2016 IL App (4th) 160172-U

NO. 4-16-0172

FILED
August 4, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.G., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Coles County
v.	)	No. 13JA18
CHENCHO GARZA,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew L. Sullivan,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court's fitness and best-interest findings were not against the manifest weight of the evidence, and (2) the court adequately admonished respondent that his failure to cooperate with the Department of Children and Family Services could result in the termination of his parental rights.

¶ 2 In October 2015, the State filed a motion seeking a finding of unfitness and the termination of the parental rights of respondent, Chencho Garza, as to his daughter, M.G. (born November 25, 2011). Following a March 2016 fitness hearing, the trial court found respondent unfit. The same day, the court found it was in the best interest of M.G. to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting (1) the trial court's fitness and best-interest findings were against the manifest weight of the evidence; and (2) the court failed to properly admonish him that his failure to cooperate with the Department of Children and Family Services (DCFS)

would lead to the termination of his parental rights, in violation of his right to due process. M.G.'s mother executed a surrender of her parental rights in April 2015 and is not a party to this appeal. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Procedural History

¶ 6 In February 2013, following a report of domestic battery by respondent, M.G.'s mother promised DCFS she would no longer allow respondent to live with her in the home where she was raising M.G. On May 15, 2013, DCFS took protective custody of M.G. after respondent allegedly committed another act of domestic battery against M.G.'s mother.

¶ 7 Two days later, the State filed a petition for an adjudication of neglect, alleging M.G. was neglected in that (1) her environment was injurious to her welfare due to respondent's ongoing domestic violence and M.G.'s mother's failure to provide a safe environment free from domestic violence (705 ILCS 405/2-3(1)(b) (West 2014)), and (2) she was not receiving the proper or necessary support or other remedial care due to respondent's ongoing domestic violence and her mother's failure to provide a safe environment free from respondent's domestic violence (705 ILCS 405/2-3(1)(a) (West 2014)). Throughout the entirety of the proceedings, respondent remained incarcerated due to the May 2013 domestic-battery incident.

¶ 8 Following a May 2013 shelter-care hearing, the trial court found it was a matter of immediate and urgent necessity to remove M.G. from the home. At that time, the court admonished, "You are required, [M.G.'s mother] *** at this point and, [respondent], if you are not in custody, to cooperate fully with the DCFS home and background investigation, including signing any releases they request. You are also required to cooperate with DCFS to correct the

conditions which require the child to be in care or you will risk termination of your parental rights."

¶ 9 In October 2013, respondent admitted the allegations contained within the petition and agreed with DCFS's dispositional recommendation that M.G. remain in DCFS's care with a goal of returning her home within one year. The trial court thereafter entered an order (1) finding M.G. neglected, (2) making M.G. a ward of the court, and (3) placing custody and guardianship of M.G. with DCFS. At the end of the hearing, the court admonished respondent, "if you fail to correct the conditions which require the child to be in care by completing the service plan, cooperating with any aftercare plans, and complying with the terms of this order, you would be risking the loss of custody and the termination of your parental rights."

¶ 10 Following a February 2014 permanency hearing, the trial court admonished, "the parents are ordered to cooperate with DCFS, comply with terms of the service plan[,] and correct the conditions which require the minor to be in care or you'll risk termination of your parental rights." Respondent indicated he understood the admonishment. Likewise, following an August 2014 permanency hearing, the court admonished respondent, "you are ordered to cooperate with DCFS, comply with the terms of the service plan, correct the conditions that require the child to be in care or you will risk termination of your parental rights." Again, respondent indicated he understood the admonishment.

¶ 11 B. Termination Proceedings

¶ 12 In October 2015, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to M.G.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) was depraved (750 ILCS 50/1(D)(i) (West 2014)); (3) failed to make reasonable efforts during any

nine-month period following the adjudication of neglect to correct the conditions which caused DCFS to take M.G. into custody (750 ILCS 50/1(D)(m)(i) (West 2014)); (4) failed to make reasonable progress toward the return home of M.G. during any nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (5) had repeated incarcerations that prevented him from discharging his parental duties (750 ILCS 50/1(D)(s) (West 2014)).

¶ 13 1. *Fitness Hearing*

¶ 14 In March 2016, the trial court held a fitness hearing, where the parties presented the following evidence.

