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2011 IL App (3d) 110064-U

Order filed December 22, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In Re</i> L.W.,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
a Minor) Peoria County, Illinois,
)
(The People of the State of Illinois,) Appeal No. 3-11-0064
) Circuit No. 10-JA-305
Petitioner-Appellee,)
) Honorable
v.) Richard D. McCoy & Mark E. Gilles,
) Judges, Presiding.
Terrance W.,)
)
Respondent-Appellant).)

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that a minor's father was dispositionally unfit was not against the manifest weight of the evidence where the minor had been found neglected based upon domestic violence between the father and the minor's mother, and the father was resistant to services and had not yet begun domestic violence classes.

¶ 2 The trial court adjudged the minor, L.W., to be neglected because of an environment injurious to her welfare under section 2-3(1)(b) of the Juvenile Court Act of 1987 (the Act). 705

ILCS 405/2-3(1)(b) (West 2008). At the dispositional hearing, the trial court found both the mother and respondent father, Terrance W., to be unfit. The father appeals the finding that he was unfit. We affirm.

¶ 3

FACTS

¶ 4 L.W. was two months old when that State filed a petition alleging that L.W. was neglected due to an environment injurious to her welfare. The petition alleged that, a month earlier, her father came home drunk and hit her mother in the mouth, pushed the mother to the floor, and grabbed L.W. While holding L.W., the father sprayed disinfectant around the kitchen, claiming that it was flammable and he would burn down the house. The petition also alleged that the father threatened the mother with a knife, and he set fire to a curtain in the kitchen. The father threatened to kill himself and L.W. The mother was able to take L.W. and run from the home, and the police were called. The petition also alleged that L.W. was neglected based upon the father's criminal history, which included aggravated criminal sexual abuse (a delinquency case), unlawful use of weapons, and driving under the influence.

¶ 5 At the adjudication hearing, the State entered certified copies of the father's convictions. The mother testified, claiming that she and the father had a disagreement on the night in question, but that the father was not drunk and he did not harm or threaten her. However, she acknowledged her police statement and photographs taken on the day of the incident. The photographs showed a cut inside the mother's mouth, which she testified occurred when the father accidentally elbowed her. The mother's police statement was consistent with the allegations in the neglect petition.

¶ 6 Mark Lamb, a Peoria police officer, testified that he was called to the home on the date of

the incident. He found the father standing outside the residence, and the father told Lamb that the father had gotten into an argument with his girlfriend. Lamb testified that the mother told him that the father came home drunk and hit her. She also said that the father grabbed L.W. and was spraying something throughout the house and saying that he would burn the house down. Lamb also testified that the mother told him that the father threatened her with a knife. Lamb testified that the mother looked like she had a split lip, and she told Lamb that it happened when the father hit her. Lamb testified that he did not smell a strong odor or smoke, but he did notice a curtain with scorch marks.

¶ 7 The father testified that he did not strike or hit the mother and he did not attempt to burn their home down. He claimed that all of the allegations were false. The trial court found that the petition was proven. The first claim of the petition, regarding the domestic violence, was proven by the mother's statement, corroborated by other evidence. The second claim of the petition, regarding the mother's actions after the incident, was proven in part. The father admitted to his criminal history, the basis for the third claim on the petition.

¶ 8 Melissa Borders, a case worker, testified at the dispositional hearing. Borders testified that the father completed a drug and alcohol assessment and no treatment was recommended. The father had been attending visits with L.W., and, although he left some visits early, he had been appropriate with L.W. at the visits. The father had been referred for domestic violence classes, but had not yet started them. Borders described the father as cooperative, but complaining. Borders made a number of recommendations.

¶ 9 The trial court found the father and the mother dispositionally unfit. As to the father, the trial court found him unfit based upon his inability to care for, protect, train or discipline L.W. in

light of the domestic violence. The trial court found that it was in the best interest of L.W. to make her a ward of the court, and it named DCFS as guardian. The trial court adopted Borders' recommendations, which included, specific to the father, a sexual offender assessment, twice monthly breathalyzers, and the completion of domestic violence classes. The father appealed the finding of unfitness.

¶ 10

ANALYSIS

¶ 11 The father contends that the trial court's finding that he was unfit was against the manifest weight of the evidence. The State contends that it proved by a preponderance of the evidence that the father was unfit. The trial court found that L.W. was neglected because her environment was injurious to her welfare, which is a grounds for neglect under the Act. 705 ILCS 405/2-3(1)(b) (West 2008). The trial court ruled that the father was unfit because of the domestic violence that provided the basis for the petition.

¶ 12 Section 2-27 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-27 (West 2008)) governs dispositional hearings and provides that a minor may be adjudged a ward of the court and custody taken away from the parent if the parent is found "unfit or...unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor or [is] unwilling to do so." 705 ILCS 405/2-27(1) (West 2008). At this stage, where a finding of unfitness will not result in a complete termination of parental rights, the State has the burden of proving unfitness by a preponderance of the evidence. *In re Stephen K.*, 373 Ill. App. 3d 7, 20 (2007). In making a fitness determination, the trial court is in a superior position to assess the credibility of the witnesses, weigh the evidence, and draw the appropriate inferences. *In re April C.*, 326 Ill. App. 3d 225, 238 (2001). A trial court's finding of unfitness is afforded great

deference and will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 354 (2005). A decision is against the manifest weight of the evidence where the opposite conclusion is apparent. *Gwynne P.*, 215 Ill. 2d at 354.

¶ 13 Here, the father was found unfit based upon his inability to care for, protect, train or discipline L.W. in light of the domestic violence that the trial court found was proven by the mother's statement and corroborated by other evidence. The father did not challenge that finding. Although the evidence showed that the father was cooperating with services, it also showed that he was very resistant and did not believe he needed to engage in services. He had been referred for domestic violence classes, but had not begun classes at the time of the dispositional hearing. The father had also not yet had a sexual offender assessment. Accordingly, we find that the trial court's finding that the father was dispositionally unfit was not against the manifest weight of the evidence.

¶ 14 **CONCLUSION**

¶ 15 The judgment of the circuit court of Peoria County is affirmed.

¶ 16 Affirmed.