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2011 IL App (3d) 100778-U

Order filed August 12, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re E.K-B.</i>)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-10-0778
Petitioner-Appellee,)	Circuit No. 08-JA-238
)	
v.)	
)	
Michael K.,)	Honorable
)	Richard D. McCoy,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge & McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's finding at the dispositional hearing that the respondent was unfit to care for his minor son was not contrary to the manifest weight of the evidence.
- ¶ 2 Following a dispositional hearing, the circuit court found that the respondent, Michael K., was unfit to care for the minor, E.K-B. On appeal, the respondent argues that

the circuit court's unfitness finding was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

On January 5, 2009, the State filed an amended juvenile petition, alleging that the minor, E.K-B., was neglected due to an injurious environment in that "his parents ha[d] been involved in a long and continuous custody battle over the minor and ha[d] made a number of police reports against each other, a number of order of protections cases against each other *** [and] discussed the other parent with the minor which have all resulted in emotional harm to the minor. " On May 14, 2009, the circuit court placed the minor into temporary shelter care and named the Department of Children and Family Services (DCFS) as his guardian. The trial court also adjudicated the minor neglected and admonished his parents to cooperate with DCFS. The minor was placed into foster care with his maternal grandparents.

¶ 5

On July 29, 2009, a psychological evaluation was conducted on the respondent. The evaluation report indicated that the respondent was a recovering alcoholic with a history of treatment and relapse. At the time of the evaluation, the respondent reported being sober for years and attending alcoholic anonymous (AA) meetings regularly. He was described in the report as: (1) "a "forceful, extreme, almost delusional man with an agenda to protect his child from his abusive mother"; (2) overtalkative to the point of exasperating everyone involved in the case; (3) impulsive and moody; (4) overly excitable with poor emotional control; and (5) extremely anxious.

¶ 6

On August 6, 2009, at a dispositional hearing, the circuit court reserved judgment

on the respondent's dispositional fitness to care for the minor, made the minor a ward of the court, and appointed DCFS as his guardian. On appeal, this court held that the minor could not be removed from the respondent's custody without a finding that he was unfit to care for the minor, reversed the trial court's judgment, and remanded the matter for the trial court to make a determination regarding the respondent's fitness. *In re E.K-B.*, No. 3-09-0687 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 On June 1, 2010, caseworkers met with the respondent to discuss a report from an unnamed person regarding telephone calls received from the respondent. The respondent explained that his slurred speech during the telephone calls and his inability to recall making the telephone calls were side effects of taking the prescription sleeping pill Ambien. DCFS caseworkers specifically warned the respondent of the negative side effects of Ambien. On June 7, 2010, as part of a safety plan with DCFS, the respondent agreed to refrain from taking Ambien during visits with the minor.

¶ 8 On June 21, 2010, the respondent left caseworker Adrian Mann a series of telephone messages with slurred and delayed speech. As a result of the messages, Mann requested that the respondent perform a urine drop. Mann reported that the respondent refused her request. On June 23, 2010, the respondent's visits were suspended because he: (1) made a series of telephone calls in which he sounded under the influence of "something," which presented concerns regarding his stability; (2) had negative discussions regarding the minor's mother; (3) refused a urine drop; and (4) displayed escalating unstable behavior for the past month.

¶ 9 On June 25, 2010, the State filed a motion for a finding that the respondent was

dispositionally unfit. The State alleged that the respondent left "numerous and disturbing" telephone messages for Mann and that until the respondent could control his actions and his behavior, he was not fit to parent the minor.

¶ 10 On July 13, 2010, Mann prepared a permanency review report in which she described the respondent as displaying erratic behavior and continuing to be argumentative, uncooperative, and resistant to moving forward. Mann recommended that the minor be returned to his mother and the respondent continue with counseling.

