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2021 IL App (3d) 210392-U

Order filed December 15, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

<i>In re</i> Ja.J., Je.J., and J.J.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois
)	
(The People of the State of Illinois,	)	Appeal Nos. 3-21-0392
	)	3-21-0393
Petitioner-Appellee,	)	3-21-0394
	)	Circuit Nos. 16-JA-159
	)	16-JA-160
v.	)	16-JA-161
)	
Breon L. J.	)	Honorable
	)	Timothy J. Cusack,
Respondent-Appellant.)	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Daugherty and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it determined father was unfit based on depravity in termination of parental rights proceeding.

¶ 2 The trial court found that the father was unfit on the basis of depravity, and after determining it was in the children's best interests, terminated his parental rights. Father appealed. We affirm.

¶ 3

BACKGROUND

¶ 4

Three children were born to respondent Breon L. J. and Laurice S. Ja.J. was born on March 6, 2011, Je.J. was born on December 15, 2012, and J.J. was born on November 26, 2014. The children were adjudicated neglected in February 2017 after it was discovered that Laurice left them home unattended. At the time the neglect petition was filed, Breon was incarcerated at Hill Correctional Center, serving a term for unlawful possession of a weapon by a felon. He was released but arrested again in August 2019. In March 2020, Laurice surrendered her parental rights to all three children.

¶ 5

The State filed a supplemental petition to terminate Breon's parental rights in April 2020. The petition included two counts: that Breon was unfit in that he was a depraved person due to prior convictions (count I) (750 ILCS 50/1(D)(i) (West 2020)) and that he failed to make reasonable progress toward the return home of the children in the nine-month period between August 15, 2019, and May 15, 2020 (count II) (750 ILCS 50/1(D)(m)(ii) (West 2020)). The State proceeded only on count I.

¶ 6

The petition alleged that Breon was unfit as depraved because he had been convicted of the following: resisting a peace officer (720 ILCS 5/31-1(a) (West 2008)) in 2009; unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) in 2014; aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2014)) in 2015; and unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2018)) in 2019.

¶ 7

A hearing took place on the petition. The State offered certified copies of Breon's convictions and established as follows. Breon pleaded guilty to resisting a peace officer and was sentenced to 10 days in jail in January 2009. In June 2014, he was indicted for unlawful possession of a controlled substance and unlawful possession of cannabis (720 ILCS 550/4(d) (West 2014)).

He pleaded guilty to unlawful possession of a controlled substance and was sentenced to 24 months' probation, which terminated in March 2016. Breon entered a guilty plea to aggravated robbery and aggravated fleeing and eluding in July 2015 and was sentenced to seven and three years' imprisonment, respectively, with the terms to be served concurrently. While on parole from that sentence, Breon was charged with unlawful possession of a weapon by a felon in August 2019. Following a jury trial, he was found guilty and sentenced to a 20-year term of imprisonment, which was later reduced to 9 years. The State asked the court to take judicial notice that Breon was in custody at the time of the termination proceeding on charges of two counts of first degree murder and one count of unlawful possession of a weapon by a felon. The trial court did not rule on the request.

¶ 8 Breon testified that he was in the Hill Correctional Center when the juvenile petition was filed and immediately began to participate in all available classes, which included parenting and anger management. When he was released, he undertook mental health, psychological and substance abuse evaluations. He had unsupervised visits with his children. He testified that he pleaded not guilty to the pending murder charges and was awaiting trial.

¶ 9 The State argued that any progress Breon exhibited in completing services was negated when he reoffended after his release from the Hill Correctional Center and during the pendency of the proceedings. The guardian *ad litem* testified that she was not sure the State met its burden regarding the rebuttable presumption of depravity. The trial court found that Breon's convictions supported an unfitness finding based on depravity.

¶ 10 A best interest hearing followed at which the caseworker testified that the children were visiting their father in jail and wanted to see him. Breon testified that he was serving a nine-year

sentence but anticipated he would be released in approximately two-and-a-half years. Breon admitted he had been involved in violent altercations while in custody.

¶ 11 The trial court found that it was in the children’s best interests that Breon’s parental rights be terminated. It granted the petition to terminate. Breon appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, Breon argues that the trial court erred when it found he was an unfit parent on the basis of depravity. He complains the trial court made its findings solely on proof of his convictions and did not consider his character and credibility.

