

NOTICE
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2011 IL App (4th) 110212-U

Filed 8/1/11

NO. 4-11-0212

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.C., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 10JA72
ANTON CANEDY,)	
Respondent-Appellant.)	Honorable
)	Richard P. Klaus,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and McCullough concurred in the judgment.

ORDER

- ¶ 1 Held: Where the circuit court appropriately considered the relevant factors in entering its dispositional order, it did not err in making the minor child a ward of the court and awarding custody and guardianship to the Illinois Department of Children and Family Services.
- ¶ 2 The State filed a petition to adjudicate minor A.C., born August 29, 2007, a ward of the court. The circuit court found she was a neglected minor pursuant to the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 through 7-1 (West 2008)) due to her injurious environment of being exposed to the risk of physical harm when residing with her mother. A dispositional hearing was held and both parents, including respondent father Anton Canedy, were found to be unwilling, unable, and unfit to parent the minor, who was then adjudicated a ward of the court. Respondent appeals from the dispositional order. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On November 20, 2010, the Illinois Department of Children and Family Services (DCFS) received a hotline report that A.C.'s mother, Dominique Jackson, was arrested for battering another woman with a baseball bat and a stun gun. (Jackson is not a party to this appeal.) According to the shelter-care report, when police arrived on the scene of the altercation, A.C. was in Jackson's car playing with the stun gun. The child was taken into emergency custody. Jackson explained to caseworkers that A.C.'s father, respondent, resided in Chicago, and that he had visited the child only three times since her birth.

¶ 5 On November 22, 2010, the State filed a petition for adjudication of abuse and neglect, alleging A.C. was (1) abused because her mother created a substantial risk of physical injury to the child (705 ILCS 405/2-3(2)(ii) (West 2008)) (count I), (2) neglected because when she resided with her mother she was exposed to an environment injurious to her welfare based on the risk of physical harm (705 ILCS 405/2-3(1)(b) (West 2008)) (count II), and (3) neglected because when she resided with her mother she was exposed to an environment injurious to her welfare based on the exposure to criminal activity (705 ILCS 405/2-3(1)(b) (West 2008)) (count III). The petition contained no allegations against respondent.

¶ 6 On February 1, 2011, the parties convened for an adjudicatory hearing. Respondent appeared with appointed counsel and waived his right to an adjudicatory hearing. Jackson stipulated to the allegations set forth in count II of the petition in exchange for the State's dismissal of the remaining allegations. The State presented the circuit court with the police report and the resulting shelter-care report of the precipitating event involving Jackson as the factual basis. The court accepted Jackson's stipulation, respondent's waiver, and the factual basis, and entered an adjudicatory

order, finding A.C. neglected due to her injurious environment, which exposed her to a risk of physical harm (705 ILCS 405/2-3(1)(b) (West 2008)).

¶ 7 In February 2011, DCFS filed a dispositional report that recommended (1) guardianship of A.C. be placed with DCFS, (2) the court find respondent unfit, (3) DCFS be given discretion to conduct unsupervised visitation with respondent, and (4) the case be reviewed in six months. According to the dispositional report, respondent's goals included the following: (1) participation in a substance-abuse assessment, (2) successful completion of a parenting course, and (3) individual therapy. Respondent, age 28, was raised in Chicago and currently resides there with his parents. He has a significant criminal history with at least 10 arrests and 2 convictions: one for "distribution of drugs" in 2007 and one for aggravated kidnapping in 2005. An additional 2002 conviction for possession of a controlled substance was proven by a certified copy, which was admitted into evidence at the dispositional hearing. He is unemployed and receives \$300 per month in unemployment benefits. Respondent reportedly began using marijuana at the age of 17 every weekend. He claims he voluntarily stopped using in December 2010, and feels he does not require treatment for continued sobriety.

¶ 8 Respondent reported that he and Jackson had maintained a long-distance relationship prior to A.C.'s birth, until Jackson learned that respondent was in a relationship with another woman, the mother of his son. Respondent remains in a relationship with this woman and is involved in the care of his son. The caseworker observed respondent interacting with his son and described respondent's conduct as "appropriate." Jackson told the caseworker that she believed respondent "could be a good dad," but she had not seen him interact with A.C. She admitted that respondent "seem[ed] to parent [his son] fine." Respondent expressed his willingness to parent A.C.

¶ 9 On March 1, 2011, the circuit court conducted a dispositional hearing. The court noted its receipt of the dispositional report. The prosecutor informed the court that respondent had enrolled in a parenting class the day prior to the hearing. The court admitted, without objection, two exhibits tendered by the State: certified copies of respondent's Cook County convictions in case Nos. 05-CR-1943101 (aggravated kidnapping) and 02-CR-3126101 (possession of a controlled substance). No parties presented testimonial evidence. Respondent's counsel recommended that respondent be found fit, willing, and able to exercise custody of A.C. based on the fact that he reportedly was the primary caregiver for his son in Chicago.

