

**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. 4-10-0914

Order Filed 3/7/11

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: E.M. and C.M., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 09JA121
YVES KABENGELE,	)	
Respondent-Appellant.	)	Honorable
	)	Kevin P. Fitzgerald,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court. Justices Turner and Appleton concurred in the judgment.

**ORDER**

*Held:* The appellate court affirmed the trial court's adjudication of respondent's daughter as a neglected minor and a ward of the court because respondent forfeited his argument by conceding that he was unfit.

In October 2009, the State filed a petition for adjudication of wardship, alleging that E.M. (born March 18, 2009), and C.M. (born May 6, 2005), were neglected minors. Following a September 2010 hearing, the trial court adjudicated E.M. and C.M. neglected minors. At a November 2010 dispositional hearing, respondent, Yves Kabengele, the biological father of C.M., admitted that he was unfit. The court then adjudicated E.M. and C.M. wards of the court and appointed the Department of Children and Family Services (DCFS) as their guardians.

Respondent appeals, arguing that the trial court's finding that he was unfit was against the manifest weight of the

evidence. Because respondent has forfeited this argument, we affirm.

## I. BACKGROUND

Initially, we note that paternity testing results confirmed that another person was the biological father of E.M.; thus, neither E.M. nor his biological father are parties to this appeal.

On October 1, 2009, the State filed a petition for adjudication of wardship, alleging that E.M. and C.M., were neglected minors in that their biological mother, Camille McElroy, had unresolved issues of alcohol abuse. 705 ILCS 405/2-3(1)(b) (West 2008). The State's petition listed respondent, who lived in Florida, as C.M.'s putative father.

Following a shelter-care hearing conducted that same day, at which neither Camille nor respondent appeared, the trial court entered an *ex parte* temporary custody order, finding that because Camille communicated to a domestic-violence call center that she was going to harm herself and her children, an immediate and urgent necessity required the placement of E.M. and C.M. in shelter care. At a shelter-care-renewal hearing conducted one week later, Camille stipulated that probable cause existed for the State's petition.

At a November 2009 hearing, at which respondent appeared, the trial court (1) appointed counsel for respondent, (2)

ordered respondent to undergo paternity testing, (3) granted respondent's motion to waive his appearance at the adjudicatory hearing, and (4) denied respondent's request to visit with C.M. because (a) he did not have any previous contact with C.M. and (b) paternity had yet to be established.

That same month, DCFS filed an integrated assessment-social history report, in which Camille provided, in pertinent part, the following history regarding her relationship with respondent: (1) Camille met respondent in 2002 and later began a dating relationship; (2) Camille had been dating respondent for about six months when the police arrested him for driving under the influence of cannabis; (3) shortly thereafter, police again arrested respondent because he had physically battered Camille; (4) Camille provided respondent's bail and after a brief separation, moved into respondent's Florida home where he continued to physically abuse her on a weekly basis; (5) during their relationship, respondent began ingesting increasing amounts of cannabis, cocaine, and other illicit drugs; (6) after Camille moved to Chicago because of respondent's abuse, she discovered that she was pregnant with C.M.; and (7) Camille informed respondent of her pregnancy, but he told her that he did not care about her or their child.

In December 2009, DCFS filed a client service plan in which respondent, whose paternity as C.M.'s biological father had

been confirmed, was assigned the following goals: (1) complete (a) substance-abuse and (b) domestic-violence assessments; (2) comply with the respective assessment recommendations; (3) successfully complete counseling to address emotional issues regarding C.M.'s placement in foster care, and (4) successfully complete parenting classes.

Prior to the start of the adjudicatory hearing later that same month, the State informed the trial court that an agreement had been reached. Specifically, in exchange for Camille's admission that she had unresolved alcohol-abuse issues as alleged in its petition for adjudication of wardship, the State would (1) recommend that Camille regain custody of E.M and C.M. subject to DCFS supervision and her cooperation with DCFS directives and (2) agree to continue its petition for adjudication of wardship for 12 months. After confirming that respondent did not object and that Camille's admission was knowing and voluntary, the court accepted the parties' agreement and later entered an agreed order of (1) continuance under supervision and (2) protective supervision.