¶ 14 To terminate a parent’s right to his children, the State must establish by clear and convincing evidence that the parent is unfit and it is in the children’s best interests that his parental rights be terminated. *In re C.W.*, 199 Ill. 2d 198, 210 (2002); 750 ILCS 50/1(D) (West 2020); 705 ILCS 405/2-29(2) (West 2020); A parent may be unfit on the basis of depravity. 750 ILCS 50/1(D)(i) (West 2020). A rebuttable presumption of depravity arises where the parent has three felony convictions and at least one conviction took place within five years of when the petition to terminate was filed. *Id.* Depravity means “ ‘an inherent deficiency of moral sense and rectitude.’ ” *In re P.J.*, 2018 IL App (3d) 170539, ¶ 13 (quoting *In re A.M.*, 358 Ill. App. 3d 247, 253 (2005)). The State establishes depravity with a showing that the parent is deficient “ ‘ “in moral sense” ’ ” and has “ ‘ “an inability or an unwillingness to conform to accepted morality.” ’ ” *Id.* (quoting *A.M.*, 358 Ill. App. 3d at 253, quoting *In re J.A.* 316 Ill. App. 3d 553, 561 (2000)). Once the State establishes a presumption of depravity, a *prima facie* case arises and the parent may then introduce evidence opposing the presumption. *J.A.*, 316 Ill. App. 3d at 562 (citing *Diederich v. Walters*, 65 Ill. 2d 95, 100 (1976)). If the parent introduces some opposing evidence, the presumption no longer exists and the court determines the issue based on the evidence adduced as if there had not been a

presumption. *Id.* This court will not reverse a trial court's finding of unfitness on the basis of depravity unless it was against the manifest weight of the evidence. *In re Shanna W.*, 343 Ill. App. 3d 1155, 1168 (2003) (citing *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000)).

¶ 15 Breon submits that the trial court relied only on the fact of his convictions, did not consider his efforts in completing required services and visiting his children, and failed to contemplate his character and credibility. We disagree. The State offered without objection exhibits that outlined Breon's criminal history. He was charged with resisting a peace officer, a misdemeanor offense, when he was 17 years old. Six years later, he offended again, unlawfully possessing cocaine. The possession charge was a felony and Breon was sentenced to two years of probation. Also in 2014, Breon committed the offenses of aggravated robbery and aggravated fleeing and eluding, both felonies, and was sentenced to concurrent prison terms of seven and three years, respectively. It was during this term of incarceration that the juvenile petition was filed and Breon began taking parenting and anger management classes. He was released in 2019, at the age of 27, and continued to engage in services. However, Breon reoffended on August 14, 2019, and was convicted of unlawful possession of a weapon by a felon and sentenced to a nine-year term of imprisonment. He was serving this term of imprisonment when the supplemental petition to terminate parental rights was filed and decided.

¶ 16 Beyond proof of conviction, these facts show that Breon was morally deficient and had an inability or unwillingness to conform his behavior to morally accepted conduct. He was first convicted as a juvenile. He continued to engage in criminal behavior before and after his children were born. After his release from prison in 2019, he participated in and completed services and he was enjoying unsupervised visitation with his children. Nevertheless, these successes did not

convince Breon to avoid further unlawful actions and to conform his behavior to “accepted morality.”

¶ 17 Breon’s reliance on *In re Sanders*, 77 Ill. App. 3d 78 (1979) and *In re Perez*, 173 Ill. App. 3d 922 (1988) is misplaced. In both cases, the reviewing court affirmed the trial court’s finding the father was not depraved despite numerous past convictions. *Sanders*, 77 Ill. App. 3d at 81-82; *Perez*, 173 Ill. App. 3d at 937-38. The courts noted that a parent’s convictions, even of a number of felony offenses, was insufficient to establish depravity, that a parent’s convictions were only one factor to consider and that the court should scrutinize the parent’s character and credibility. *Sanders*, 77 Ill. App. 3d at 82; *Perez*, 173 Ill. App. 3d at 937. These cases were decided prior to the inclusion of the rebuttable presumption provision of the statute. See Pub. Act 90-608 (eff. June 30, 1998). At the time the *Sanders* and *Perez* cases were determined, the State was required to establish the parent committed “repetitious acts of sufficient duration to establish a deficiency in a moral sense and either an inability or unwillingness to conform to accepted moral standards.” *Sanders*, 77 Ill. App. 3d at 81; *Perez*, 173 Ill. App. 3d at 937. These cases do not assist Breon. The current statute provides that a rebuttable presumption arises when a parent has three prior convictions, one of which was entered within five years of the filing of the juvenile petition. 750 ILCS 50/1(D)(i) (West 2020). Breon’s record established three felonies with one being within five years of the petition to terminate.

¶ 18 Despite Breon’s claims to the contrary, he did not overcome the presumption of depravity. The trial court considered his character and credibility along with the other evidence presented. We find the trial court’s finding that Breon was unfit due to depravity was not against the manifest weight of the evidence. Breon does not present any argument on appeal regarding the trial court’s best interest determination and we do not reach a disposition on that finding.

¶ 19

CONCLUSION

¶ 20

For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21

Affirmed.