court held it must consider the evidence as if the presumption did not exist if the respondent presented contrary evidence. The court considered and weighed both sides of the evidence. The State did not oppose Anderson's conclusion. We accept the premise Anderson's evidence may have been sufficient to rebut the statutory presumption of depravity.

¶ 34 Anderson argues the trial court's decision finding him depraved is against the manifest weight of the evidence. Anderson argues the mere recitation of Anderson's offenses in the State's 12 exhibits was insufficient to establish Anderson was depraved. Anderson concedes he had a number of convictions, but he maintains the 12 offenses did not establish depravity. In support, Anderson points to his explanations for the offenses, his relationship with his daughter, his efforts at complying with the service plan, his employment history, and his church membership. Anderson contends his offenses are not so extreme as to show he lacks moral sense or rectitude, and he emphasizes he only committed one felony since 2003.

¶ 35 Anderson begins his argument with the premise the State's evidence was a "mere recitation" of the offenses. This premise is faulty. The record establishes the State did not offer only a bare list of three felony convictions to trigger the rebuttable presumption. The State's exhibits contain information regarding each of the *five* felony offenses and multiple

misdemeanors and probation revocations, including docket sheets, specific charges, the resolution of the charges, and the sentences Anderson received. The trial court examined not only the fact these offenses occurred, but also the underlying circumstances of the offenses in the submitted exhibits. For example, the trial court observed Anderson committed forgery and aggravated battery in 2003 and remained a fugitive until 2006, when he was arrested for those offenses.

¶ 36 The trial court's decision finding the State proved by clear and convincing evidence Anderson is depraved is not against the manifest weight of the evidence. Anderson's Navy service, from 1996 to 1999, preceded all of his convictions, and therefore is negligible on the matter of his depravity. Between 1999 and 2011, Anderson had 12 criminal convictions, consisting of 5 felony convictions and 7 misdemeanors. During this time, he had one daughter who was adopted by his mother and for whom he failed to provide. While Anderson argues he had only one felony conviction since 2003, the trial court aptly noted Anderson was a fugitive from 2003 until 2006, when he was ultimately taken into custody for two felonies and sentenced in 2007 to a prison term of four years. After Anderson was released from prison, and despite B.K.'s arrival in 2009, Anderson continued to demonstrate an unwillingness to conform to acceptable morality. He was convicted for domestic battery in October 2011, for which he received probation, but then a short time later, he was returned to prison for a probation violation. Anderson was in prison when the fitness hearing was held. While Anderson may be correct that his convictions, each standing alone, do not establish depravity, those convictions cannot be viewed in a vacuum. Anderson's purported explanations for his offenses showed he minimized his convictions and placed the blame elsewhere. The trial court was not required to

believe Anderson's testimony as to the circumstances surrounding his offenses. This court will not substitute its judgment for the trial court's judgment on credibility matters. See *Best v. Best*, 223 Ill. 2d 342, 350-51, 860 N.E.2d 240, 245 (2006). Anderson attempted to flee from police, was unable to comply with probation terms, had an escape offense for failing to report to prison, had repeated offenses, was a fugitive, and repeatedly failed to comply with an order of protection. The court properly concluded the State proved Anderson has an inherent deficiency of moral sense and rectitude and is depraved.

¶ 37 Anderson next argues, even if he was depraved, he is no longer because he has been rehabilitated. Anderson contends the trial court's decision finding he was not rehabilitated is against the manifest weight of the evidence.

¶ 38 We disagree. There is no error in the trial court's decision Anderson failed to prove he was rehabilitated. Anderson's testimony showing he was rehabilitated centered on events that occurred between his criminal convictions or during confinement. Anderson's church attendance and his enrollment at a university, as well as his relationship with his daughter and his participation in services, were followed by additional criminal activity—negating any showing of rehabilitation. This criminal activity led to additional prison time, when Anderson's children needed him to be their father. The services performed while in prison do not show Anderson is willing to conform to accepted morality outside the structure of prison life. They simply show, at best, an intent to conform to accepted morality. Such intent is insufficient to show rehabilitation. See *A.M.*, 358 Ill. App. 3d at 254, 831 N.E.2d at 655. Given Anderson's continued criminal activity, including domestic battery and a probation revocation following the birth of his son, and the absence of any time to show Anderson was able to comply with accepted

morality outside prison walls, the court's conclusion Anderson was not rehabilitated is not against the manifest weight of the evidence.

¶ 39 Anderson's case law is distinguishable. In *Young v. Prather*, 120 Ill. App. 2d 395, 398, 256 N.E.2d 670, 671 (1970), the evidence of continued depravity included minor violations of the parent's parole curfew, a bicycle ride in her pajamas, and a practical joke. The offenses here include aggravated battery, domestic battery, escape, and forgery, as well as violations of probation and an order of protection.

¶ 40 Anderson last contends the trial court improperly relied on three cases when concluding he was depraved: *In re Addison R.*, 2013 IL App (2d) 121318, 989 N.E.2d 224; *A.M.*, 358 Ill. App. 3d at 254, 831 N.E.2d at 655; and *In re Shanna W.*, 343 Ill. App. 3d 1155, 799 N.E.2d 843 (2003). Anderson argues *Shanna W.* and *Addison R.* are irrelevant to the case because, in those cases, the State offered more evidence than simply criminal convictions. Anderson argues the court in *A.M.* considered only bare criminal convictions and "[t]o the extent *A.M.* purports to establish the rule that three or more bare criminal convictions, without more evidence, constitute clear and convincing evidence despite rebuttal, that rule is only *dictum*, it is contrary to the law in the Fourth District, and it even suffered criticism in a concurrence with the opinion."

¶ 41 This argument fails. The State here presented more than "mere criminal convictions." The State did not rest on proof of three felonies. The State provided the facts regarding 12 convictions. The facts in the State's evidence were sufficient to support the depravity finding. This premise fails, and Anderson has not proved the trial court improperly relied on *Addison R.* and *Shanna W.*

¶ 42 Anderson's citation to *A.M.* has no bearing on this case. The trial court did not improperly rely on *A.M.* for the proposition certified copies of crimes are sufficient to counter evidence of a lack of depravity or rehabilitation. Instead, the court cited *A.M.* as a basis for giving *less* weight to Anderson's efforts while in prison. See *A.M.*, 358 Ill. App. 3d at 255, 831 N.E.2d at 655. Anderson has not argued *A.M.* is incorrect on that ground.

¶ 43 III. CONCLUSION

¶ 44 We affirm the trial court's judgment.

¶ 45 Affirmed.