¶ 15 The trial court began by taking judicial notice of the respondent's prior convictions, which included the following: (1) a 2013 felony domestic-battery conviction (Coles County case No. 13-CF-186), for which he was currently incarcerated; (2) a 2006 residential-burglary conviction (Coles County case No. 06-CF-161); (3) a 2004 conviction for failure of a sex offender to report a change of address (Coles County case No. 04-CF-90); and (4) a 2000 burglary conviction (Coles County case No. 00-CF-673). The court also took judicial notice of its prior orders entered throughout the case.

¶ 16 a. Cathy Veloza

¶ 17 Cathy Veloza, M.G.'s foster mother and maternal great-aunt, testified M.G. had resided with her since May 2013. Since that time, M.G. had received no correspondence, cards, gifts, phone calls, or other forms of communication from respondent. He also did not contact Veloza to inquire about M.G.'s welfare. According to Veloza, DCFS would take M.G. to see respondent in prison every three months, and that was the extent of respondent's communication with M.G.

¶ 18 b. Respondent

¶ 19 Respondent testified his projected prison release date was in May 2016. He had been in custody continuously from May 2013 to the present due to the domestic-battery incident.

¶ 20 As to his communication and contact with M.G., respondent testified he had provided Christmas gifts for M.G. over the past two years through the Angel Tree program. However, he was unaware if M.G. ever received those gifts. Respondent testified he had attempted to receive more visits with M.G., instead of one visit every three months.

¶ 21 Respondent also explained, after his arrest, M.G.'s mother filed an emergency order of protection that prohibited him from contacting M.G.'s mother or M.G. (Coles County case No. 13-OP-92). During that time, respondent was unable to write or call M.G. However, the plenary order, issued in June 2013, only prohibited respondent from contacting M.G.'s mother.

¶ 22 Respondent testified he took parenting classes, anger-management courses, and a substance-abuse class while at Robinson Correctional Center (Robinson). He was in special housing at Robinson to participate in substance-abuse counseling, and he also attended Alcoholics Anonymous/Narcotics Anonymous meetings. Respondent intended to continue attending groups upon his release from prison, something he had never done before. Although respondent was able to engage in several programs while incarcerated, Robinson offered him no means by which to obtain a mental-health evaluation and his caseworker failed to make arrangements for a mental-health professional located outside the prison to conduct the evaluation. Respondent stated he had never previously enrolled in courses or programs while incarcerated. He explained that the maximum-security prisons where he was previously incarcerated did not provide those types of programs.

¶ 23 In his parenting classes, respondent stated he learned how to manage his role as M.G.'s father and the importance of being a positive role model. He also learned to talk through his problems so he can manage his anger. As a result, respondent believed he could be a responsible parent. However, respondent also acknowledged he had spent more than 9 years of the last 12 years incarcerated. Upon his release, respondent stated he had arranged to return to his previous employer, and he would then obtain adequate housing within a month.

¶ 24 c. Andrea Zuber

¶ 25 Andrea Zuber, the family's DCFS caseworker, testified respondent failed to meet any of the recommendations of the service plan. Because respondent previously complained Zuber had not obtained his prison records regarding his completed programs and classes, Zuber attempted to obtain respondent's records and the Department of Corrections denied her request. She admitted she made no attempts to send a mental-health professional into Robinson to obtain a mental-health assessment from respondent because she was unaware of anyone who was contracted to do such work. Regardless, Zuber explained, it was respondent's responsibility to complete the service plan, even if his incarceration posed a significant impediment.

¶ 26 According to Zuber, respondent did not reach out to her to discuss potential services or to inquire about M.G. However, respondent testified he did discuss services with Zuber in August 2015, when he told her she needed to contact his counselor to arrange mental-health services.

¶ 27 d. The Trial Court's Order

¶ 28 Following the presentation of evidence, the trial court found respondent made no attempts to contact M.G. while incarcerated after noting the plenary order of protection did not prohibit him from contacting her after June 2013. The court found "the entirety of his interest,

concern, or responsibility that he can point to is he spoke to some volunteer group who he believes may have tried to deliver a Christmas present to his daughter." Thus, the court determined the State proved respondent failed to show reasonable interest, concern, or responsibility for M.G.

¶ 29 Moreover, the trial court found the State established a rebuttable presumption of depravity that respondent failed to overcome. The court pointed out respondent had been incarcerated for more than 9 of the past 12 years, including the vast majority of M.G.'s life. The court also found respondent's repeated incarcerations prevented him from discharging his parental responsibilities. However, the court specifically stated it would not make a finding as to whether respondent made reasonable progress or efforts because the State failed to specify any particular nine-month periods for the court to consider.

