

NOTICE
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NO. 4-11-0035

Filed 5/24/11

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

In re: B.G., H.G., and C.G., Minors,)
THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner-Appellee,)
v.)
NICOLE GAITHER,)
Respondent-Appellant.)
Appeal from)
Circuit Court of)
McLean County)
No. 10JA110)
Honorable)
Kevin P. Fitzgerald,)
Judge Presiding.)

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Turner and Steigmann concurred in the judgment.

ORDER

Held: The trial court's decision that respondent mother was unfit following a dispositional hearing in juvenile neglect proceedings was not against the manifest weight of the evidence.

Respondent, Nicole Gaither, challenges the trial court's dispositional order, making her children wards of the court and placing their custody with the Illinois Department of Children and Family Services (DCFS). She argues the court's dispositional unfitness finding was against the manifest weight of the evidence. We affirm.

Respondent and Brandon Gaither are the parents of three children: C.G., born December 21, 2006; H.G., born October 6, 2008; and B.G., born December 29, 2009. In June 2010, the family came to the attention of authorities when respondent reported to

police that H.G. had significant unexplained bruising and linear marks on his back and buttock. At that time, respondent and Brandon were going through a divorce and each parent blamed the other for H.G.'s injuries. The children's maternal grandmother, with whom respondent and the children were living, also came under suspicion as a perpetrator of the injuries. (The record shows the maternal grandmother admitted to police that she caused H.G.'s injuries but then immediately recanted her admission. She also failed a polygraph test regarding the matter.)

Due to H.G.'s unexplained injuries, DCFS assisted with the implementation of a safety plan to restrict contact between the children and both Brandon and the maternal grandmother. Respondent was to be the children's sole caregiver while an investigation into the injuries was pending. On July 29, 2010, the children were taken into protective custody after a case-worker determined both parents were violating the safety plan.

On July 30, 2010, the State filed a petition for adjudication of wardship, alleging the children were abused and neglected. On October 28, 2010, respondent admitted an allegation in the state's petition that her children were living in an environment injurious to their welfare because respondent had unresolved issues of domestic violence. The trial court entered an adjudicatory order, finding the children neglected.

On November 24 and December 21, 2010, the trial court

conducted dispositional hearings in the matter. No testimony was presented. Instead, the court considered various reports filed in the matter. A dispositional report, filed November 17, 2010, showed the children had been placed in relative foster care with their paternal grandmother. Each child was reportedly doing well in the foster home.

The dispositional report noted respondent and Brandon were each given service plan objectives of participating in parenting skills classes; maintaining safe, adequate, and clean housing; achieving appropriate levels of understanding of mental illness and how that affects parenting and relationships; maintaining alcohol and drug free levels of functioning; maintaining stable employment; and achieving levels of interaction that did not involve domestic violence. The report showed both respondent and Brandon had engaged in all services. The caseworker described them as having done "a wonderful job." With respect to respondent, the report stated as follows:

"[Respondent] has engaged in all of her services. She was not recommended for substance abuse treatment. She sees Nancy Duffy of Chestnut Health Systems for individual counseling and domestic violence counseling. When a spot opens in the SECURE program she will begin attending domestic violence group.

[Respondent] has completed parenting class and does well during visits. [Respondent] is currently unemployed but receives unemployment and is taking GED classes. [Respondent] moved to a mobile home in Farmer City. It is a two bedroom home. She is preparing a room for [the children]. [Respondent] has informed worker that she has a roommate. This roommate is Brenton Baize. Worker is completing a background check on him but it has not come back yet. There is [sic] also two police reports dated 11/13/10 that involves [sic] Brandon, [respondent], and Brenton Baize. Catholic Charities is withholding judgment on Brenton living with [respondent] until his background check is returned. If it is found that he is an inappropriate person for [the children] to be around then he would have to leave if [respondent] wants [the children] returned to her care."

The recommendation in the report was that DCFS retain guardianship of the children with a permanency goal of return home in 12 months. The caseworker also recommended both Brandon and respondent be found to be fit parents.

On November 23, 2010 and addendum report was filed in the matter. It showed the background check on Baize revealed that, in 2007, he was indicated for an allegation of environmental neglect against three minors. On December 20, 2010, a status report was filed, showing the children's foster mother reported that C.G. was upset following a visit with respondent because respondent was living with Baize. In early December 2010, a caseworker spoke with C.G. at his daycare. Upon inquiry by the caseworker, C.G. reported that he did not think it was good that his mom was living with Baize and he did not like Baize because Baize had called him a "fucker" and had punched him. C.G. indicated he did not want to live with respondent if she was living with Baize. The caseworker noted she had observed C.G. interact with Baize at the end of a visit and C.G. did not act afraid of Baize and would engage him in play.

