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No. 3--11--0046

Order filed June 13, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

*In re* P.C. and B.C., ) Appeal from the Circuit Court  
) of the 12th Judicial Circuit,  
Minors ) Will County, Illinois,  
)  
(The People of the State of )  
Illinois, ) Nos. 08--JA--207 and  
) 08--JA--208  
Petitioner-Appellee, )  
)  
v. )  
)  
Elizabeth C., ) Honorable  
) Paula Gomora,  
Respondent-Appellant). ) Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justice O'Brien concurred in the judgment.  
Justice Holdridge dissented.

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**ORDER**

*Held:* The trial court erred by not making an actual finding that wardship was in the best interests of the minors. Instead, the trial court's statements clearly demonstrated that it only made the minors wards of the court in order to award custody to the father.

The respondent, Elizabeth C. (Liz), appeals from a dispositional order that, among other things, found her to be an unfit parent and restored custody of the minors, P.C. and B.C., to their father, Michael C. (Michael). On appeal, Liz argues that the trial court exceeded its statutory authority under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1--1 *et seq.* (West 2008)) and failed to comply with Illinois Supreme Court Rule 903 (eff. July 1, 2006) and Will County Circuit Court Rule 8.19 (Aug. 3, 2009). We reverse and remand.

### FACTS

Liz and Michael are the parents of P.C. and B.C. On September 3, 2008, the State filed a petition against Liz and Michael alleging that the minors were neglected by reason of an injurious environment. The basis of the petition was that on August 30, 2008, Liz picked up the children from their babysitter after ingesting alcohol. Prior to this date, Liz had struggled with alcohol problems and an eating disorder. As a result of these problems, she had entered into a "safety agreement" with the paternal relatives where she agreed that she would not drink. After Liz picked up the children, the paternal aunt and paternal grandmother went to recover them from Liz, and a physical dispute occurred in the presence of the minors.

At the time of the petition, Michael was incarcerated in the Department of Corrections (DOC) after being convicted of several counts of aggravated criminal sexual abuse unrelated to his own family members. 720 ILCS 5/12--16(c)(1)(i) (West 2002). His convictions were reversed on appeal.

At the shelter care hearing, temporary custody and guardianship were awarded to the Department of Children and Family Services (DCFS) with discretion to place the minors. P.C. and B.C. were placed with the paternal aunt, and they have remained in her home throughout

these proceedings. Some time after the shelter care hearing, Michael filed a petition for dissolution of marriage from Liz.

Both parents were given service plans to complete. Liz's services were designed to address Liz's alcohol use and anorexia nervosa, teach her money management skills, and bring her case to closure. The focus on Michael's service plan was for him to work on maintaining a positive relationship with P.C. and B.C., and for him to use his time in prison to address issues related to incarceration and appropriate care of the minors.

Both parents continued to make progress in their service plans throughout 2009 and 2010. Indeed, at a status hearing on February 11, 2010, an employee of the supervising agency stated, "[a]t this point, neither one of them has any services left to complete[,]" and "[i]t seems futile at this point. I don't understand the services." The State also commented, "essentially the State will withdraw this petition if things are moving along. I don't want to withdraw the petition today. Essentially that's going to happen. The parents are doing great."

At that February 11, 2010, status hearing, the trial court expressed concern about who would get custody of the minors if the petition were to be withdrawn. The court noted that, because the case had not been taken to adjudication, it did not have the power to award custody. In addition, at that hearing Michael was given permission to reside with the minors in the foster home full time, but he continued to live with his parents, although he frequently visited P.C. and B.C.

Liz continued to make apparent progress until June 11, 2010, when she voluntarily checked herself into an alcohol treatment facility. She admitted that she had been drinking every day during the three to four days per week that she did not have unsupervised visits with P.C. and

B.C. She completed her treatment at the facility and was released on July 9, 2010. Upon her release, she completed intensive outpatient treatment at another facility.

As a result of Liz's relapse, the case moved forward to an adjudication hearing. At that hearing, the State recommended withdrawing the petition, discharging DCFS, and closing the case. However, the trial court was again concerned about which parent would get custody of the minors. The trial court made the following remarks:

"I mean, at this point, temporary custody and guardianship is with DCFS. Well [the parents are] no longer in the same household together and are going through a divorce proceeding. I have to give custody to somebody \*\*\*.

\*\*\* I just don't know if it's appropriate to close the case and leave that in limbo because I don't think--well, it's not fair to the parties.

\* \* \*

MS. RIPPY [Assistant State's Attorney]: Is there any way that [the family court judge] can make that decision while this case is open, and then once she makes that decision, then we can come back here--

THE COURT: No. Actually they should probably happen together."

The trial court continued:

"So if the parties would like for this proceeding to go away, I need to place custody with one of the parents. I can't leave them in limbo unless I send you out of here right over to the Will County Courthouse to file your emergency motion."

