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No. 3-10-0675

Order filed April 26, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

In re A.K.,)	Appeal from the Circuit Court
a Minor)	of the 10 th Judicial Circuit
)	Peoria County, Illinois,
(The People of the State of Illinois)	
)	
Petitioner-Appellee,)	
)	No. 07-JA-164
v.)	
)	
Jessica M.,)	The Honorable
)	Richard D. McCoy,
Respondent-Appellant).)	Judge Presiding.

JUSTICE McDADE delivered the judgment of the court
Justices Wright and Lytton concurred in the judgment.

ORDER

Held: The filing of a timely notice of appeal, 30 days after the entry of a final order, vests the appellate court with jurisdiction. Because the trial court's dispositional unfitness finding is not against the manifest weight of the evidence, we affirm the trial court's judgment.

At the conclusion of a dispositional hearing, the respondent mother, Jessica M., was found to be unfit to have physical custody of her child, the minor. The respondent appeals,

arguing that the court's unfitness finding is against the manifest weight of the evidence. We affirm.

FACTS

On June 14, 2007, the State filed a petition alleging neglect of the minor. The minor was born on March 3, 2002. The trial court found the allegations of the petition proven by a preponderance of the evidence and, thus, that the minor was neglected. On December 10, 2007, the court subsequently found the respondent unfit to care for the minor and ordered that the minor be made a ward of the court.

The dispositional order expressly noted the minor's exposure to domestic violence and the respondent's issues with substance abuse. The respondent was ordered to perform various tasks, such as: cooperate fully with the Department of Children and Family Services (DCFS) or their designee, perform two random drug drops per month, participate in and successfully complete counseling and domestic violence classes, and obtain stable income, among other tasks.

Permanency review hearings were held periodically after the issuance of the dispositional order. In the permanency review order dated May 12, 2008, the trial court noted that the respondent's efforts had been mixed in the previous six months. The respondent had not submitted any drug drops between December 12, 2007, and April 10, 2008; had missed four visits with the minor; had not yet obtained employment; had poor attendance at domestic violence classes; and violated an order of protection she had against her husband. The respondent was found to still be unfit.

In the period before the next permanency review hearing, the respondent was arrested on July 10, 2008, and again on October 4, 2008 for driving on a suspended or revoked licence. A

warrant was issued for the respondent's arrest for failing to appear in court on October 17, 2008. The respondent submitted only three drug drops during the period in question and tested positive on all three. She tested positive for marijuana on both June 12, 2008, and July 10, 2008. She tested positive for alcohol on July 3, 2008. The respondent failed to submit drops on all other required dates between May and October of 2008. The respondent also missed numerous "life skills" sessions as well as three visits with the minor. In the permanency order dated December 1, 2008, the trial court concluded that the respondent had not achieved the requisite goals due to the positive drug drops, the missed drug drops, arrests, and not completing the "life skills" training.

In the period before the next permanency review hearing, the respondent was arrested in November 2008 on the previously-issued warrant for failing to appear. The respondent failed to submit any drug drops in the prior six months. The respondent informed caseworkers she relapsed and used marijuana and alcohol in April 2009. The respondent also had not been participating in counseling and was still unemployed. In the permanency order dated June 1, 2009, the trial court held that the respondent's efforts were still unreasonable overall based on the preceding reasons. The court, however, held the minor's father had made reasonable efforts. Thus, the court found the minor's father fit.

In the permanency order dated September 28, 2009, the trial court found that the respondent was fit. Consequently, the court changed the permanency goal from "return home one year" to "return home five months." The order provides that the basis for this change was "[the] progress of parents." The order also found the minor's father fit.

In the period before the next permanency review hearing, the respondent was

unsuccessfully discharged from substance abuse treatment. The respondent failed to report this development to caseworkers. As for her drug drops, the respondent told caseworkers that she completed a drop on October 9, 2010, but she, in fact, did not complete the drop. The respondent missed two out of three required drops in October 2009, and tested positive for marijuana on October 5, 2009. She also failed to submit drops in November and December of 2009, and in January and February of 2010. The respondent remained unemployed. In the permanency order dated March 1, 2010, the trial court found the respondent unfit. The order noted the respondent's "missed drops" and dismissal "from treatment." The court held the minor's father remained fit.

In the period before the next permanency review hearing, the respondent missed five out of ten required drug drops between March 15, 2010 and July 28, 2010. Several of the drops that were submitted were late. At the hearing, a caseworker stated that the respondent had experienced a death in her family, but the caseworker was unsure if the date of the death had any bearing on the respondent missing the drug drops. In the permanency order dated August 16, 2010, the trial court found the respondent remained unfit. Specifically, the order provides:

"Wardship terminated and guardianship is vacated and is placed with Father (over State's objection). 90 days after care for monitoring stability. Mother remains unfit. Case closed."

