

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).

NO. 4-10-0821 Order Filed 2/25/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.T., a Minor,) Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,) Circuit Court of
Petitioner-Appellee,) Champaign County
v.) No. 09JA38
DANIEL HURSEY,)
Respondent-Appellant.) Honorable
) Richard P. Klaus,
) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and McCullough concurred in the judgment.

ORDER

Held: Trial court's finding respondent father remained unfit to be a custodial parent was not against the manifest weight of the evidence. Trial court did not err in closing case where respondent mother was found fit and custody and guardianship of parties' minor child were returned to her.

Respondent father, Daniel Hursey, appeals from the trial court's finding he is unfit to be a custodial parent to his minor daughter, C.T., contending the finding is against the manifest weight of the evidence. We disagree and affirm.

I. BACKGROUND

On April 29, 2009, the State filed a petition for adjudication of neglect concerning C.T. (born January 20, 2009), the minor child of Daniel and Amy Testory, and M.M. (born October 13, 2006), the minor child of Amy and Rafael Marroquin. The

State alleged in three counts the minors were neglected because their environment was injurious to their welfare when they resided with (1) Amy, Daniel, or Rafael because the environment exposed them to domestic violence; (2) Amy because she failed to protect the minors from exposure to domestic violence; and (3) Amy and/or Daniel because their environment exposed the minors to risk of physical harm, all pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2008)).

Daniel and Amy lived together with C.T. and M.M. They engaged in frequent arguments and altercations requiring police involvement. On April 28, 2009, the police were called to their residence after an altercation in which M.M. was pushed over, Amy's mother was pushed over, Daniel attempted to pull C.T. out of her car seat while strapped in, and items of personal property were thrown around the house. A no-contact order was already in place preventing the couple from living together. Daniel was arrested.

On April 30, 2009, a temporary custody and admonition order was entered giving the Illinois Department of Children and Family Services (DCFS) temporary custody of both minors.

On June 24, 2009, after a hearing, an adjudicatory order was entered. Daniel stipulated to count I of the petition C.T. was neglected because her environment was injurious to her

welfare due to exposure to domestic violence when she lived with him. Amy stipulated to count II C.T. was neglected because she failed to protect her from exposure to domestic violence.

On July 31, 2009, a dispositional hearing was held and custody and guardianship of C.T. were removed from both Daniel and Amy. They were both found unfit to have custody of C.T. Both parents were ordered to engage in services or risk termination of parental rights. Specifically, Daniel was ordered to cooperate fully with DCFS and the terms of its service plans by completing alcohol/drug usage evaluations and any services deemed necessary following the evaluations; completing recommended counseling as well as domestic violence counseling; completing parenting education; refraining from mood altering substances and submitting to testing for same on request of DCFS; establishing and maintaining an appropriate residence; refraining from criminal activity; and making reasonable efforts to obtain and maintain appropriate employment.

On November 4, 2009, a permanency report was filed with the trial court which indicated Daniel still needed to contact service providers to commence ordered services. Specifically, Daniel was still living with his mother and stepfather. He had been referred for domestic-violence classes but never attended any after the intake and was discharged but re-referred for a new intake. Daniel failed to appear for a substance abuse screening

on July 16, 2009. He did attend his visitation with C.T. regularly and was appropriate in his interactions with C.T.

At a November 9, 2009, permanency review hearing, the trial court found Daniel had not made either reasonable and substantial progress or a reasonable effort toward returning C.T. home.

On April 5, 2010, another permanency report was filed in which Daniel was found to have made both reasonable and substantial progress and reasonable efforts toward the return of C.T. home because he was participating and finally attending domestic-violence classes, engaging in counseling, and doing well in visits with C.T. He was also employed full time and had no new legal involvements.

On June 29, 2010, a permanency report was filed which indicated Daniel completed a psychological evaluation and been referred for a psychiatric evaluation to determine his capability to properly parent. At a July 6, 2010, permanency review hearing Daniel was found to have no new legal problems and continued his employment. Although he was close to completion of domestic-violence classes, Daniel's instructors believed he failed to take responsibility for the situation leading to DCFS involvement. A psychologist evaluated him and diagnosed him with mood disorder and narcissistic personality disorder. Due to his angry outbursts, the psychologist stated Daniel could not be considered

capable of providing minimal parenting to C.T. He was to be referred for a psychiatric evaluation to determine his ability to parent.

Daniel refused to comply with drug screens, stating he had no history of substance abuse. He did attend 11 of 13 visits with C.T. during the reporting period and was attentive and affectionate toward his daughter. The trial court found Daniel had made reasonable efforts but had not made reasonable progress as he was in domestic-violence classes but not making progress. He had not yet started parenting classes and it was undetermined if he could meet minimum acceptable parenting standards. Meanwhile, Amy was making both considerable efforts and progress, and custody of C.T. was returned to her.

