2021 IL App (4th) 210372-U

NO. 4-21-0372

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 24, 2021
Carla Bender
4th District Appellate
Court, IL

In re Adoption of J.T., a Minor	)	Appeal from the
	)	Circuit Court of
(Paul J. K. and Janet R. C.,	)	Sangamon County
Petitioners-Appellees,	)	No. 19AD107
v.	)	
Moises T.,	)	Honorable
Respondent-Appellant).	)	Raylene Grischow,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the judgment of the trial court terminating respondent's parental rights because the trial court's finding that respondent was an unfit parent was not against the manifest weight of the evidence.

¶ 2 Respondent, Moises T., is the father of J.T. (born November 2017). In May 2020, petitioners, Paul J. K. and Janet R. C., filed an amended petition for adoption of J.T., alleging, in pertinent part, that respondent was an unfit parent because he was depraved.

¶ 3 In April 2021, a jury found respondent guilty of four counts of murder (which stemmed from the killing of a single victim) and one count of armed robbery. The jury further found that respondent personally discharged a firearm resulting in the death of the victim. In June 2021, the trial court (1) found respondent was an unfit parent due to his first degree murder conviction, (2) terminated respondent's parental rights, and (3) approved petitioners' adoption of J.T.

¶ 4 Respondent appeals, arguing only that the trial court's finding that respondent was an unfit parent was against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Petition for Adoption

¶ 7 In November 2019, petitioners filed a petition for adoption that did not name respondent; instead, the petition sought to terminate the rights of any unknown fathers. In December 2019, respondent wrote a letter to the trial court stating that he was J.T.'s father, opposed J.T.'s adoption, and wished to contest the proceedings in court. Respondent further explained that he had been incarcerated in the Sangamon County jail since March 2017. Respondent eventually established his paternity through DNA testing. (We note that respondent was in jail awaiting trial, which did not occur until April 2021.)

¶ 8 In May 2020, petitioners filed an amended petition for adoption, which alleged (1) Paul was the maternal great-grandfather of J.T., (2) petitioners had been the court-appointed guardians over J.T., whose mother died in April 2019, since May 2019, (3) petitioners had had continuous custody of J.T. since December 2018, and (4) petitioners desired to adopt J.T. and change his legal name. The petition further alleged Paul was 77 years old, Janet was 67 years old, and they had been married since January 2018. The petition asserted respondent was the biological father of the child, was unfit, and his parental rights should be terminated because, among other things, respondent was depraved as defined by section 1(D)(i) of the Adoption Act. 750 ILCS 50/1(D)(i) (West 2018).

¶ 9 (To provide context, we further note that because respondent had not been convicted at the time the amended petition was filed, petitioners sought to terminate his parental rights on alternative grounds other than depravity, such as failure to demonstrate a reasonable

degree of interest or concern within 30 days of birth. However, those grounds are not relevant to this appeal.)

¶ 10 In October 2020, respondent, through court-appointed counsel, filed an answer (1) denying he was an unfit parent and (2) asserting his parental rights should not be terminated.

¶ 11 B. The Fitness Proceedings

¶ 12 In June 2021, the trial court conducted a termination hearing regarding respondent's parental fitness.

¶ 13 1. *Petitioners' Case*

¶ 14 Petitioners offered, by agreement, three exhibits in their case-in-chief. The first exhibit contained certified copies of (1) the indictments filed against respondent, which alleged respondent murdered Dezmeion Poole in March 2017, and (2) the jury's guilty verdicts from respondent's April 2021 trial. Notably, the jury found defendant guilty of four counts of first degree murder, including that respondent personally discharged a firearm that caused the death of another, and one count of armed robbery. The second exhibit was search results of the Illinois Putative Father Registry for J.T. The third was a copy of J.T.'s mother's death certificate.

¶ 15 Petitioners then rested, arguing they had established a rebuttable presumption of depravity and had shifted the burden to respondent to rebut that presumption. The trial court agreed and permitted respondent to present evidence.