The trial court also temporarily interrupted the proceedings in an attempt to find the family court judge to discuss the case with her. It is unclear from the record whether a

conversation between the two courts actually occurred. Ultimately, however, because the parties could not work out an agreement about custody, they proceeded by way of stipulation and agreed that the minors were neglected.

Between the adjudicatory hearing and dispositional hearing, Michael's girlfriend reported that she had seen Liz buying alcohol at Target. Liz's caseworker confronted her about the incident. Liz initially denied the purchase but, after approximately half an hour of questioning, she admitted to purchasing the alcohol. She stated, however, that she did not drink it and instead poured it down the drain because she did not want to jeopardize her sobriety.

The dispositional hearing took place over several days in October, and the trial court rendered a decision on November 18, 2010. On a preprinted dispositional order, the court made the following findings: (1) that the minors were to be made wards of the court; (2) that Michael was to have custody, but the court did not order Michael to comply with the terms of an after-care plan; (3) Liz was unfit because she was still engaged in her service plan and had a recent relapse; (4) guardianship was returned to Liz and Michael; (5) shelter care was no longer necessary; and (6) the case was closed. The court also orally announced that Michael was "fit, willing, ready, able to parent their children."

While Liz's motion to reconsider was pending, the parties appeared before the trial court to discuss her visitation over the holidays. At that time, consolidation of the cases was discussed, but the trial court declined to consolidate the cases because the motion to reconsider was pending, and because the juvenile court had more knowledge of the visitation issues than the family court.

At the hearing on the motion to reconsider, the trial court amended the November 18,

2010, order to show that DCFS wardship was terminated. In amending the order, the court stated:

"[I]t seems a bit odd to me to declare the children wards of the Court on, you know, at one particular point in the day and a while later terminate their wardship. To me, it seems somewhat of a legal fiction.

But my understanding is to do that in order to make the children or to choose one parent over the other when both have the entitlement to legal custody and guardianship since they were married at the time the children were born, that was the only way I could do it.

I had to make the children wards of the Court in order to give preferential or make a custody determination with respect to one parent. And I had no other case law to tell me that is not what I should do."

Liz filed her notice of appeal that day. On February 16, 2011, the record was filed with the Appellate Court. Liz filed a motion to supplement the record on appeal, which requested the inclusion of documents from the dissolution proceeding. That motion was denied on March 23, 2011. Liz subsequently filed a motion to reconsider, which we have taken with the case.

#### ANALYSIS

First, we consider Liz's motion to reconsider supplementing the record on appeal. Illinois Supreme Court Rule 329 states in pertinent part:

"Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof. \*\*\* If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant." Ill. S. Ct. R. 329 (eff. Jan. 1, 2006).

In the instant case, Liz seeks to supplement the record by adding (1) the docket sheet from the divorce proceeding; (2) Michael's petition for dissolution of marriage; and (3) Liz's counter-petition.

We deny Liz's motion for two reasons. First, the above documents are not "[m]aterial omissions" necessary for resolution of the case. Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). As detailed more fully above, the original record clearly established that there was a dissolution case proceeding at the same time as the juvenile court proceeding, and that custody was an issue in both cases. In other words, the documents do not add anything to the appeal that could not be gleaned from the original record.

Secondly, there is no indication in the record that the trial court had an opportunity to view the documents. A record on appeal may be supplemented only with evidence actually before the trial court. *County of Lake v. Fox Waterway Agency*, 326 Ill. App. 3d 100 (2001). Since we are not certain that the trial court had an opportunity to view these documents, we will not consider them on appeal.

Turning to the merits of the case, Liz argues that the trial court erred when it made the minors wards of the court and issued various dispositional decisions because the court did not actually believe that the minors needed to become wards of the court. We will reverse a trial court's dispositional order "only if the findings of fact are against the manifest weight of the evidence, or if the trial court committed an abuse of discretion by selecting an inappropriate dispositional order." *In re K.L.S-P.*, 383 Ill. App. 3d 287, 294 (2008).

We recently held in the case of *In re C.L.*, 384 Ill. App. 3d 689, 697 (2008), that "[d]ispositional decisions, such as visitation orders, findings of unfitness, and determinations of guardianship are statutorily predicated upon the court first making the minors wards of the court." The court can only make the minors wards of the court if it finds that it is in the minors' best interests to do so. *C.L.*, 384 Ill. App. 3d 689. Where one parent is found to be fit and is willing to assume the role of parenting the children, the court cannot interfere unless it is in the minors' best interests to become wards of the court. *Id.* As we explained in *C.L.*, the importance of making an accurate wardship determination is to minimize the State's presence in a parent's life, and to ensure that only those families that are at risk are monitored. *Id.*

Although the trial court issued an oral and written order finding that it was in the best interests of the minors to become wards of the court, the court's own statements make it clear that this was not a genuine finding. Our review of the record establishes that the trial court did not truly believe it was in the minors' best interests to become wards of the court; instead, the court only did so in order to have the statutory authority to make a custody determination. The trial court admitted that it was engaging in a legal fiction by making P.C. and B.C. wards of the court one day and then terminating wardship the next, but that it was doing so in order to give Michael

custody. Furthermore, the court specifically stated "I had to make the children wards of the Court in order to give preferential or make a custody determination with respect to one parent."

