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2011 IL App (3d) 110085-U

Order filed October 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re A.W.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0085
	)	Circuit No. 10-JA-261
v.	)	
	)	
Jackie W.,	)	Honorable
	)	Mark E. Gilles,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding at the dispositional hearing that respondent was unfit was not against the manifest weight of the evidence.

¶ 2 Following a combined adjudicatory and dispositional hearing, the trial court found respondent, Jackie W., to be dispositionally unfit to care for his minor son, A.W. On appeal, respondent argues that the trial court's finding was against the manifest weight of the evidence.

We affirm.

¶ 3 FACTS

¶ 4 On September 15, 2010, the State filed a juvenile petition, alleging that the minor, A.W., was neglected due to an injurious environment (705 ILCS 405/2-3(1)(b) (West 2010)). Specifically, the petition alleged that the minor's environment was injurious to his welfare because: (1) on June 29, 2009, the minor's mother was beaten by her boyfriend, Michael P., and the minor was present during this domestic battery; (2) the mother visited Michael during his incarceration, and allowed him to be paroled into the minor's home; and (3) Michael had an extensive criminal history. The mother admitted to the allegations in the petition. The petition listed the father as unknown, and service was initially made to the father by publication.

¶ 5 On October 13, 2010, substitute service was made upon respondent through his girlfriend. After respondent's first appearance in court, a deoxyribonucleic acid (DNA) test was ordered to prove respondent's paternity to the minor. On December 13, 2010, respondent was found to be the legal father of the minor pursuant to the DNA test.

¶ 6 On January 31, 2011, a combined adjudication and dispositional hearing was held, and respondent stipulated that the petition could be proven by the State. The State noted that the juvenile petition only contained allegations against A.W.'s mother; however, none of the parties objected, and the trial court found that allegations as to respondent were not required. At this hearing, the trial court noted that a different trial judge in a previous hearing found the minor to be neglected, which was not the result of physical abuse. The trial court stated that the same evidence would be presented and the same findings would be made.

¶ 7 During the hearing, the State asked the trial court to find respondent unfit and referenced

another case involving respondent. The case referenced was case No. 10-JA-60, which involved respondent's fitness regarding his other minor son, C.W. In June 2010, respondent was found unfit to care for C.W. At the initial permanency hearing in that case on November 16, 2010, the trial court found that respondent was making reasonable efforts, but was still found unfit. At this hearing, respondent was ordered to participate in a new substance abuse program, complete counseling, and submit breathalyzers in addition to drug tests.

¶ 8 In response to the State's recommendation that respondent be found unfit in the instant case, respondent's attorney called caseworker Danny Walker, who indicated respondent was cooperating in all services and in his probation. There had been no new incidents of domestic violence or other arrests. Walker stated that respondent finished his domestic violence program since his last hearing in November 2010. Respondent had also tested negative in all of his drug screens for the last two months and had one year of sobriety, but was still completing his outpatient treatment. Respondent's housing was stable, but Walker did not know how long he had been living at his current residence. Walker also stated that respondent started visitation with the minor in January 2011, and as of January 31, 2011, respondent had been consistent in his visits without any misbehavior.

¶ 9 Following this evidence, the trial court ordered that wardship and guardianship of the minor would remain the same. The trial court found that respondent was dispositionally unfit, but that he was on the right path. The trial court based its decision, in part, on the findings of progress in case No. 10-JA-60, where respondent was found dispositionally unfit in June 2010, and again at a permanency review hearing in November 2010. As a result of respondent's dispositional unfitness in the present case, the trial court ordered, among other things, that

respondent follow the recommended treatment for drug and alcohol rehabilitation, perform random testing, and complete counseling. Respondent appeals.

¶ 10 ANALYSIS

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

¶ 12 Under section 2-21(2) of the Juvenile Court Act of 1987, 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). The State must prove parental unfitness for dispositional purposes by a preponderance of the evidence. *In re April C.*, 326 Ill. App. 3d 245 (2001).

¶ 13 On review, a trial court's dispositional fitness determination will be reversed only if the trial court's findings of fact are against the manifest weight of the evidence or the trial court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re J.C.*, 396 Ill. App. 3d 1050 (2009). A reviewing court will not overturn a trial court's findings merely because the reviewing court would have reached a different result. *In re T.B.*, 215 Ill. App. 3d 1059 (1991). A finding is against the manifest weight of the evidence where a review of the record clearly demonstrates that the trial court should have reached the opposite result. *Id.*

¶ 14 In this case, we conclude that the trial court’s finding that respondent was dispositionally

unfit was supported by the record and not against the manifest weight of the evidence. At the time of the dispositional hearing on January 31, 2011, the trial court stated that the finding of unfitness was a matter of timing because respondent had been previously found unfit at a permanency review hearing for another minor in November 2010. The only changes in the two months following this determination were that respondent completed his domestic violence program and began visitation with the minor in January 2011. While this is a good indication that respondent is complying with his service plan, completion of some required services does not, in and of itself, make a parent fit, particularly where other required services are still ongoing. See *J.C.*, 396 Ill. App. 3d 1050. Accordingly, we hold that the trial court's finding of dispositional unfitness was not against the manifest weight of the evidence.

¶ 15 CONCLUSION

¶ 16 For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

¶ 17 Affirmed.