On December 21, 2010, a status report was filed which contained a Chestnut Health Systems progress report for respondent. The progress report showed respondent had been referred for a domestic violence assessment. The report noted concerns that respondent did not speak to her caseworker, advocate, or therapist prior to her move to Farmer City, a move which involved a change of county and social services. Respondent also failed to mention that Baize was her roommate until after he had moved into her home and "seemed surprised" by any concerns with her

living situation. The report stated respondent's naivete sometimes interfered with thoughtful decision making. Further, it showed respondent denied any romantic involvement with Baize and agreed to consider asking him to move out in the interest of having the children returned to her home.

At the conclusion of the dispositional hearing, the trial court adjudicated the children wards of the court with guardianship to DCFS. The court expressed concerns about respondent's judgement in living with Baize. It was "disturbed" by C.G.'s statements about Baize, particularly C.G.'s report that Baize had punched him in the past. The court determined, although respondent was not "very far from fitness," she needed to demonstrate better judgment before she could attain a fitness finding. It found Brandon was fit, noting it was also "a very close issue with respect to his fitness." The court determined he still needed to participate in a reassessment regarding domestic-violence issues. It set the children's goal as return home within five months.

This appeal followed.

As stated, respondent challenges the trial court's dispositional order. She argues the court's decision that she was unfit was against the manifest weight of the evidence.

The Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-22 (West 2008)) 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 health, safety and interests of the minor and the public."

Under the Act, the trial court may appoint DCFS as guardian of the minor where it determines the parents are unfit or unable "to care for, protect, train or discipline the minor" and the minor's best interest would be jeopardized by remaining in the parents' custody. 705 ILCS 405/2-27(1) (West 2008); *In re J.W.*, 386 Ill. App. 3d 847, 856, 898 N.E.2d 803, 811 (2008). Further, a neglected minor may not be returned to any parent whose acts or omissions formed the basis for the neglect finding until the court enters an order finding that the parent is fit to care for the minor. 705 ILCS 405/2-23(1)(a) (West 2008).

On review, the trial court's unfitness finding will only be reversed if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323, (2008). A court's finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident. *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24.

Here, respondent's children were taken into protective custody after one was found with unexplained bruises and markings and respondent violated the terms of a safety plan to keep her children away from suspected perpetrators of the abuse. One important objective of respondent's service plan was to address issues related to domestic violence and her counseling for those issues was ongoing. While the case was pending, respondent began living with Baize. She continued to live with him despite growing concerns about whether he was an appropriate person to be around her children.

The record shows respondent failed to inform caseworkers about Baize until after he was already living in her home and was surprised by concern about his presence in the home. The record also shows, in 2007, Baize was indicated for an allegation of environmental neglect against three minors. While the case at bar was pending, respondent and Baize were involved in an incident with Brandon which resulted in respondent and Brandon reporting one another to police. Most importantly, respondent's oldest child, C.G., reported to caseworkers that he did not want to live with respondent and Baize because Baize called him a "fucker" and had punched him.

We agree with the trial court's assessment that respondent's involvement with Baize called her judgment into question. Although respondent actively engaged in services, her living

situation with Baize presented real concerns about returning the children to her custody and care. Given the reasons for DCFS's involvement with respondent and her children, her continued affiliation with Baize is particularly troubling and shows a lack of insight into her situation.

Respondent argues there was a "lack of proof tying her to concerns about her roommate," arguing there was no evidence in the record showing when she knew of Baize's 2007 indicated finding or the statements made by C.G. However, the dispositional report shows respondent was informed that, pending the results of a background check, Baize's presence in her home could prevent the return of her children. Further, the record clearly shows concerns about Baize and his status as respondent's roommate were raised at the first dispositional hearing. During its argument, the State specifically referenced Baize's 2007 indicated finding. Despite those concerns, respondent was still living with Baize as of the date of the second dispositional hearing approximately one month later.

C.G.'s allegations against Baize were contained in a status report filed the day before the second dispositional hearing. There is no allegations by respondent that she failed to receive that report. When questioned by the trial court at the second hearing, respondent's attorney acknowledged that Baize continued to live with respondent. Respondent offered no other

evidence regarding her living situation and made no objections to the court's consideration of the status report containing C.G.'s statements.

The trial court's finding that respondent was unfit was not against the manifest weight of the evidence. The court committed no error.

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

Affirmed.