

**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) 100763-U

Order filed October 12, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

*In re* Myky.S.; E.S., Jr.; Myka.S.; R.S.; A.S.;  
and E.S., ) Appeal from the Circuit Court  
Minors ) of the 10th Judicial Circuit,  
) Peoria County, Illinois,  
)  
)  
(The People of the State of Illinois, ) Appeal No. 3-10-0763  
) Circuit Nos. 10-JA-107, 10-JA-108,  
Petitioner-Appellee, ) 10-JA-109, 10-JA-110,  
) 10-JA-111, and 10-JA-112  
v. )  
)  
Errick S., Sr., ) Honorable  
) Richard D. McCoy,  
Respondent-Appellant.) Judge, Presiding.

---

JUSTICE SCHMIDT delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

---

**ORDER**

- ¶ 1 *Held:* The trial court's determination that respondent was dispositionally unfit was not against the manifest weight of the evidence. The evidence before the trial court was sufficient to warrant a finding of unfitness by a preponderance of the evidence.
- ¶ 2 On April 22, 2010, the State filed a juvenile petition alleging that the minor children of respondent, Errick S., Sr., were neglected. Following an adjudicatory and dispositional hearing,

the minors were found to be neglected and were made wards of the court. The trial court initially found respondent to be a fit parent and awarded him custody and guardianship of the minors. The State subsequently filed motions for unfitness and change of guardianship. The trial court granted the State's motions, and the Department of Children and Family Services (DCFS) was named guardian of the minors. Respondent appeals, claiming that the trial court's finding of unfitness was against the manifest weight of the evidence. We affirm.

¶ 3

### FACTS

¶ 4 The State filed juvenile petitions on behalf of respondent's six children on April 22, 2010. Respondent filed an answer in which he admitted to or stipulated to each of the counts within the petition. The counts included the allegations that respondent: (1) had problems complying with having the lead levels of his home and the children checked; (2) had a criminal history that included convictions for burglary and resisting police; and (3) was arrested on a warrant on April 14, 2010.

¶ 5 On June 14, 2010, the trial court held an adjudicatory hearing. Pursuant to the petition and respondent's admittance and stipulation to its allegations, the trial court adjudicated the minors neglected and abused. Immediately following the adjudicatory hearing, the court held a dispositional hearing. The trial court made the minors wards of the court and found that their mother was unfit. At this time, the court found respondent to be fit and placed the minors in his custody and guardianship.

¶ 6 The State filed motions on September 3, 2010, for unfitness and for change of guardianship. The motion for unfitness alleged that: (1) on August 23, 2010, respondent had broken into a home and was found lying next to a woman; and (2) on September 1, 2010,

respondent was arrested for burglary. A hearing on the motions was held on September 20, 2010. The trial court noted that the hearing was a reiteration of the dispositional hearing. In support of its motions, the State submitted the police reports from the two incidents. Respondent did not produce any evidence.

¶ 7 The first police report submitted by the State was dated August 23, 2010. Victims reported finding respondent lying on the floor of their home next to a woman. According to the residents, when they confronted respondent he stated that he had come to the house with his girlfriend. Respondent then fled out the back door. The residents later found that a window screen had been cut. Respondent was questioned and claimed that he was with his girlfriend all night.

¶ 8 A second police report, relating to events that occurred on September 1, 2010, reported that respondent was arrested after an officer noticed a van, driven by respondent, emerge from an alley without its lights on at 2:33 a.m. The officer was patrolling the area because there had been a recent increase in garage burglaries. The officer discovered a power washer and a pry bar in the van, as well as a small bag of suspected cannabis.

¶ 9 Following the hearing, the trial court granted the State's motions for unfitness and change of guardianship. The trial court stated that while there was weak evidence that respondent broke into a house on August 23, there was strong evidence that he was found in possession of stolen property on September 1. The court noted that this evidence was more than enough to support a finding of unfitness at the dispositional stage. Therefore, the trial court found respondent unfit and made DCFS the guardian of the children with the power to place the children in a different home. Respondent appeals.

¶ 10

## ANALYSIS

¶ 11 On appeal, respondent argues that the trial court's finding that respondent was an unfit parent was against the manifest weight of the evidence. A dispositional hearing represents one step in a multistep process that determines whether children should be removed from their parents. At the dispositional stage, the trial court determines whether it is consistent with the health, safety, and best interests of the minors and the public that the minors be made wards of the court. 705 ILCS 405/2-21(2) (West 2010). The trial court also determines whether the minors' parent is fit to care for the minors. 705 ILCS 405/2-27(1) (West 2010). Hearsay evidence is permissible at a dispositional hearing. *In re D.L.*, 226 Ill. App. 3d 177 (1992). Because a finding of unfitness at this stage does not result in a complete termination of all parental rights, the standard of proof to determine unfitness is a preponderance of the evidence. *In re M.B.*, 332 Ill. App. 3d 996 (2002). The trial court may modify the dispositional order at any time until the case is closed or the minors reach the age of majority. 705 ILCS 405/2-23(2) (West 2010).

¶ 12 A trial court's dispositional decision regarding a minor rests within the court's discretion and will not be overturned unless it is against the manifest weight of the evidence or the court abused its discretion. *In re William H.*, 407 Ill. App. 3d 858 (2011). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the court's determination is unreasonable, arbitrary, or not based on the evidence. *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051 (2011).

¶ 13 Here, the trial court's determination that respondent was unfit was not against the manifest weight of the evidence. During the adjudicatory hearing, the trial court found that

respondent: (1) had problems complying with the requirement that the minors' lead levels be checked; (2) was convicted of crimes in 2000 and 2007; and (3) was arrested on a warrant in 2010. During the dispositional stage the court was presented with evidence that respondent was arrested twice in 2010 after he received guardianship and custody of the children. We believe that the police reports presented enough evidence for the trial court to determine that respondent was unfit by a preponderance of the evidence. Therefore, we cannot say that the finding of the trial court was against the manifest weight of the evidence.

¶ 14

#### CONCLUSION

¶ 15 The judgment of the circuit court of Peoria County is affirmed.

¶ 16 Affirmed.