2016 IL App (4th) 150653-U

NOS. 4-15-0653, 4-15-0654 cons.

FILED
January 6, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v. (No. 4-15-0653)	)	No. 12JA122
CHAD CUTLER,	)	
Respondent-Appellant.	)	
_____	)	
In re: I.C., a Minor,	)	No. 12JA123
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0654)	)	Honorable
CHAD CUTLER,	)	Thomas E. Little,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: In this parental termination case, the appellate court affirmed the trial court's fitness finding but vacated the court's best-interest determination and remanded for further proceedings.

¶ 2 In July 2015, the State filed amended petitions to terminate the parental rights of respondent, Chad Cutler, as to his children, C.C. (born February 24, 2001) (Macon County case No. 12-JA-0122) and I.C. (born November 13, 2003) (Macon County case No. 12-JA-0123). Following a July 2015 fitness hearing, the trial court found respondent unfit. At a best-interest hearing held immediately thereafter, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest determi-

nations were against the manifest weight of the evidence. For the following reasons, we affirm the court's fitness finding, vacate the court's best-interest finding, and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 In December 2010, the Department of Children and Family Services (DCFS) received information regarding respondent. A later investigation ended with an indicated finding that sufficient evidence existed to believe that C.C. and I.C. were neglected by respondent and Lisa Cutler, the biological mother of C.C. and I.C. As a result, DCFS opened a case "for monitoring and any additional services" based on respondent's angry and argumentative demeanor after consuming alcohol. In April 2012, DCFS again had contact with respondent due to Lisa's death. DCFS opened a preventative case to "offer services to the family to address their emotional and physical needs."

¶ 7 In October 2012, the State filed separate petitions for adjudication of wardship, alleging, in pertinent part, that C.C. and I.C. were neglected minors under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). The State's allegations originated from an incident in which respondent left C.C. and I.C. unsupervised in a car parked at a restaurant. An hour later, C.C. and I.C. exited the car and found respondent drunk in the restaurant. Respondent ordered the children to return to the car. Police later found C.C. and I.C. walking on a roadway. C.C. and I.C. told police that because they feared that respondent would drive drunk, they decided to walk to their aunt's home.

¶ 8 At a November 2012 shelter-care hearing, respondent stipulated that an immediate and urgent necessity required the placement of C.C. and I.C. into shelter care. The trial court

subsequently entered an order, granting DCFS temporary custody of C.C. and I.C.

¶ 9 Following a January 2013 adjudicatory hearing, the trial court determined that C.C. and I.C. were neglected minors based on respondent's stipulation that he had placed them in an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2102)). The court then (1) continued the matter under supervision and (2) permitted C.C. and I.C. to remain in respondent's care provided respondent complied with DCFS guidance and client-service-plan tasks.

¶ 10 In March 2013, the State filed separate petitions for shelter-care warrant, alleging that (1) respondent was still abusing alcohol, (2) C.C. and I.C. were "out of control" and respondent was not correcting their behavior, and (3) C.C. and I.C. were not receiving their medication. In its prayer for relief, the State requested that the trial court appoint DCFS as guardian of C.C. and I.C. Following a shelter-care hearing held shortly thereafter, the court (1) found that an immediate and urgent necessity required the placement of C.C. and I.C. into shelter care and, as a result, (2) granted DCFS temporary custody of C.C. and I.C.

¶ 11 In July 2013—following two continuances—the trial court adjudicated C.C. and I.C. neglected minors based on respondent's stipulation that he had placed them in an environment injurious to their welfare. Following an August 2013 dispositional hearing, the court made C.C. and I.C. wards of the court and maintained DCFS as their guardian.

¶ 12 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 13 In July 2015, the State filed amended petitions to terminate respondent's parental rights, alleging that respondent was unfit within the meaning of section 1(D) of the Adoption Act in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to her children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) was depraved in that he had been convicted of killing Lisa (Macon County case No. 13-CF-1016) (750 ILCS 50/1(D)(i) (West

2014)); (3) failed to make reasonable efforts to correct the conditions that were the basis for the children's removal during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2014)); (4) failed to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (5) was incarcerated at the time the State filed the termination petition, has been repeatedly incarcerated as a result of criminal convictions, and his repeated incarceration will prevent him from discharging his parental responsibilities (750 ILCS 50/1(D)(s) (West 2014)).

¶ 14 1. *The July 2015 Fitness Hearing*

¶ 15 Melanie Ishmael, an adoption specialist for Webster-Cantrell Hall (a DCFS contractor), testified that she was the caseworker for C.C. and I.C. Respondent's initial December 2012 client-service-plan goals required him to (1) refrain from consuming alcohol, (2) submit to drug screenings, (3) attend substance-abuse and family counseling, and (4) maintain suitable housing and employment. Respondent began but did not finish family counseling. Although respondent completed his substance-abuse counseling, staff from Webster-Cantrell Hall later observed respondent drunk at a local business, which respondent did not dispute. Ishmael noted that on August 8, 2013, police arrested respondent, and the State charged him with Lisa's murder.