¶ 30 2. *Best-Interest Hearing*

¶ 31 Following the finding of unfitness, the trial court immediately commenced the best-interest hearing, where the parties presented the following evidence.

¶ 32 a. Veloza

¶ 33 Veloza testified she was not only the maternal great-aunt and foster mother for M.G., but she also had custody of M.G.'s two half-siblings. The siblings lived together their entire lives and had been with Veloza since DCFS took protective custody in May 2013. At the time of the hearing, M.G. was five years old, and her older half-siblings were six and eight years old. Veloza's boyfriend of 19 years also lived in the home and the two had a stable relationship.

¶ 34 According to Veloza, M.G. and her half-siblings were very close, and Veloza said M.G. "would be lost" without her half-siblings because they have been the only constant in one another's lives. M.G. had also bonded with Veloza's boyfriend and expressed concern over his

well-being when he had a recent hospital stay. Veloza testified she loved M.G. and provided for her care, meals, clothing, and other needs. Veloza described M.G.'s favorite activities, such as riding her bicycle and coloring. M.G. also had her own room in Veloza's four-bedroom house, with a twin-sized bed, a large dollhouse, stuffed animals, and a television. On occasions when M.G. would misbehave, M.G. would respond to Veloza's attempts to redirect her behavior. Veloza noted M.G. has attended preschool for the past two years, and Veloza kept in communication with M.G.'s teachers.

¶ 35 Veloza testified, at one point, respondent's sister visited regularly and bought toys for M.G., but those visits had decreased to every couple of months. She acknowledged she received some income from DCFS for the purchase of meals and other items; however, she also used her own money to support M.G. Even if she received no state subsidy, Veloza said she would continue caring for M.G.

¶ 36 b. Respondent

¶ 37 Respondent testified he hoped to build a relationship with M.G. upon his release from prison, and he believed building such a relationship would be in M.G.'s best interest. He said Veloza never reached out to him to see if he wanted to be part of M.G.'s life.

¶ 38 c. Melissa Jones-Bromenshenkel

¶ 39 Melissa Jones-Bromenshenkel (Jones), a court-appointed special advocate volunteer, testified she had been assigned to M.G.'s case over the past three years and had numerous opportunities to meet with M.G. Jones described M.G.'s relationship with her foster parents as very typical of a parent-child interaction, with playing and hugging as well as disciplining. M.G. always had food and clothing available, and she was performing well in

school. Jones also observed M.G. with other family members, including her grandmother and half-siblings. However, Jones had not had an opportunity to view M.G. with respondent.

¶ 40 Jones testified M.G. was comfortable in Veloza's home and had developed a close and loving relationship with her foster family. She was also appropriately socialized, dressed, cared for, and fed.

¶ 41 d. The Trial Court's Order

¶ 42 Following the presentation of evidence, the trial court stated it sympathized with respondent's inability to complete all of his services in prison but noted respondent was in prison due to his own poor decisions. Although the court believed respondent cared for M.G. and was doing the best he could within the confines of incarceration, the court noted the best-interest hearing was about the best interest of M.G., not respondent. The court found M.G. was entitled to permanency and a stable home, which respondent could not provide. She also had a close and loving relationship with and a sense of attachment to her foster family that allowed her to live with her half-siblings. Accordingly, the court found it was in M.G.'s best interest to terminate respondent's parental rights.

¶ 43 This appeal followed.

¶ 44 II. ANALYSIS

¶ 45 On appeal, respondent asserts (1) the trial court's fitness and best-interest findings were against the manifest weight of the evidence, and (2) the court failed to properly admonish him that his failure to cooperate with DCFS would lead to the termination of his parental rights, in violation of his right to due process.

¶ 46 A. Fitness Finding

¶ 47 The trial court found respondent unfit on three different grounds. We begin by addressing the court's finding as to depravity.

¶ 48 "Depravity" is defined as " 'an inherent deficiency of moral sense and rectitude.' " *In re J.A.*, 316 Ill. App. 3d 553, 561, 736 N.E.2d 678, 685 (2000) (quoting *Stalder v. Stone*, 412 Ill. 488, 498, 107 N.E.2d 696, 701 (1952)). As to an allegation of depravity, section 1(D)(i) of the Adoption Act provides:

> "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 or any other state, or under federal law, or the criminal laws of any United States territory; 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 2014).

