

child-neglect case.

¶ 3 Hunter appeals from an adjudicatory order finding her children, D.H. and D.W., to be neglected and from a dispositional order making them wards of the court and awarding custody and guardianship of them to the guardianship administrator of the Illinois Department of Children and Family Services (DCFS). She argues that because of her history of drug abuse, the trial court should not have accepted her stipulation to count I of the second amended petition for adjudication of neglect (which alleged that the children were neglected in that they were exposed to their mother's drug abuse).

¶ 4 Winfrey, the putative father of D.W., did not join in Hunter's stipulation to count I. Consequently, the trial court held an evidentiary hearing, and at the conclusion of the hearing, the court found counts II and III of the second amended petition to be proved as to Winfrey. He appeals from the resulting dispositional order on the ground that the record is devoid of any evidence that he actually is a "parent" of D.W. within the meaning of section 1-3(11) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(11) (West 2010)). He argues we should remand this case for a determination of whether he is in fact D.W.'s biological father.

¶ 5 Both Winfrey and Hunter appear to be taking new positions on appeal, positions they never took in the trial court. Not only did Winfrey refrain from arguing to the trial court that his paternity of D.W. was unproved, but he actively participated in proceedings in the trial court on the necessarily implied premise that he was D.W.'s father.

¶ 6 Likewise, attacking the stipulation appears to be a new idea on Hunter's part. After stipulating to count I of the second amended petition for an adjudication of neglect, she never suggested to the trial court (in the subsequent dispositional hearing, for instance), that she should

be released from her stipulation.

¶ 7 And, besides, it is difficult to see any basis for letting Hunter out of her stipulation, considering that (1) the trial court fully admonished her, and confirmed with her that she understood the admonitions, before accepting her stipulation; and (2) the stipulation appears to be objectively true. So, we find no merit in the arguments that Hunter and Winfrey make on appeal, and we affirm the trial court's judgment.

¶ 8 I. BACKGROUND

¶ 9 On April 19, 2011, the State filed a petition for adjudication of neglect and for shelter care. The petition named Hunter as the mother of D.H. (born on April 15, 2009) and D.W. (born April 5, 2010) and Winfrey as D.W.'s "putative father." (It named "Jose"—last name unknown, address: "Mexico"—as the "putative father" of D.H.) The petition had two counts. Count I alleged that both children were "neglected" within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)) in that they were exposed to substance abuse when they resided with Hunter. Count II alleged that D.W. was "neglected" within the meaning of section 2-3(1)(a) (705 ILCS 405/2-3(1)(a) (West 2010)) in that his parents, Hunter and Winfrey, failed to provide him "the medical care recognized under state law as necessary for [his] well-being."

¶ 10 The trial court held a shelter-care hearing on April 19, 2011, and according to the docket entry for that date, respondent Winfrey appeared personally. He also signed in. The record contains a "Juvenile Court Sign-in Sheet" dated April 19, 2011, and under the heading "Please *Print* Your Name," the signature "Demetrius D. Winfrey" is written, and to the right of that signature, under the heading "Your Relationship/Agency," the word "Father" is written. (Emphasis in original.)

¶ 11 The trial court admonished Winfrey on the assumption that he was D.W.'s father—and apparently that assumption was not contradicted. The docket entry for April 19, 2011, states: "Respondent mother and father are advised of the nature of the allegations and the possible consequences; court finds they understand the same." This would seem to suggest that Winfrey understood he was regarded as D.W.'s father.

¶ 12 The trial court must have advised Winfrey that, as D.W.'s father, he had the right to counsel, including appointed counsel if he could not afford to hire counsel. Instead of telling the court, "Wait a minute, this might all be a mistake," Winfrey filled out an affidavit disclosing his income and lack of assets, and on his motion, the court appointed an attorney, David Appleman, to represent him, *i.e.*, to protect his rights as the father of D.W.

¶ 13 On April 20, 2011, the trial court resumed the shelter-care hearing, and according to the docket entry for that date, Winfrey appeared personally and by his attorney, Appleman. Winfrey signed in the same way as before: "Demetrius D. Winfrey," "Father." The court found probable cause to believe that D.H. and D.W. were neglected, and the court appointed the guardianship administrator of DCFS as their temporary guardian. The docket entry further provided that the "respondent parents" would have reasonable visitation. The record appears to contain no indication that Winfrey ever questioned his designation as a "parent" and, therefore, his right to visitation.

¶ 14 On April 25, 2011, the State filed a notice that had been published in a newspaper. The notice was directed to unknown fathers of D.H. and D.W. and stated that an adjudicatory hearing would be held on June 6, 2011, to determine whether the children should be declared wards of the court.

¶ 15 On May 31, 2011, the State filed a second amended petition for adjudication of

neglect. This version of the petition had three counts. The first two counts were the same as in the original petition. Count III alleged that D.W. was "neglected" within the meaning of section 2-3(1)(a) (705 ILCS 405/2-3(1)(a) (West 2010)) in that his parents, Hunter and Winfrey, failed to provide him with adequate food, clothing, and shelter.

¶ 16 On June 6, 2011, the trial court held a final pretrial hearing, at which Winfrey appeared personally and by Appleman. No one else purporting to be D.W.'s father appeared. Nor did Jose appear. The court declared Jose and any unknown fathers to be in default.

¶ 17 The assistant State's Attorney, Kathryn Pugh, informed the trial court that Hunter wished to stipulate to count I of the second amended petition. Hunter's attorney, Pamela Burnside, said, "That's accurate." The trial court admonished Hunter as follows:

"THE COURT: Ms. Hunter, the Second Amended Petition in Count One alleges that your children are neglected under Illinois, law because they are under the age of 18, they live in an environment that is injurious to their welfare when they reside with you, in that they are exposed to substance abuse. You understand the allegations in Count One?