¶ 16 At the State's request, and without objection, the trial court took judicial notice of the (1) three-count information filed in case No. 13-CF-1016 and (2) jury verdict forms in that case, which confirmed that the jury convicted respondent of three counts of first degree murder. (At the time of the fitness hearing, respondent had yet to be sentenced in case No. 13-CF-1016.)

¶ 17 Respondent testified that with regard to the State's depravity allegations, he was wrongly convicted of first degree murder. Respondent added that after C.C. and I.C. were re-

moved from his care in October 2012, he complied with his client-service plan for 10 months, which included (1) attending parenting classes, (2) completing substance-abuse counseling, and (3) complying with drug screens. Respondent noted that it was only after his August 2013 arrest that he was unable to make reasonable progress toward the return of C.C. and I.C. to his care. Respondent stated that he had "a great deal of interest and concern in my children's lives." Pro-claiming his innocence, respondent requested that the trial court continue the proceedings to permit him to appeal his convictions.

¶ 18 Following the presentation of argument, the trial court found respondent unfit as to all grounds alleged by the State in its July 2015 amended petition to terminate parental rights.

¶ 19 2. *The Best-Interest Hearing*

¶ 20 At a best-interest hearing conducted immediately thereafter, the following oc-curred:

> "THE COURT: All right. We will show cause called for an immediate—let's just do it this way.
>
> Show by agreement, cause called for immediate best inter-est hearing.
>
> The court finds the [State has] proven by a preponderance of the evidence that the parental rights of [respondent] should be terminated."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. The Trial Court's Fitness Determination

¶ 24 1. *The Applicable Statute, Reasonable Progress, and the Standard of Review*

¶ 25 Section 1(D) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:
>
> * * *
>
> (i) Depravity. Conviction of any one of the following crimes shall create a presumption that a parent is depraved which can be overcome only by clear and convincing evidence: (1) first degree murder[.]" 750 ILCS 50/1(D)(i) (West 2014).

¶ 26 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not reverse a trial court's fitness finding unless it is contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record. *Id.*

¶ 27 2. *Respondent's Fitness Claims*

¶ 28 Respondent argues that the trial court's fitness determinations were against the manifest weight of the evidence. We disagree.

¶ 29 Respondent's challenge proceeds in two parts. Respondent first contends that the evidence the State presented in support of its allegation that he was depraved was insufficient to satisfy the aforementioned clear and convincing standard. Alternatively, respondent claims that if this court concludes otherwise, he sufficiently rebutted the presumption of depravity by testifying that he was wrongly convicted. We reject both claims.

¶ 30 In this case, the State presented clear and convincing evidence that following a criminal trial, a jury convicted respondent of the first degree murder of Lisa, the biological mother of C.C. and I.C. Respondent does not challenge that he was convicted, but instead, claims only that he was wrongly convicted. As to that claim, we reject that respondent's bald assertion of innocence provides clear and convincing evidence sufficient to overcome the presumption of depravity established by the State.

¶ 31 Accordingly, we conclude that the trial court's finding that respondent was depraved under section 1(D)(i) of the Adoption Act was not against the manifest weight of the evidence.

¶ 32 Having so concluded, we need not consider the trial court's other findings of parental fitness against respondent. See *In re Katrina R.*, 364 Ill. App. 3d 834, 842, 847 N.E.2d 586, 593 (2006) (on review, if sufficient evidence is shown to satisfy any one statutory ground, we need not consider other findings of parental fitness).

¶ 33 B. The Trial Court's Best-Interest Determination

¶ 34 1. *Standard of Review*

¶ 35 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 36 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 37 2. *The Trial Court's Best-Interest Finding*

¶ 38 In this case, the trial court found that terminating respondent's parental rights was in the best interest of C.C. and I.C. However, after the court entered its fitness finding and determined that the parties were prepared to immediately transition to the best-interest phase of the termination proceedings, the court did not inquire as to whether the parties had evidence to present. Thus, no pertinent evidence was presented regarding (1) where C.C. and I.C. were placed, (2) how they were progressing in that placement, and (3) recommendations regarding their future disposition. Simply put, the court did not have before it any pertinent evidence, let alone a preponderance of evidence, to substantiate its ruling. Instead, the court called the proceedings to order and immediately thereafter terminated respondent's parental rights. Given our standard of review, we vacate the court's best-interest finding and remand for further proceedings. In so do-

ing, we express no opinion regarding the best-interest phase of the proceedings.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's fitness finding, vacate the court's best-interest finding, and remand for further proceedings.

¶ 41 Affirmed in part and vacated in part; cause remanded.