A parent may overcome the rebuttable presumption of depravity by presenting evidence that, despite his criminal convictions, he is not depraved. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1166, 799 N.E.2d 843, 851 (2003). Once evidence rebutting the presumption is presented, the presumption ceases to operate and the issue is decided on the evidence as if no presumption had existed. *J.A.*, 316 Ill. App. 3d at 562-63, 736 N.E.2d at 686. We will not overturn the trial court's finding unless it is against the manifest weight of the evidence. *In re A.M.*, 358 Ill. App. 3d 247, 252, 831 N.E.2d 648, 653 (2005).

¶ 49 Here, the State provided evidence of respondent's four felony convictions, with respondent's most recent domestic-battery conviction occurring within five years of the State

filing its petition for the termination of respondent's parental rights. Thus, the State established a rebuttable presumption of depravity.

¶ 50 Respondent asserts the evidence at trial did not support the trial court's finding of depravity because he overcame the rebuttable presumption of depravity, and the State thereafter failed to prove his depravity. Respondent contends he presented sufficient evidence to rebut the presumption of depravity by demonstrating his commitment to becoming a better person through completing numerous programs while incarcerated. However, "[r]eceiving a few certificates for completing basic services in prison, while commendable, is not a difficult task and does not show rehabilitation." *Shanna W.*, 343 Ill. App. 3d at 1167, 799 N.E.2d at 852. Because respondent remained incarcerated throughout the pendency of the case, nothing in the record demonstrates respondent will implement the training from his classes in parenting M.G. See *id.* (evidence of rehabilitation "can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely"). Rather, respondent's history, where he has spent more than 9 of the past 12 years in prison, including one conviction and period of incarceration during M.G.'s lifetime, suggests a lack of rehabilitation and an inherent deficiency of moral sense and rectitude.

¶ 51 Respondent also argues his offenses did not consist of any crimes against children. While that may be true, M.G. was removed from the home due to her exposure to respondent's domestic violence against her mother. Thus, his actions fostered an unsafe living environment for M.G. See *In re M.P.*, 408 Ill. App. 3d 1070, 1074, 945 N.E.2d 1197, 1200 (2011) (allowing a man with a history of domestic battery into the home created an unsafe environment for the minor children).

¶ 52 Accordingly, we conclude the trial court's fitness finding was not against the manifest weight of the evidence. Because we have affirmed the trial court's finding of depravity, we need not consider any additional grounds for the finding of unfitness. *In re M.S.*, 351 Ill. App. 3d 779, 788, 814 N.E.2d 938, 946 (2004). We now turn to the court's best-interest finding.

¶ 53 B. Best-Interest Finding

¶ 54 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The petitioner must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 55 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2014). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(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 ***[;]
>
> * * *
>
> (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." *Id*.

¶ 56 In this case, the trial court found respondent cared for M.G. and wanted to be part of her life. However, the court correctly noted the hearing was about M.G.'s best interest, not respondent's. Due to his imprisonment and failure to complete the required services, respondent was unable to provide M.G. with permanence and stability. Even if he was released from prison in May 2016, respondent would need time to find housing, complete the service plan, and become reacquainted with M.G., meaning that he would be unable to provide permanence in the near future.

¶ 57 Over the course of three years, respondent made very little effort to maintain a relationship with M.G., making no attempts to communicate with her other than scheduled prison visits every three months. The only evidence that he sent cards or gifts was respondent's testimony that he provided M.G.'s information to a volunteer group that provided Christmas gifts for children.

¶ 58 On the other hand, M.G. had been in the same relative foster placement along with her half-siblings for three years, the vast majority of her life. The family shared a close and loving relationship where all of M.G.'s needs—clothing, socialization, food, schooling, toys—were being met. Veloza provides both the permanency and stability M.G. needs for her development.

¶ 59 Accordingly, we conclude the court's best-interest finding was not against the manifest weight of the evidence.

¶ 60 C. Admonishment

¶ 61 Finally, respondent asserts the trial court violated his due-process rights by failing to properly admonish him that his parental rights could be terminated if he failed to cooperate with DCFS. The State argues respondent failed to preserve this issue before the trial court and it is therefore forfeited.

¶ 62 The State is correct in stating respondent failed to raise this issue before the trial court and, instead, raises it for the first time on appeal. Therefore, this issue is forfeited. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1045, 796 N.E.2d 1175, 1179 (2003). Accordingly, we decline to address the merits of this issue.

¶ 63 III. CONCLUSION

¶ 64 For the foregoing reasons, we affirm the trial court's judgment.

¶ 65 Affirmed.