On October 12, 2010, another permanency review hearing was held. During the reporting period, Daniel completed parenting classes, and engaged in other services and counseling. He failed to show for three drug screens. Service providers recommended Daniel attend additional counseling because he did not appear to have internalized what the domestic violence and other classes taught. His visits with C.T. continued to be appropriate.

The trial court continued to find Daniel unfit to parent C.T. as he had made reasonable efforts but not reasonable progress. However, because Amy had been making reasonable

efforts and progress throughout the pendency of the case and custody of C.T. had previously been returned to her and was going well, the trial court granted guardianship to Amy and dismissed the wardship case.

This appeal followed.

II. ANALYSIS

Daniel argues the trial court's finding he was unfit to be a custodial parent was against the manifest weight of the evidence. Further, closing the case instead of letting him work to acquire a finding of fitness to parent, leaves him with the untenable burden of having to prove in family court he is fit to have visitation with C.T. if Amy does not cooperate voluntarily. He is indigent and would not have the advantage of an appointed lawyer's services as he did in this proceeding. He contends C.T.'s right to have a continuing relationship with her father will be thwarted by the trial court's ruling.

When a trial court determines a child is neglected, custody may not be returned to the parents or parent until, in a hearing determining the best interests of the minor, the court finds the parent is fit to care for the minor without endangering her health or safety. 705 ILCS 405/2-23(1)(a) (West Supp. 2009). Such a finding must be found by a preponderance of the evidence. *In re Lakita B.*, 297 Ill. App. 3d 985, 993, 697 N.E.2d 830, 836 (1998).

When custody proceedings are brought under the Act, the trial court's primary concern is the best interest of the child and, therefore, the court is vested with wide discretion. *In re M.M.*, 337 Ill. App. 3d 764, 779, 786 N.E.2d 654, 666 (2003). When the court determines the health, safety and best interests of the minor no longer require the wardship of the court, the court may order the wardship terminated and all proceedings under the Act respecting that minor closed and discharged. 705 ILCS 405/2-31(2) (West Supp. 2009). The court's determination will not be disturbed on appeal unless it exceeded its discretion or the decision is against the manifest weight of the evidence. *M.M.*, 337 Ill. App. 3d at 779, 786 N.E.2d at 666.

A trial court's determination is not against the manifest weight of the evidence unless the record "clearly demonstrates" the opposite result was proper. *In re T.B.*, 215 Ill. App. 3d 1059, 1062, 574 N.E.2d 893, 896 (1991). The record here demonstrates the court's decision to close this case, leaving its finding Daniel was unfit to parent in place, is not against the manifest weight of the evidence.

Daniel admitted to the allegation of neglect he exposed C.T. to an injurious environment when she resided with Amy and himself because they exposed the minor to domestic violence. He was then found unfit to parent C.T. and her best interests would be jeopardized if she remained in his custody as he had engaged

in acts of domestic violence with C.T. present. Amy obtained a preliminary order of protection against him.

Daniel was required to complete the services provided in his service plan. He made a slow start, but by the time of the permanency review hearing in October 2010 he had completed parenting classes and domestic-violence classes, attended counseling, and had no problems with visitation. However, he still was not fit to have custody of C.T. All the service providers agreed he needed more counseling because he refused to accept responsibility for his actions, causing C.T. to be taken from him and his consequent need to change. His psychological evaluation indicated he had mood disorder and narcissistic disorder, lacked the capacity to provide minimum parenting for C.T., and needed a psychiatric evaluation. Further, Daniel did not comply with urine drops as he did not think they were necessary because he contended he had no drug-use history. He unreasonably failed to comply with a court order he did not like.

Daniel does not argue the trial court's finding Amy was a fit parent and capable of being restored to custody and guardianship of C.T. was in error. He simply contends the case should have been held open for him to eventually earn himself a finding of fitness to parent C.T. He argues closing the case would result in him having to go to family court to obtain a finding of fitness and he would need to do this without the representation

of counsel as he is indigent and unable to hire counsel.

The focus of the Act is the best interests of the minor. It is not to enable parents to obtain unlimited free services and legal counsel. Daniel had such services and legal counsel for over a year while this case was pending and yet he failed to start services immediately after the case was opened and did not comply with court orders.

It was in C.T.'s best interests once Amy was found fit and had custody that guardianship be transferred back to her and the case closed. If Daniel had availed himself of the opportunities presented to him while this case was pending, he could also have been found fit to be a custodial parent.

III. CONCLUSION

We conclude the trial court's judgment is not against the manifest weight of the evidence.

Affirmed.