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SIXTH DIVISION  
NOVEMBER 23, 2011

No. 1-11-1700

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE INTEREST OF: JULIA H., a Minor,	)	Appeal from the
	)	Circuit Court of
Minor Respondent-Appellee,	)	Cook County.
	)	
(THE PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 10JA954
	)	
NATHANIEL H.,	)	Honorable
	)	Bernard J. Sarley,
Respondent-Appellant).	)	Judge Presiding.

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PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.

Justices Garcia and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Although the notice of appeal in the case at bar stated that the trial

court terminated the father's parental rights, the trial court did not terminate his parental rights and, in fact, set a goal of "return home 12 months." However, we reverse the trial court's finding of abuse and neglect which was based on the fact that the father had not yet "completed [the] training" required for the return home of his severely handicapped daughter who had been hospitalized since birth. Since the adjudicated facts were stipulated to, our review is *de novo*, and we affirm the disposition and dependency orders on the ground that the minor was dependent, rather than abused and neglected.

¶ 2 Respondent Nathaniel H., Julia H's father, appeals the trial court's adjudication order, entered on May 12,2011, which determined that his daughter was abused and neglected based on the fact that "minor was ready for discharge from hospital and [Nathaniel H] had not completed [the] training" required for her home care. His daughter, Julia H., was born with severe physical and mental handicaps, and has lived at Children's Hospital since birth. The trial court's order also found that the natural mother had "refused to participate in training." However, the mother has not appealed.

¶ 3 Since the facts for adjudication were stipulated to, we exercise *de novo* review and reverse the finding of abuse and neglect. However, since we may affirm on any ground found in the record and since the father does not appear to dispute on this appeal the permanency or disposition orders but only the adjudication of abuse and neglect, we affirm the disposition and permanency

No. 1-11-1700

orders on the ground that the child is dependent. We remand the case to the trial court for further proceedings consistent with this order, including the permanency hearing that was previously scheduled by the trial court but was apparently delayed by this appeal.

¶ 4 BACKGROUND

¶ 5 I. Stipulated Facts

¶ 6 On May 12, 2011, the parties entered into a written "Stipulation of Facts" which was received and signed by the trial court. The stipulation stated the following facts.

¶ 7 The minor, Julia H., was born on May 12, 2009, to Nathaniel H. and Natasha H. If called to testify, Dr. Steven Lestrud would testify that the minor was admitted to Children's Memorial Hospital on May 13, 2009, and he has been one of the minor's attending physicians. The minor has many birth defects including the absence of a right lung, malformed spine and ribs, a hole in the upper chambers of her heart, and inability to eat by mouth. The minor would be at significant risk if she were discharged home without services in place, and a mental health assessment of her parents.

¶ 8 If called to testify, Monique Gunn, would testify that she is a social worker

No. 1-11-1700

at Children's Memorial Hospital assigned to Julia H. and that, as of October 19, 2010, the minor was medically stable and ready to be discharged and had been ready to be discharged for approximately six months. However, after six months, the natural father had still not completed the necessary training. The stipulation also stated that a letter dated October 19, 2010, and prepared by Monique Gunn and her team was admissible.

¶ 9

## II. Orders Appealed From

¶ 10 On May 12, 2011, after the parties' factual stipulations were read into the record and the trial court heard argument from the parties, the trial court entered an "Adjudication Order." The order is a pre-printed form which listed three possible findings: (1) no abuse, neglect or dependency; (2) abuse or neglect; or (3) dependency. If the trial court found abuse, neglect or dependency, then the form provided further options. For example, if the trial court found that a minor was dependent, then the court had to assess the level of parental fault and could find that a child was without proper medical or other necessary care "through no fault" of his or her father or mother. If the trial court found abuse or neglect, then it had to select from a list of possible statutory sections violated and had to complete a "because" section.