RESPONDENT MOTHER MS. HUNTER: Yeah. Yes.

THE COURT: Ma'am, this matter, as I indicated at the very beginning of this hearing, is set for an adjudicatory hearing next Monday at 9 a.m. That adjudicatory hearing is, in essence, a trial. The State would have to prove by a preponderance of the evidence, which means more likely true than not true, the allegations in the

petition. They would do that by calling witnesses and presenting evidence. You'd have the opportunity to present evidence and witnesses of your own.

If you agree to the allegations in Count One today, I'm not going to have that trial as to your part of the case and as to the allegations in Count One. Do you understand that?

RESPONDENT MOTHER MS. HUNTER: Yeah.

THE COURT: Did anyone force, threaten, or pressure you in any way to make you enter into this agreement?

RESPONDENT MOTHER MS. HUNTER: No, no.

THE COURT: Anyone promise you anything in return for this agreement [*sic*]?

RESPONDENT MOTHER MS. HUNTER: Hmm-mm.

THE COURT: No?

RESPONDENT MOTHER MS. HUNTER: No.

THE COURT: That's okay. Are you entering into that agreement [*sic*] of your own free will?

RESPONDENT MOTHER MS. HUNTER: No.

MS. BURNSIDE: Excuse me.

(Off-the-record discussion between the respondent mother and her counsel.)

RESPONDENT MOTHER MS. HUNTER: Yes, sir.

THE COURT: Okay. Hold on, hold on. Okay. Here's the reason I'm asking these questions, okay? I have to know that this is voluntary, which means you're not being forced to do it, and I have to know that this is—that you're doing this knowingly, which means you understand exactly what you're doing, which is why I'm having this discussion with you, okay?

RESPONDENT MOTHER MS. HUNTER: Yeah—yes.

THE COURT: So I want to make sure no one's making you do this against your will. So no one is making you do this against your will?

RESPONDENT MOTHER MS. HUNTER: No, sir.

THE COURT: Do you agree to the allegations in Count One today?

RESPONDENT MOTHER MS. HUNTER: Yes, sir."

¶ 18 The trial court requested a factual basis, and Pugh tendered petitioner exhibits Nos. 1 and 2, which were, respectively a shelter-care report dated April 19, 2011, and "a substance abuse screen that the respondent mother completed with Investigator Linda Wild on April 18th, 2011." Upon inquiry by the court, none of the other attorneys had any objection to the admission of these two exhibits as a factual basis, and the guardian *ad litem*, Carrie Kmoch, opined that it would be in the children's best interests for the court to accept Hunter's proposed stipulation to count I. Therefore, the court found as follows:

"THE COURT: Court finds that the respondent mother has

knowingly, intelligently, and voluntarily stipulated to Count One.

The court finds there's a factual basis premised on Petitioner's Exhibits One and Two. Court finds that the stipulation is in the best interests of the respondent minor [*sic*], and accordingly, the court accepts the respondent mother's stipulation to Count One."

Pugh told the trial court: "As to the respondent father, Mr. Winfrey, I believe he would like to proceed to trial." The record appears to contain no indication that Winfrey said, "Not so fast—I might not be the father," or words to that effect. The court asked Appleman what would be the "anticipated evidence for the respondent father in this matter." Appleman named several witnesses, including his client.

¶ 19 On June 13, 2011, the trial court resumed the adjudicatory hearing. This time, Winfrey did not appear personally, but Appleman appeared. The court found D.W. to be neglected due to lack of support, education, and remedial care, as alleged in counts II and III.

¶ 20 On July 7, 2011, the trial court held a dispositional hearing. This time, Winfrey appeared personally and by Appleman. At the conclusion of the hearing, Appleman told the court: "[B]ased upon my discussions with [Winfrey] yesterday, he is quite interested in being a parent to his child, and ready to do what [DCFS] asks of him." The record appears to contain no evidence that Winfrey disagreed with Appleman's assertion. The court found both Hunter and Winfrey to be unfit, unable, and unwilling, for reasons other than financial circumstances, to care for, protect, train, and discipline their children and that the health, safety, and best interests of the children would be jeopardized if they remained in Hunter's and Winfrey's custody. Thus, the court removed custody and guardianship of the children from their his parents and awarded custody and guardianship to

¶ 27

B. Winfrey's Argument

¶ 28

Winfrey points out that in section 1-3(11) (705 ILCS 405/1-3(11) (West 2010)), "parent" is defined as (1) the father or mother of the child, (2) a man whose paternity is presumed or has been established by law, or (3) a man who has registered with the Putative Father Registry and whose paternity has not been legally ruled out. Winfrey argues that the record is devoid of evidence that either (1), (2), or (3) describes him. He concludes that because he never actually was proved to be a "parent" of D.W. within the meaning of section 1-3(11), he was "not a party from whom custody and guardianship could be removed."

¶ 29

The State objects that Winfrey never made this argument in trial court and that it is too late to make the argument now. We agree. Winfrey has forfeited the issue of whether he is D.W.'s father, because he never raised that issue in the trial court. See *Travelport, LP v. American Airlines, Inc.*, 2011 IL App (1st) 111761, ¶ 31; *In re April C.*, 326 Ill. App. 3d 225, 242 (2001). In fact, Winfrey consistently presented himself to the trial court as D.W.'s father. Consequently, he is stuck with that characterization on appeal.

¶ 30

III. CONCLUSION

¶ 31

For the foregoing reasons, we affirm the trial court's judgment.

¶ 32

Affirmed.