¶ 16 2. *Respondent's Case*

¶ 17 Respondent testified he had been in the Sangamon County jail awaiting his jury trial for over four years (from March 2017 through April 2021) and that his trial had concluded in April 2021 while he was in custody. Further, he testified the jury convicted him of armed robbery and first degree murder, which had been charged four different ways under the murder

statute (see 720 ILCS 5/9-1(a) (West 2016)).

¶ 18 Respondent testified that he maintained his innocence throughout the trial and continued to do so. He was currently drafting posttrial motions challenging the verdicts, and he planned on appealing his convictions if his motions were denied. Respondent stated he understood his sentencing range was between 76 years and life in prison.

¶ 19 Respondent further testified he understood it was his burden in the adoption case to prove he was not depraved based on his murder conviction. In an effort to demonstrate that he was not depraved, respondent read aloud a letter he had written, which said the following:

> "[W]ords can't explain the love and emotions I have for my son. But I know what it is like to not have a father figure in life, especially when you need him the most.
>
> If things don't go my way, I want to thank you very much, [petitioners], for taking care and loving my son while I've been incarcerated.
>
> When I first saw [J.T.] on the visiting screen, it was loving, but also very distant. I do not have anything against you guys—or I don't have anything against you guys, and I've tried to let you both know before I am not a monster if that is how you see me. I just really need to be a part of [J.T.'s] life as much as he needs me in his as a father.
>
> It is very hard to give my rights—it is very hard to give up my rights because I don't have a father in my life.
>
> [Paul], you have known me since 2013. I know your whole family. We have been through so much together. And you know I'll always love your beautiful granddaughter.

> Janet, even though I just met you, we have had great times together while I was out.
>
> I want to be a father to [J.T.] no matter what my circumstances are because I would always strive for the best. I've experienced so much in life, and I know how much a young kid needs his father growing up, and I am his only parent that he has left. I just hope that you find it in your heart to share him with me. [J.T.] means everything to me, and I will never give up on him.
>
> I am a loving and caring person. I ask that you please let my son know who his father is and let him know how much I love him."

¶ 20 The trial court asked for an explanation of respondent's potential sentence. Respondent's counsel explained that, depending on how the sentencing judge applied the firearm enhancement, respondent could be sentenced to a minimum of 76 years because the armed robbery sentence would have to be served consecutively to the murder sentence. Respondent's counsel stated, and respondent agreed on cross-examination, that respondent was facing a mandatory minimum sentence of 45 years, to be served at 100%, on the murder conviction alone. Respondent also noted that he had been incarcerated since before he knew J.T.'s mother was pregnant.

¶ 21 Respondent then rested.

¶ 22 3. *The Trial Court's Findings*

¶ 23 The trial court made oral findings on the record that (1) petitioners made a *prima facie* showing of depravity and (2) respondent failed to rebut that showing. The court made a docket entry, which set forth the following:

> "Petitioners made a *prima facie* case of depravity so the burden shifted to

> [respondent] to explain away the evidence. [Respondent] failed to meet his burden. The Court holds petitioners have established that [respondent] is [an] unfit person as defined by statute based on the fact he has been convicted of first degree murder and faces an extended term of imprisonment which demonstrates wanton cruelty along with the gun enhancement. These factors taken together establish by clear and convincing evidence that [respondent] suffered from an inherent deficiency of moral sense and rectitude in that they show depravity. [Respondent] is an unfit person by reason of depravity. The parental rights of [respondent] are terminated."

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Respondent appeals, arguing only that the trial court's finding that respondent was an unfit parent was against the manifest weight of the evidence. We disagree and affirm.

¶ 27 A. The Applicable Law

¶ 28 The adoption of a minor child generally requires the consent of both parents. 750 ILCS 50/8(a) (West 2016). However, consent is not required if one parent is dead and the trial court finds, by clear and convincing evidence, the remaining parent to be an unfit person, as defined by the Adoption Act. *Id.* The burden is on those petitioning for adoption to prove parental unfitness. *In re Adoption of L.T.M.*, 214 Ill. 2d 60, 67-68, 824 N.E.2d 221, 226 (2005). Section 1(D)(i) of the Adoption Act provides that there is a rebuttable presumption that a parent is depraved—and therefore unfit—if the parent has been convicted of first degree murder within 10 years of the date of filing a petition for adoption. 750 ILCS 50/1(D)(i) (West 2018).

