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No. 3–10–0537

Order filed June 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2011

<i>In re</i> S.C.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minor,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Nos. 10–JA–128
)	
v.)	
)	
LISA K.,)	Honorable
)	Richard D. McCoy,
Respondent-Appellant.))	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

Held: The trial court made S.C. a ward of the court, and placed him under the guardianship of DCFS after finding mother dispositionally unfit to have custody of the minor on grounds that she was both unable and unwilling to care for him at the time of the dispositional hearing. On appeal, mother disputes that she was *unwilling* to care for S.C. but concedes that she was *unable* to care for S.C. Mother’s argument on appeal is moot because either ground can support this finding of dispositional unfitness and, therefore, our decision would have no practical impact on parties or the court’s order. Appeal dismissed.

The State filed a petition alleging the respondent Lisa K. (mother) provided an environment injurious to the welfare of the minor, S.C., based upon being unable to control the minor and refusing to allow him back into her home due to his abusive behavior.

At the dispositional hearing, the court made the minor a ward of the court and found mother dispositionally unfit because she was both unable and unwilling to care for, protect, train or discipline the minor. The court named DCFS the guardian of the minor and ordered both the minor and mother to cooperate with several conditions listed in the dispositional orders. Mother challenges the court's finding that she was unwilling to care for the minor, but does not challenge the finding of unfitness based upon her being unable to care for the minor. After determining the issue raised in this appeal is moot, we dismiss the appeal *sua sponte*.

BACKGROUND

Respondent-appellant Lisa K. is the mother of the minor child, S.C., who was born on August 27, 1998. On May 10, 2010, the State filed a petition against Lisa K. (mother) alleging she neglected S.C. by providing an injurious environment for the minor for the following reasons: A) S.C. was out of control and tried to harm family members by poisoning a family member's food, placing urine-soaked caulk in the family's food, turning the gas stove on to kill the family, tampering with medication, and mother and stepfather refuse to allow him into the home; B) mother and step-father, David K., were previously indicated by DCFS on March 9, 1999, for risk of harm and inadequate supervision, and on February 5, 2000, for cuts, welts, bruises, substantial risk of harm, inadequate food and clothing, torture (stepfather only), and on October 5, 2000, for risk of harm; and C) stepfather has a criminal history which includes: 2000 endangering the life and health of a child, 2000 domestic battery, 1995 possession of cannabis,

1992 domestic battery, and 1989 unlawful restraint.

On July 9, 2010, mother stipulated to the allegations in the petition and the State presented a factual basis to support the petition. The court found that the State proved the allegations in the petition and entered a written adjudicatory order.

By agreement of the parties, the court conducted the dispositional hearing on that same date. The State filed a 20-page dispositional report prepared by DCFS. The DCFS worker's assessment stated that she did not believe that mother was currently capable of caring for S.C. and meeting his mental health needs. Additionally, S.C. was very outspoken and adamant about not wanting to return to his mother's and stepfather's care. The DCFS worker also recommended that DCFS be named the guardian of the minor; mother be ordered to cooperate with DCFS and homemaker services and complete individual counseling and any family counseling services arranged through DCFS; supervised visitation occur between mother and S.C.; S.C. to cooperate with the rules and regulations of his placement and with individual and family counseling. No additional evidence was presented during the dispositional hearing. Mother, through appointed counsel, did not present evidence or object to the admission of the dispositional report. The only argument mother raised at this hearing was that she was not "unwilling" to care for S.C., but she agreed she was "unable" to care for the minor at the time of the dispositional hearing.

The court found it was in the best interests of S.C. to make him a ward of the court and award guardianship to DCFS. The court found mother both unable and unwilling to parent S.C., and adopted the recommendations included in the dispositional report. The court entered a written dispositional order, on July 9, 2010, making the minor a ward of the court, naming DCFS

the minor's guardian, and finding that mother was unable and unwilling to care for, protect, train, or discipline the minor. The court also entered a written order documenting the tasks mother must complete to correct the conditions causing the removal of S.C. from mother's care.

Mother filed a timely appeal challenging the court's finding that she was dispositionally unfit on grounds that she was unwilling to care for the minor.

ANALYSIS

On appeal, mother challenges the trial court's finding her dispositionally unfit based upon her being "unwilling" to care for S.C., although she does not dispute that she was "unable" to care for S.C. at the time of the dispositional hearing. The State contends, since mother does not contest the finding that she was unable to care for S.C., that mother's argument is moot. In the alternative, that State argues the trial court's dispositional finding of unfitness on either ground was not against the manifest weight of the evidence.

We will first address the State's argument that mother's argument on appeal is moot. A case has been deemed moot if it does not involve any actual controversy and the reviewing court's decision can have no practical effect on the parties. *In Interest of Lakita B.*, 297 Ill. App. 3d 985, 992 (1998); *In re J.M.*, 170 Ill. App. 3d 552, 556 (1988). Section 2-27(1)(d) of the Juvenile Court Act (Act) provides:

"If the court determines and puts in writing the factual basis supporting the determination of whether the parents * * * of a minor adjudged a ward of the court 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 it is in the best interest of the minor to take him from the custody of his parents, * * * the court

may at this hearing and at any later point:

* * *

(d) commit him to the Department of Children and Family Services for care and service.” (Emphasis added.) 705 ILCS 405/2-27(1)(d) (West 2008).

In construing this statute, this court must ascertain and effectuate the legislative intent, based solely on the plain language of the statute when that language is certain and unambiguous. *Lakita B.*, 297 Ill. App. 3d at 992. The choice of the disjunctive term “or” between other terms in a statute gives rise to the reasonable inference that the legislature intended that the terms be viewed in the alternative. *Lakita B.*, 297 Ill. App. 3d at 992.

The Act does not specifically define “unable” or “unwilling. Based upon the legislature wording these terms in the disjunctive, indicating separate meanings, the legislature intended that a minor may be placed away from a parent’s custody if the parent is found to be either “unable” or “unwilling” to have custody of his or her child, and finding of only one of the disjunctive terms allow for the court to place the child with DCFS. *Lakita B.*, 297 Ill. App. 3d at 992.

The facts in *Lakita B.* are similar to the facts at the case at bar. In the instant case, mother concedes that the trial court properly found her unable to care for S.C., pursuant to section 2-27, and the court’s finding as to this factor alone is a sufficient basis for the trial court's judgment. See *Lakita B.*, 297 Ill. App. 3d at 992-93. Therefore, the issue of the trial court's additional finding that mother was also “unwilling” to care for S.C. is moot because there is no actual controversy before this court and our decision would have no practical effect on the parties.

CONCLUSION

For the reasons set forth above, we dismiss the appeal as moot.

Appeal dismissed.