

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (3d) 100569-U

Order filed July 21, 2011

---

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

<i>In re</i> K.B.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minor	)	Peoria County, Illinois,
	)	
(The People of the State of	)	
Illinois,	)	Appeal No. 3-10-0569
	)	Circuit No. 10-JA-125
Petitioner-Appellee,	)	
	)	
v.	)	
	)	
Mandy H.,	)	Honorable
	)	Richard D. McCoy,
Respondent-Appellant).	)	Judge, Presiding.

---

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

---

**ORDER**

- ¶ 1 *Held:* A trial court's finding that a mother was dispositionally unfit was upheld on appeal as not against the manifest weight of the evidence when the mother continued to reside with the minor's father, who was unfit because of his history of sexually abusing minors and prior finding of unfitness.
- ¶ 2 The trial court adjudicated the minor, K.B., neglected pursuant to section 2--3 of the Juvenile Court Act of 1987 (705 ILCS 405/2--3 (West 2008)). At the dispositional hearing, the

trial court found that respondent mother, Mandy H., was unfit, made K.B. a ward of the court, and named the Department of Children and Family Services (DCFS) as guardian of K.B. with the right to place. The respondent appealed, arguing that the trial court's finding of unfitness was against the manifest weight of the evidence. We affirm.

¶ 3

#### FACTS

¶ 4 On May 6, 2010, the State filed a petition alleging that K.B. (born July 6, 2009) was neglected because she was living in an environment that was injurious to her welfare. The basis for the injurious environment was the criminal and sexual history of K.B.'s father. The petition alleged that the father had a history of committing sex offenses against minors and he had not successfully completed sex offender counseling. The father and the respondent resided in the same home with K.B. In the previous 20 years, the father had been indicated multiple times by DCFS for sexual molestation, risk of sexual harm, and sexual penetration, all involving minors, including three of the father's siblings. The petition also alleged that the father had previously been found unfit on three separate occasions with respect to his other children and there had been no subsequent finding of fitness.

¶ 5 The respondent stipulated to all of the allegations in the petition. The father stipulated to all of the allegations except for the allegation that he had a history of committing sex offenses against minors. At the adjudicatory hearing, all the evidence was directed toward proving the contested allegation by a preponderance of the evidence. The State presented two exhibits. The first exhibit contained records from Peoria County from 1991, which included: (1) a petition that alleged that the father's minor son was neglected due to an injurious environment in that the father had committed sex offenses against minors and never successfully completed sex offender counseling; (2) the father's answer to the petition, denying that he committed any sex offenses

but admitting that he never completed sex offender counseling; (3) the adjudicatory order finding the petition, including the allegation of sex offenses against minors, was proven by a preponderance of the evidence. The second exhibit contained records from Tazewell County from 2008 which showed that the father had been found unfit with regard to his children because of his extensive criminal history and sexual activity with minors with no successful treatment.

¶ 6 The father testified, denying ever committing any sexual offenses against minors. The trial court adjudicated K.B. neglected, finding that the allegation that the father had committed sex offenses against minors was proven by clear and convincing evidence by a preponderance of the evidence. Thereafter, the trial court found that both parents were dispositionally unfit; the respondent was unfit because she was still residing and maintaining a relationship with K.B.'s father and the father was unfit because he was a sex offender who had not completed treatment and he had prior findings of unfitness without any subsequent findings of fitness. The respondent appealed.

¶ 7 ANALYSIS

¶ 8 The respondent argues that the trial court's finding that she was unfit was against the manifest weight of the evidence. She contends that although the father may have been unfit, her unwillingness to leave K.B.'s father was not sufficient evidence to find her an unfit parent. The State argues that the trial court's finding that the respondent was unfit was not against the manifest weight of the evidence.

¶ 9 A trial court may make a child a ward of the court if the trial court finds that the parents are unfit, unwilling, or unable for some reason, other than financial circumstances alone, to care for, protect, train, or discipline the minor and that the health, safety, and best interest of the minor will be jeopardized if the minor remains in the custody of the parents. 705 ILCS

405/2–27(1) (West 2006). 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 April C.*, 326 Ill. App. 3d 245 (2001). On review, the trial court's dispositional decision will be reversed only if the findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate disposition. *In re Ta.A.*, 384 Ill. App. 3d 303 (2008). A determination will be found to be against the manifest weight of the evidence only if the record shows that the opposite conclusion is clearly evident. *April C.*, 326 Ill. App. 3d 245. In this case, we have carefully reviewed the record, including the petition, the stipulations, the exhibits, and the testimony at the adjudicatory hearing. We conclude that the trial court's finding that the respondent was unfit was supported by the record and not against the manifest weight of the evidence. K.B.'s father had a history of sexually abusing minors, which was shown by a preponderance of the evidence. He had also been previously found unfit, and there had been no subsequent finding of fitness. The respondent continued to reside with K.B. and the father, and she expressed an intent to remain with the father as a family. She also failed to show an understanding why K.B. could not reside with the father. Accordingly, we hold that the trial court did not err in finding the respondent dispositionally unfit.

¶ 10

#### CONCLUSION

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

¶ 12 Affirmed.