¶ 29 Once the petitioners make a *prima facie* showing of depravity, the burden of

rebutting the presumption of depravity rests on the parent. *In re J.A.*, 316 Ill. App. 3d 553, 562, 736 N.E.2d 678, 686 (2000). The parent must come forward with evidence "showing that, despite his convictions, he is not depraved." *Id.* The First District has explained the rebuttable presumption as follows:

> "If evidence opposing the presumption is presented, the presumption ceases to operate, and the case is determined on the basis of the evidence presented, as if the presumption never existed. [Citation.] There is no fixed rule as to how much evidence is required to meet the presumption: the stronger the presumption, the greater the amount of evidence is required to rebut it." *In re J.V.*, 2018 IL App (1st) 171766, ¶ 180, 115 N.E.3d 1099.

"Rehabilitation can only be shown by a parent who, upon leaving prison, maintains a lifestyle suitable for parenting children safely." *Id.* ¶ 183.

¶ 30 B. The Standard of Review

¶ 31 A determination of parental unfitness involves factual findings and credibility determinations that the trial court is in the best position to make. *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007). "The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent[,] and the reviewing court will give such a determination deferential treatment." *J.A.*, 316 Ill. App. 3d at 563. A trial court's finding of parental unfitness will not be reversed unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001). A decision is against the manifest weight of the evidence when the opposite conclusion is clearly the proper result. *In re Nylani M.*, 2016 IL App (1st) 152262, ¶ 48, 51 N.E.3d 1067.

¶ 32 C. This Case

¶ 33 Here, the trial court found respondent failed to "explain away the evidence" that demonstrated he was presumed depraved based on his murder conviction. We agree respondent failed to rebut the presumption.

¶ 34 By agreement, the parties presented certified copies of the jury's verdicts finding respondent guilty of four counts of murder—including that respondent personally discharged a firearm resulting in the victim's death—and one count of armed robbery. In his case-in-chief, respondent explained that he did not have a father so he knew the importance of having a father in one's life. Respondent testified he loved his son and wanted to be in his life. Respondent also thanked petitioners for taking care of J.T. while respondent was in custody. Respondent acknowledged that he had been in custody facing murder charges since before J.T. was born.

¶ 35 On appeal, respondent argues that he "has not been given a chance at rehabilitation"—ostensibly because he was convicted of the charges against him only mere months before the termination hearing—and he still has posttrial motions pending and appeal rights. (We note that the Illinois Supreme Court has held that an unfitness determination does not have to be postponed while a criminal case is under appellate review. *In re Donald A.G.*, 221 Ill. 2d 234, 254, 850 N.E.2d 172, 183 (2006).) Respondent also argues petitioners refused to allow respondent to communicate with them or J.T. Accordingly, respondent has lacked the opportunity to establish a relationship with J.T. or provide financial assistance to him. Respondent further contends petitioners are attempting to erase J.T.'s heritage and cultural identity by changing his name and denying respondent and his family access to J.T.

¶ 36 We note that because respondent did not make these arguments or present evidence related to them at the termination hearing, he has arguably forfeited these contentions. Regardless, the trial court was well within its discretion to find that such considerations did not

rise to the level necessary to rebut the presumption of depravity caused by respondent's personally shooting someone to death during an armed robbery.

¶ 37 We acknowledge that respondent has had limited opportunities to demonstrate rehabilitation because he was in jail awaiting trial and was presumed innocent during that time. Nonetheless, his actions put him in jail. Respondent was ultimately convicted and agreed he was facing at least 45 years in prison and likely over 70 years in prison. Respondent's evidence amounted to an expression of his love for his son. Although we do not question respondent's sincerity, we agree with the trial court that such evidence was not enough to overcome the presumption of depravity.

¶ 38 Based upon the foregoing, we conclude the trial court's determination that respondent failed to rebut the statutory presumption of depravity was proper.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.