¶ 11 On July 24, 2010, Mann received additional "long and rambling" phone messages from the respondent, during which his speech was slurred and delayed. The same day he also left eight telephone phone messages for the Court Appointed Special Advocate (CASA) volunteer in regard to her report on the case, during which his speech was slurred and delayed. Specifically, the respondent complained that: (1) the reason E.K-B's foster parents reported that the minor seemed "weird" after leaving the respondent's home was because E.K-B "goes from a happy place where there is God and prayer"; (2) the foster parents were manipulative; (3) the fact that the minor was in foster care was "so stupid it [was] freaking incredible"; (4) the report was indicative of a "definite anti-father campaign"; (5) the report failed to acknowledge that the respondent was the person who had involved the minor in counseling, baseball, summer camp, and summer school; (6) the respondent took the minor to get his eight cavities filled; (7) he must not be a good dad "because [he had] this penis thing happening"; and (8) the report failed to discuss the promiscuity of the minor's mother.

¶ 12 On September 1, 2010, the trial court conducted a dispositional fitness hearing.

The respondent stipulated to the facts alleged in the State's motion regarding him making the telephone calls. The respondent's June 21 and July 24, 2010, phone messages to Mann were entered into evidence.

¶ 13 In the first message, the respondent complained to Mann that her supervisor had said to him, "if you don't leave I am going to call the police" as the respondent was walking toward the exit doors, which he believed was "a power play." The respondent requested that next time the caseworkers "don't threaten [him] with [calling the police]" and "just do it." He also explained that he was not afraid of police involvement because the minor's mother had him arrested on unfounded charges numerous times. He stated: (1) "I am afraid of the police like a cat is afraid of a mouse. No fear"; (2) "The police are dirty"; (3) "[T]hey are willing to arrest somebody over a pretty smile"; (4) "So, I am the cat and the police are the mouse really, you know, in terms of fear; I have no fear of them whatsoever"; (5) "They have rendered themselves useless in this situation because I can show that I have been arrested this time, this time"; and (6) "I just wanted to make sure that you were aware of that, never threaten to call the police on me. Just call them."

¶ 14 The second message consisted of the respondent indicating that "it rocked [the minor's] world" to have his teenage half-sister removed from his mother's home on abuse allegations. The respondent also indicated that an order of protection had been entered against him in favor of the minor's maternal grandparents because he had accidentally missed the court date. He asked, "Does anybody really believe that I was at the park harassing grandma like the order of protection says?" He also stated, "It's the best thing that ever happened to me. Being removed from evil."

¶ 15 The third and fourth messages consisted of the defendant singing a Ray Charles song.

¶ 16 The fifth message consisted of the respondent agreeing to Mann's request that he submit to a breathalyzer test and requesting, in vulgar terms, that Mann prevent E.K-B.'s mother from introducing E.K-B. to her multiple boyfriends. In the message the respondent stated, "I am more than happy to [take a breathalyzer]" and asked, "How about you stop my son's mother from having her vagina *** f*** guys." The respondent went on to explain that all he wanted was for his son "to have a healthy place" and requested that Mann tell [the minor's mother] to refrain from exposing his son to various men "until they know that it is going to work out." In the message, the respondent's speech was severely slurred, and he used vulgar and offensive language.

¶ 17 The seventh message consisted of the respondent rambling in slurred speech that he and the minor's mother made progress in that he had called her and she answered the phone. He also stated, in part:

"And whatever act she wants to play, I don't care about it. I care about my son's best interest. *** I am all for [the minor's mother] being involved in a relationship. *** But in the beginning stages this is relationship number four. Is this healthy for [the minor]. I don't know. I don't think so. So, why can't we put it on ice? Why can't we hold it off? But, obviously, you guys don't view child advocacy the same way that I do. *** You said, 'Contact her directly' and then you guys questioned me about doing that. And so obviously you didn't present it to her as though, you know what, Michael wants to have [E.K-B.] but he wishes that you would call him and ask him and open those doors of

communication. Obviously, by her response, you didn't do that. She said, 'You had the opportunity to have your son and you refused.' That's laughable."

¶ 18 Message eight and nine consisted of the respondent complaining about Mann's recommendation that he be found unfit. He stated that he and the minor's mother had begun to make progress but Mann was "so anti-father that [she] would like to sabotage things" and that Mann was willing to support the minor's mother and "smash [him]." He also stated:

" I could really give a crap about you. Call the police. Have me arrested. *** I'll go to jail. *** I actually had a conversation with [the minor's mother]. And it was actually a good conversation. *** But you all protect her, protect her, protect her. Oh goodness, protect her, please do. I've been to jail four times already. *** So, you can call me and you say, oh well, you need to *** go breathe into a tube or something. *** You go breathe into a tube. *** [You can] have me arrested, and make up your own story. Make it up because they'll arrest me, I assure you. *** What solitude does my son have? What solitude does my son have? Give me a situation in which my son is okay? *** I am not afraid of anything other than my son's well-being. That's all I care about."