No. 1-11-1700

¶ 11 In the case at bar, the trial court checked the options which stated that "the minor is abused or neglected as defined in 405/2-3 of the Juvenile Court Act in that conduct toward the minor violates: 405/2-3(1)(b) injurious environment [and] 405/2-3(2)(ii) substantial risk or injury." In the "because" section, the trial court wrote by hand that the "minor was born medically complex & requires specialized care by trained caregivers. Minor was ready for discharge from hospital and NF [Natural Father] had not completed training [and] NM [Natural Mother] refused to participate in training."

¶ 12 After the "because" section, the form states: "and the abuse or neglect of the minor is..." Then the form presents the trial court with one of two options: that the abuse or neglect was the result of abuse or neglect by a parent; or that it was not. Instead of selecting one of these two options, the trial court in the case at bar wrote in by hand: "No Finding."

¶ 13 The adjudication order stated that the disposition hearing would be held "instanter" and that the permanency hearing would be held on October 26, 2011.

¶ 14 After entering the adjudication order and then hearing from live witnesses concerning disposition, the trial court entered a "Disposition Order," also on May 12, 2011. The disposition order stated that the minor was "adjudged a ward of the

No. 1-11-1700

court, it being in the best interest and welfare of the minor and the public" and that the father was "unable for some reason other than financial aid circumstances alone to care for, protect, train or discipline the minor." At the disposition hearing, there had been no dispute that the father was presently unable to care for his daughter at home, since he had not yet completed the last course required for home care. As a result, at the end of the disposition hearing, both the father and the assistant public defender representing the mother had asked for an additional five months.

Although the State had conceded that the parents had been "working consistently since at least March of 2011 to receive the specialized training" and the State had agreed with a "return home" goal of 12 months, the State had asked for a DCFS administrator to be appointed as guardian since there was still progress to be made.

¶ 15 The disposition order further stated that "[r]easonable efforts have been made to prevent or eliminate the need for removal of the minor from the home" and that "[a]ppropriate services aimed at family preservation and family reunification have been unsuccessful." The disposition order found that "[i]t is in the best interest of the minor to remove the minor from the custody of the parents, guardian or custodian." The order then stated that the "minor shall be placed in the

No. 1-11-1700

(custody/guardianship of DCFS/D. Jean Ortega Piron, a DCFS Guardianship Administrator with the right to place minor."

¶ 16 A "Permanency Order" was also entered on May 12, 2011, concurrently with the disposition order. The permanency order stated that "[t]he appropriate permanency goal is "RETURN HOME within 12 months," since both the mother and father have "made substantial progress toward the return home of this minor." The order stated that "the reason for selecting this goal" was that the "minor has medically complex issues & is currently hospitalized. Natural parents are in need of services for minor to be discharged to their home." However, "the selected goal cannot be immediately achieved" and "DCFS shall provide services consistent with this goal." The order set the matter for a permanency hearing on October 26, 2011.

¶ 17 A notice of appeal was filed by the father alone on June 13, 2011. Since the notice was filed, the previously scheduled permanency hearing has not been held. The notice states that the "nature of the order appealed from" is "termination of parental rights" entered May 12, 2011. In addition, the sole relief requested by the father in the "Conclusion" section of his appellate brief is "that this Court reverse the order of the Circuit Court terminating his parental rights."

¶ 18 Although the notice states that parental rights were terminated, that is not

No. 1-11-1700

what the appealed-from orders found. Based on our reading of the father's appellate brief, we interpret the notice to be an appeal from the order adjudicating his child as abused and neglected.

¶ 19 The father's appellate brief puts forth one issue: "whether the circuit court erred, as a matter of law, in finding by a preponderance of the evidence that the minor was neglected and abused by her natural father." Thus, we interpret the father's notice as appealing only the adjudication order which found abuse and neglect, and not the disposition and permanency orders which provided for a goal of the minor's return home to her parents in 12 months. The father does not argue in his appellate brief that 12-months is unreasonable.