¶ 10 After considering the dispositional report, the exhibits, and recommendations of counsel, the circuit court found it was in A.C.'s best interests that she be made a ward of the court and adjudicated neglected. The court found respondent unfit, unable, and unwilling, for reasons other than financial circumstances alone, to parent A.C. based upon (1) his "extensive criminal background," (2) his history of substance abuse, and (3) the fact that he has had no contact with A.C. for over two years. The court awarded DCFS custody of A.C. and, despite DCFS's request for discretion to conduct unsupervised visitation, ordered supervised visitation. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Respondent claims the circuit court erred in entering a dispositional order without first complying with section 2-27 of the Act (705 ILCS 405/2-27 (West 2008)). That section provides:

"(1.5) In making a determination under this Section, the court shall consider whether, based on health, safety, and the best interests of the minor,

(a) appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions that have led to a finding of unfitness or inability to care for, protect, train, or discipline the minor, or

(b) no family preservation or family reunification services would be appropriate." 705 ILCS 405/2-27(1.5) (West 2008).

Respondent contends the court failed to consider whether appropriate services as set forth in this section had been offered before entering the dispositional order. Respondent seems to argue that, because the court failed to consider whether appropriate services had been offered, it was without jurisdiction to enter the dispositional order.

¶ 13 The State counters respondent's argument first by claiming that respondent forfeited the issue by not objecting to the sufficiency of the order in the circuit court proceedings. Indeed, respondent raises the issue for the first time in this appeal. "Where a party fails to make an appropriate objection in the court below, he or she has failed to preserve the question for review and the issue is waived." *In re April C.*, 326 Ill. App. 3d 225, 242 (2001). However, due to the fundamental importance of proceedings relating to a parent's custody and care of his child (*Santosky v. Kramer*, 455 U.S. 745, 753 (1982)), we will excuse respondent's procedural default and address the merits of his claim. See *In re D.F.*, 208 Ill. 2d 223, 238 (2003) (the doctrine of forfeiture is a limitation on the parties, not on the court).

¶ 14 In addressing the merits, we initially note that:

"The purpose of a dispositional hearing is not to terminate parental rights. To the contrary, as described in *In re G.F.H.*, 315 Ill. App. 3d 711, 715 (2000), a dispositional hearing serves the purpose of allowing the circuit court to decide what further actions are in the best interests of a minor, and the hearing and ruling on whether to make a minor a ward of the court gives the parents 'fair notice of what they must do to retain their rights to their child' in the face of any future termination proceedings." *April C.*, 326 Ill. App. 3d at 237.

A circuit court's decision will be overturned only if the findings of fact are against the manifest weight of the evidence or if the court abused its discretion by selecting an inappropriate dispositional order. *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008).

¶ 15 Respondent's argument that the circuit court lacked jurisdiction is without merit. Failing to consider the appropriate factors in entering an order does not effect the court's jurisdiction. "Once a court has acquired jurisdiction, an order will not be rendered void merely because of an error or impropriety in the issuing court's determination of the law. [Citations.] 'Accordingly, a court may not lose jurisdiction because it makes a mistake in determining either the facts, the law[,] or both.' " *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174-75 (1998) (quoting *People v. Davis*, 156 Ill. 2d 149, 156 (1993)). With no open question regarding the court's jurisdiction, the only issue on appeal is whether the court's findings were against the manifest weight of the evidence. *In re John C.M.*, 382 Ill. App. 3d 553, 558 (2008).

¶ 16 The express language of section 2-27(1.5) of the Act clearly allows the circuit court to determine that no family-preservation or reunification services would be appropriate at the time

the court enters the dispositional order. See 705 ILCS 405/2–27(1.5)(b) (West 2008). However, in making his argument, respondent referred only to subsection (1.5)(a), ignoring subsection (1.5)(b), which provides the court the option. Granted, the court did not make an explicit finding in its order as to whether such services would be appropriate in this case. But, the court need not recite word-for-word the applicable statutory factors it considered. See *In re Interest of Johnson*, 134 Ill. App. 3d 365, 374 (1985) (no requirement that the circuit court enter an explicit record finding on the factor regarding whether family preservation or reunification services were unsuccessful in the dispositional order). Respondent has failed to demonstrate that the court's dispositional order was entered in error.

¶ 17 Respondent also claims the circuit court erred in improperly considering respondent's arrest record, rather than only his record of convictions. Section 2–22(1) of the Act provides as follows:

"At the dispositional hearing, the court shall determine whether it is in the best interests of the minor and the public that he be made a ward of the court, and, if he is to be made a ward of the court, the court shall determine the proper disposition best serving the *** interests of the minor and the public. ***"

All evidence helpful in determining these questions, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing." 705 ILCS 405/2–22(1) (West 2008).

Hearsay evidence is admissible during the dispositional phase of the proceedings, not the adjudicatory phase. *People v. Brady*, 7 Ill. App. 3d 404, 407 (1972). We find the circuit court appropriately

considered respondent's criminal history, including his arrest record, in determining what would be in A.C.'s best interests. Nevertheless, even if the court erred in considering respondent's arrests, his record of convictions, coupled with his history of substance abuse and his lack of contact with A.C., were sufficient to support the court's dispositional order.

¶ 18

III. CONCLUSION

¶ 19

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

¶ 20

Affirmed.