In July 2010, DCFS filed a status report, outlining, in pertinent part, respondent's progress toward completing his client service-plan goals. DCFS' report noted the following:

"On February 3, 2010, [respondent] reported that he should not have to complete

services because he is not the reason why his child came into care and has not cooperated with goals outlined in his service plan. I have spoken with [respondent] on several occasions [regarding] visitation [with C.M. and] he did not mention completing services."

In September 2010, the State filed a petition to revoke order of continuance under supervision, alleging that Camille had failed to comply with DCFS directives by concealing her (1) continued alcohol abuse, (2) involvement with police, and (3) multiple emergency-room visits that occurred since she regained custody of her children.

At a September 9, 2010, hearing on the State's petition, at which respondent was represented by counsel, (1) Camille admitted the allegations contained in the State's petition and (2) respondent and Camille waived their rights to a dispositional hearing within 30 days. Thereafter, the court entered an order, adjudicating E.M. and C.M. neglected minors.

In October 2010, DCFS filed a dispositional report, noting the following regarding respondent's client service-plan goals:

"On September 7, 2010, [respondent] contacted this worker stating he would like to complete services[. T]his worker mailed

[respondent] consent forms on September 7, 2010. This worker received the [consent] forms on [October 9, 2010]. This worker mailed the [consent] forms along with his part of the service plan to Children Advocacy Center in Florida for [respondent] to begin services."

In addition, the dispositional report showed that DCFS placed C.M. with her maternal uncle who was providing C.M. a loving, nurturing environment and was meeting all of C.M.'s physical and emotional needs. In this regard, DCFS' report stated that it had "no concerns" with regard to C.M.'s well-being. DCFS concluded its report by recommending, in part, that the court find respondent unfit.

At a November 2010 dispositional hearing, at which respondent was represented by counsel, the State made the following argument to the trial court:

"As for [respondent], clearly he's just not interested. He doesn't seem to be interested in visiting [C.M.] He really hasn't begun to participate in services. I believe he's been here maybe once. \*\*\* And now, apparently, he's indicated again he's in \*\*\* services. So I guess we'll see. But, at

this point, he clearly has not demonstrated that he is involved or interested. So he is unfit."

In response, respondent's counsel made the following admission:

"I don't object to [respondent] being found unfit. I was encouraged to see that he wants to get back into services. The last contact I had with him he had an issue with \*\*\* phone calls and trying to call [C.M.] And there was nothing \*\*\* in the report about phone calls. [DCFS' dispositional report] just \*\*\* says that [respondent] hasn't had a visit. \*\*\* [R]espondent has contacted me when he has an issue, so I'm assuming that he's okay with what's going on so far. And that's not much. So I agree that he's unfit."

Thereafter the trial court entered a dispositional order, adjudicating E.M. and C.M. wards of the court and appointing DCFS as their guardians.

This appeal followed.

## II. THE TRIAL COURT'S DETERMINATION AT THE DISPOSITIONAL HEARING

Respondent argues only that the trial court's finding

that he was unfit was against the manifest weight of the evidence. We decline to address the merits of respondent's argument because he has forfeited this issue.

A party cannot complain of "error" that he induced the court to make or to which he consented. *In re E.S.*, 324 Ill. App. 3d 661, 670, 756 N.E.2d 422, 430 (2001). A party forfeits his right to complain of an error where to do so is inconsistent with the position taken by the party in an earlier court proceeding. *E.S.*, 324 Ill. App. 3d at 670, 756 N.E.2d at 430.

In this case, respondent has forfeited his argument by conceding that he was unfit as alleged by the State and as noted in DCFS' dispositional report recommendations, which constituted the basis of the trial court's adjudication at the dispositional hearing. However, we note in passing that even if respondent had not conceded his fitness and this court were to reach the merits of respondent's argument, the aforementioned record fully supports the court's (1) fitness finding and (2) adjudication of E.M. and C.M. as (a) neglected minors and (b) wards of the court.

### III. CONCLUSION

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

Affirmed.