¶ 20 The father's appellate brief states that the trial court found that the father abused and neglected his daughter. That is factually incorrect. Although the trial court found that the minor child was abused or neglected, the trial court specifically made "no finding" as to whether any of the abuse or neglect was the result of abuse or neglect by the father.

¶ 21

#### ANALYSIS

¶ 22 The following facts are not in dispute. This child was born with severe birth

No. 1-11-1700

defects and has spent her whole life in the hospital. Her father has fallen behind schedule in what he was required to do before she can come home. As a result, his daughter was ready to leave for approximately six months, and he was not yet ready to receive her.

¶ 23 Since the facts were stipulated to at the adjudication hearing, our standard of review is *de novo*, rather than the typical manifest weight standard. Typically, a reviewing court will not disturb the factual findings made by a trial court at an adjudication hearing unless they were against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007); *In the Interests of D.W., V.R. and N.B., Jr.*, 386 Ill. App. 3d 124, 134 (2008). The reason for this deferential standard is that "the trial court is in a superior position to assess the credibility of witnesses and weigh the evidence." *In re Stephen K.*, 373 Ill. App. 3d at 25; *In the Interests of D.W.*, 386 Ill. App. 3d at 136 ("the trial court, having observed the witnesses and heard their testimony, is in the best position to make credibility determinations"). However, in the case at bar, since the facts were stipulated to, there was no factual dispute or credibility issue for the trial court to resolve, but only a legal question of whether the stipulated facts met the legal standard of abuse or neglect. As a result, we are in the same position as the trial court and we review the question *de novo*.

No. 1-11-1700

*Norskog v. Pfiel*, 197 Ill. 2d 60, 70-71 (2001) (citing *In re Marriage of Bonneau*, 294 Ill. App. 3d 720, 723-24 (1998) ("If the facts are uncontroverted and the issue is the trial court's application of the law to the facts, a court of review may determine the correctness of the ruling independent of the trial court's judgment.")).

¶ 24 Whenever a court considers a petition for adjudication of wardship, the paramount consideration is the best interests of the child. *In re Stephen K.*, 373 Ill. App. 3d at 19-20; *In the Interests of D.W.*, 386 Ill. App. 3d at 134. After filing a petition, the State bears the burden of proving abuse, neglect or dependency by a preponderance of the evidence. *In re Stephen K.*, 373 Ill. App. 3d at 20; *In the Interests of D.W.*, 386 Ill. App. 3d at 134.

¶ 25 We find that, in a case that is as medically complex as all the parties agree this one is, a six-month delay in completing training does not constitute abuse and neglect. The State has not presented us with a single case that such a six-month delay constitutes abuse and neglect, nor have we found one. Thus, we reverse the trial court's finding in the adjudication order of abuse and neglect based on a failure to complete training.

¶ 26 However, we may affirm the trial court's order on any ground supported by

No. 1-11-1700

the record. *DeRaedt v. Rabiola*, 2011 Ill. App. (2d) 100719, ¶ 24; *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010). We do find ample evidence in the stipulated facts to support the conclusion that the minor was dependent.

¶ 27 A dependent minor is one for whom the parents are unable to provide "proper medical or other remedial care recognized under State law or other care necessary for his or her well being through no fault, neglect, or lack of concern by his [or her] parents." 705 ILCS 405/2-4(1)(b) (West 2010).

¶ 28 There is no dispute that the father was unable to provide the proper medical care at the time of the adjudication hearing, since he had not yet completed his training. In fact, the father had asked for an additional 5 months. Thus, there was no dispute about the minor's dependency at the time of the adjudication hearing.

¶ 29 If a child is adjudicated dependent under this section, the ensuing disposition may not include removal of the minor from the custody of the parents for more than 6 months, unless the trial court finds that it is "in the best interests of the minor," which the trial court found in the case at bar. 705 ILCS 405/2-4(1)(b) (West 2010). The trial court found that it was in the best interest of the minor to be placed in the guardianship of a DCFS administrator, with a return home goal of 12 months. For reasons that we discuss below, we find that this finding and

No. 1-11-1700

disposition was not against the manifest weight of the evidence.