¶ 19 In the tenth message, with slurred speech, the respondent informed Mann that he was going to an AA meeting and stated, "If you wanted to meet [the minor's mother] and you all wanted to be in each other's vaginas together that would be fine." He also repeated that he was going to an AA meeting because he was "a recovering alcoholic" and stated that he had "no problem with hiding the vagina condition" and Mann had played into the mother's hand "100 %." He also told Mann that he did not like her, care about

her feelings, or want to get along with her and that all he wanted was "to get along with [his] son" and "get along with [his] son's mother."

¶ 20 The respondent's eleventh and twelfth messages consisted of him stating that he received Mann's report and he was not a threat to her. He also asked Mann if she was "willing to live with what [she had] documented" and stated, "I am going to end up losing my son, so, I am no harm to you and you guys know it." The remaining seven messages consisted of the respondent rambling in disagreement to various aspects of Mann's report.

¶ 21 Additional evidence at the hearing indicated that on Sunday afternoon of August 29, 2010, the respondent had abandoned his vehicle partly in the line of traffic. The vehicle contained a bottle of unopened alcohol in the glove box, an empty alcohol bottle in the back seat, two bottles of prescription drugs, a cellular phone, and a digital camera. The following day the respondent did not go to work and missed his weekly phone conference with the caseworker.

¶ 22 The respondent testified that prior to leaving the message for Mann on June 21, 2010, he had taken an Ambien pill, despite knowledge of its negative side effects and being placed on a safety plan regarding the drug. After June 21, 2010, the respondent switched to the sleeping pill Lunesta, but it caused similar side effects. After the respondent became aware that he left additional messages on July 24, 2010, he stopped using all medications. The respondent further testified that he had abandoned his vehicle on August 29, 2010, because it had run out of gasoline. He conjectured that the empty alcohol bottle appeared in the vehicle because someone must have placed trash in his car

during the one hour period of time from when he had left the vehicle until police found it. The respondent described the full bottle of alcohol as containing only water, which he had intended to use as a prop to play a prank on a fellow AA member.

¶ 23 In ruling, the trial judge noted that the respondent's testimony was "unbelievable" and found the respondent "unfit based on anger, inappropriate communications, consumption of alcohol, probable abuse of other substances, and failure to be truthful and honest with the Court." The respondent appealed.

¶ 24 ANALYSIS

¶ 25 On appeal, the respondent argues that the trial court's finding that he was dispositionally unfit was against the manifest weight of the evidence. We disagree.

¶ 26 Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1–1 *et seq.* (West 2010)), after a minor is adjudicated abused, neglected, or dependent, the trial court shall hold a dispositional hearing. 705 ILCS 405/2–21(2) (West 2010). At the dispositional hearing, the trial court determines whether the parents of a minor are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train, or discipline the minor or are unwilling to do so, and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents[.]" 705 ILCS 405/2–27(1) (West 2010). On review, the trial court's section 2–27 fitness determination will be reversed only if the trial court's findings of fact are against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App. 3d 1050 (2009).

¶ 27 In this case, the trial court's finding that the respondent was dispositionally unfit was not against the manifest weight of the evidence. It is clear from the record that the

respondent either: (1) continued to take prescription medication, which resulted in erratic and unstable behavior; or (2) relapsed in his substance abuse recovery, which resulted in erratic and unstable behavior. Either way, the record is clear that in the months leading up to the dispositional hearing, the respondent exhibited an escalating pattern of erratic and unstable behavior, which was lacking in both common sense and self-control.

¶ 28 Overall, the respondent has failed to adhere to the trial court's admonishments that he cooperate with DCFS, comply with the terms of the service plan, and correct the conditions that led to the minor's removal. Until the respondent is able to control and remember his actions, the health, safety, and best interest of his son will be jeopardized when he is in the respondent's care. Consequently, the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 31 Affirmed.