Had the trial court believed it was necessary to make the minors wards of the court, the case should have remained open to monitor the family's progress. However, the trial court's preprinted order crossed out the language requiring Michael to complete after-care services. In fact, when Liz's attorney asked the trial court to keep the case open to monitor the parties, the trial court asked "[w]hy would I do that? \*\*\* You have got, you have a parent who is fit, willing, ready, able to parent their children. I have no business, I, the State, has no business interfering with their lives." Therefore, while it may very well be that it is in the best interests of the minors to become wards of the court, such a ruling requires an actual finding that it is in their best interests to do so.

Although we do not reach Liz's second argument on appeal, we are aware that the record reveals several instances where the trial court expressed a desire to determine custody with regard to the minors. In fact, if the trial court had acquired power over the custody case, that would have alleviated the need to make the minors wards of the court in order to make a custody determination. As an advisory matter, we note that Illinois Supreme Court Rule 903 (eff. July 1, 2006) provides that, when possible, all child custody proceedings relating to an individual child shall be conducted by a single judge. Moreover, Will County Circuit Court Rule 8.19 (Aug. 3, 2009) also mandates that, upon learning of the multiple proceedings, the trial courts involved should confer in order to determine if consolidation is convenient and appropriate. It does not appear from the record that this conference has taken place, and therefore this is an issue for the trial court to consider on remand.

## CONCLUSION

For the foregoing reasons the judgment of the circuit court of Will County is reversed and remanded.

Reversed and remanded.

JUSTICE HOLDRIDGE, dissenting:

I respectfully dissent. I would affirm the trial court's dispositional order finding the mother to be an unfit parent and restoring custody of the minors to their father. I disagree with the majority's holding that the trial court erred in not making the requisite finding that wardship was in the best interest of the minors. A dispositional order will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re T.B.*, 215 Ill. App. 3d 1059, 1062 (1991). A dispositional determination will be found to be 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.*, 201 Ill. 2d 476, 498 (2002). A finding that it is in the best interest of the minors that they be made wards of the court is a prerequisite to awarding the care, custody and control of the minors to any party, including a parent determined by the court to be fit. *In re Ta.A.*, 384 Ill. App. 3d 303, 306 (2008); *In re Ryan B.*, 367 Ill. App. 3d 517, 520 (2006).

In this case, following the admission by the mother to the allegations of abuse and injurious environment contained in the original juvenile petition, the trial court entered an adjudicatory order finding that the minors were neglected due to an injurious environment caused by the mother's unresolved alcohol issues and her inability to care for the minors. That

adjudicatory order is not at issue in the instant proceedings.

At the dispositional hearing, the mother was determined to be unfit due to unresolved alcohol abuse issues. The court found, however, that the father was not responsible for the injurious environment, and he was fit to care for the minors. The court further determined that it was in the best interest of the children that they be made wards of the court and the care, custody and control of the minors be given exclusively to the father. The judge also ordered that the juvenile case be closed.

At issue is whether the trial court erred in determining that it was in the best interest of the minors that they should be made wards of the court so that the care, custody and control of the minors could be *immediately* placed in the hands of the father, the only parent the court determined to be fit to exercise that responsibility. The majority holds that the trial court exceeded its authority in making that determination. I disagree. The question here is, simply, how could the trial court make an appropriate disposition where one parent was unfit and the other was fit. The court determined that the minors' environment would remain injurious as long as the mother remained unfit, so the most expeditious method of providing for the best interest of the minors was to make them wards of the court and place them in the custody of their fit parent. I see nothing unreasonable, arbitrary or unsupported by the record in the trial court's determination.

Moreover, there is ample authority for a trial court to find that it is in the best interest of the minors that they be made wards of the court and placed with a fit parent. *In re Ta.A.*, 384 Ill. App. 3d at 307; *In re S.S.*, 313 Ill. App. 3d 121, 132-33 (2000); *In re M.K.*, 271 Ill. App. 3d 820, 829 (1995).

For the foregoing reasons, I would find that the trial court's determination that it was in the best interest of the minors that they be made wards of the court and placed in the care, custody and control of their father, who had been found to be fit to exercise parental responsibility, was not against the manifest weight of the evidence. I would, therefore, affirm the trial court's dispositional order.