¶ 30 Whether the trial court's finding of wardship is based on abuse, neglect or dependency, the next step is the same: a dispositional hearing. 705 ILCS 405/2-21 (2) (West 2010) (after an adjudication that a minor is abused, neglected, or dependent, the trial court must set a time not later than 30 days for a dispositional hearing). The question at the dispositional hearing is "whether it is consistent with the health, safety and best interests of the minor and the public that he [or she] be made a ward of the court." 705 ILCS 405/2-21 (2) (West 2010). The State bears the burden of proof by a preponderance of the evidence. *In re Stephen K.*, 373 Ill. App. 3d at 25; *In the Intests of D.W.*, 386 Ill. App. 3d at 139.

¶ 31 At the dispostional hearing, the trial court may also terminate parental rights, if certain conditions are satisfied. In the case at bar, termination was neither sought nor granted. 705 ILCS 405/2-21 (5) (West 2010).

¶ 32 In the case at bar, live testimony was heard at the dispositional hearing, and thus our standard of review for the disposition is whether the trial court's finding was against the manifest weight of the evidence. *In re Stephen K.*, 373 Ill. App. 3d at 25; *In the Intests of D.W.*, 386 Ill. App. 3d at 139. "A finding is against the manifest weight of the evidence where a review of the record clearly demonstrates

No. 1-11-1700

that the result opposite to the one reached by the trial court was the proper result." *In re Stephen K.*, 373 Ill. App. 3d at 25; *In the Intests of D.W.*, 386 Ill. App. 3d at 139 (a finding is against the manifest weight of the evidence if it is unreasonable, arbitrary, and not based on the evidence).

¶ 33 At the dispositional hearing, the sole witness was Carol Brockington, the minor's caseworker. She testified that the parents visited on a regular basis, with the mother visiting three times a week for 2 1/2 hours per visit and the father visiting on the weekend. The father had almost finished his training but still needed to complete a CPR course; and the mother still had other training to complete. The caseworker testified that, as a result of the parents' consistent efforts, the minor had experienced "a complete turnaround." When the caseworker was asked why she was recommending that the minor be adjudged a ward of the court and that a DCFS administrator be appointed as guardian, the caseworker explained: "Based on Julia's medical condition and need for additional services. The natural parents are not in a position at this time to provide that care, and DCFS is willing to ensure that all services are available" to the minor. The caseworker further testified that, if the case continued to a permanency planning hearing on this same day, her recommendation was "[r]eturn home within 12 months."

No. 1-11-1700

¶ 34 Based on the uncontested testimony of the sole witness who testified, we cannot find that the trial court's disposition of awarding guardianship to a DCFS administrator, with a return home goal of 12 months, was against the manifest weight of the evidence.

¶ 35 We remand the case to the trial court for further proceedings consistent with this order, including the permanency hearing that was previously scheduled by the trial court but was apparently delayed by this appeal. Since the parents' parental rights are not terminated, and the trial court made no finding that the parents abused or neglected the minor, the father may move at the permanency hearing, or at another subsequent time, for reasonable visitation (705 ILCS 405/1-3(13) (West 2010) or for the court to restore the minor to his custody (705 ILCS 405/2-23(a), 2-28(4) (West 2010).

¶ 36 **CONCLUSION**

¶ 37 Since the facts for adjudication were stipulated to, we exercise *de novo* review and reverse the trial court's finding of abuse and neglect. However, since we may affirm on any ground found in the record, we affirm the disposition and permanency orders on the ground that the child is dependent. We remand the case to the trial court for further proceedings consistent with this order, including the

No. 1-11-1700

permanency hearing that was previously scheduled by the trial court but was apparently delayed by this appeal.

¶ 38 Reversed in part, affirmed in part, and remanded for further proceedings.