ANALYSIS

We are met at the outset with a jurisdictional question. The State contends that "this court is without jurisdiction because the respondent, who had the opportunity to challenge the dispositional finding of unfitness following the original finding on December 10, 2007, failed to timely appeal." The respondent has failed to file a reply brief, thereby failing to address the

State's jurisdictional argument.¹ The State's jurisdictional challenge, however, lacks merit on its face, because the order of December 10, 2007, does not qualify as a final and appealable order.

“Generally, a trial court retains jurisdiction over a cause of action until all issues of fact and law have been finally determined and a final judgment has been entered.” *Progressive Universal Insurance Co. v. Hallman*, 331 Ill. App. 3d 64, 67 (2002). A final order terminates the litigation on the merits of the case and determines the ultimate rights of the parties, so that, if affirmed, the only action remaining is to proceed to judgment. *Hamilton v. Williams*, 237 Ill. App. 3d 765, 775 (1992). Once the court enters a final order, the parties have 30 days from the entry of the final order to appeal.² Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

The trial court's order of December 10, 2007, did not constitute a final order because the rights of the parties had yet to be fully and finally adjudicated. While the order did provide that the respondent was unfit to care for the minor, it continued the matter until May 12, 2008.

¹ “While a reply brief is not required under the rules of the [supreme] court, it is helpful in that it enables the reviewing court to have before it a full and complete presentation of all material questions of law and fact involved in the case.” *Holden v. Police Board of the City of Chicago*, 324 Ill. App. 3d 862, 869 (2001), quoting *Investors Commercial Corp. v. Metcalf*, 13 Ill. App. 2d 99, 105 (1957).

² “[N]otice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion ***.” Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

Specifically, the order states: “The initial permanency hearing will held [sic] on 5/12/08 at 1:30pm.” Moreover, the record reveals that several additional permanency hearings were held after May 12, 2008. During these hearings the court examined the facts of the case and the respondent’s progress towards reunification. After each hearing, the court entered a finding regarding the respondent’s fitness. Clearly, issues of fact and law still remained after entry of the court’s order of December 10, 2007.

The trial court did not enter an order disposing of all relevant issues of fact and law until August 16, 2010. This order constituted a final and appealable order. In that order the court: 1) terminated DCFS’s wardship and guardianship, 2) placed the minor with his father, 3) found the respondent remained unfit, and 4) closed the case. The respondent filed her notice of appeal on August 30, 2010. Thus, the notice of appeal was a timely filed direct appeal that properly vested this court with jurisdiction. See Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). We now turn to the merits of the respondent’s appeal.

The respondent contends that the trial court erred in finding her unfit at the August 16, 2010, permanency review hearing. Respondent acknowledges that she “missed screenings,” but argues that the court should be assured of her fitness because she “was in treatment and aftercare” during the relevant time. Respondent also contends there was no evidence presented that “indicated that there was any domestic violence, inappropriate associations, criminality or observed drug or alcohol usage during the relative [sic] six month review period.”

A trial court’s dispositional unfitness finding will not be disturbed on review unless the findings of fact are against the manifest weight of the evidence. *In re J.P.*, 331 Ill. App. 3d 220, 238 (2002). A determination is against the manifest weight of the evidence only if the opposite

conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *In re D.F.*, 202 Ill. 2d 476, 498 (2002). Upon review, we find the court's dispositional unfitness finding was not against the manifest weight of the evidence.

Originally, the respondent was found to be unfit to care for the minor due to the minor's exposure to domestic violence and the respondent's issues with substance abuse. The trial court ordered the respondent to submit several drug drops. The record reveals, however, that the respondent never successfully submitted all the required drug drops during a particular permanency review period. Overall, respondent has submitted less than half of all the required drops during the life of her case. Even more troubling, however, is the fact that several of the drops that the respondent did submit tested positive for marijuana and alcohol. Moreover, the respondent, at one point, admitted that she had relapsed and used marijuana and alcohol. While we acknowledge that none of the drops the respondent decided to submit during the period of between March 15, 2010 and July 28, 2010 tested positive for drugs or alcohol, she still missed five of the ten required drops.

While we find the above facts sufficient alone to support the trial court's finding of unfitness, we note that respondent has also: (1) failed to obtain stable employment, (2) missed visits with the minor in 2007 and 2008, (3) failed to attend all domestic violence classes, (4) broke an order of protection against her husband, (5) been unsuccessfully discharged from substance abuse treatment, (6) missed several "life skills" sessions, (7) been cited for driving on a suspended or revoked license, (8) been arrested in November 2008 for failing to appear in court, (9) failed to report to caseworkers that she was unsuccessfully discharged from substance abuse treatment. Accordingly, based upon the foregoing, we hold that the trial court's dispositional

unfitness finding was not against the manifest weight of the evidence. We therefore affirm the trial court's ruling.

Affirmed.