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2012 IL App (3d) 110355-U

Order filed February 8, 2012

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

<i>In re</i> N.W., J.P-G., M.P-G., and J.G.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-11-0355
Petitioner-Appellee,)	Circuit Nos. 10-JA-352, 10-JA-353,
)	10-JA-354, and 10-JA-355
v.)	
)	
Antaries G.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Schmidt concurred in the judgment
Justice O'Brien dissented.

ORDER

- ¶ 1 *Held:* In a juvenile case in which the respondent stipulated that the State could prove the allegations contained in petitions alleging the abuse and/or neglect of several minors, the appellate court held that the circuit court properly denied the respondent's motion to withdraw his stipulations.
- ¶ 2 The circuit court entered orders finding the minors, N.W., J.P-G., M.P-G., and J.G., to be abused and/or neglected and finding the respondent, Antaries G., to be an unfit parent. During

the adjudicatory phase of the proceedings, the respondent stipulated that the State could prove the allegations contained in the neglect petitions, and the court adjudicated the minors abused. Shortly thereafter, the respondent filed a motion to withdraw his stipulations, alleging that he misunderstood the consequences of the stipulations. After the circuit court denied the motion and later found the respondent to be an unfit parent, the respondent appealed. On appeal, the respondent argues that "[t]he trial court's denying father's request to withdraw his stipulation to the petition and order finding father unfit was against the manifest weight of the evidence and an abuse of discretion." We affirm.

¶ 3

FACTS

¶ 4 The juvenile petitions filed in this case claimed that N.W. was abused, and all of the minors were neglected by reason of an injurious environment, based on three allegations: (1) the respondent struck N.W. with a piece of wood and slapped her in the face; (2) three of the minors reported that the respondent had used a board to discipline N.W., that the respondent had disciplined all three minors with a belt and a slipper, and that the respondent kept N.W. locked in her bedroom at night; and (3) the respondent had criminal convictions for residential burglary in 1997, aggravated assault in 1997, and burglary in 1995. The petitions requested that the circuit court adjudge the minors wards of the court.

¶ 5 The minors' mother filed an answer stipulating to the petitions' first two allegations, but claimed a lack of knowledge with regard to the third allegation. The respondent filed an answer denying the petitions' allegations. However, on the day of the adjudicatory hearing, the respondent filed an amended answer in which he stipulated to the petitions' allegations. The following exchange took place:

"THE COURT: And, [counsel for the respondent], you have an amended answer?

[COUNSEL FOR THE RESPONDENT]: I do. I gave it to your clerk.

THE COURT: And what does that say?

[COUNSEL FOR THE RESPONDENT]: That Antaries stipulates the State can prove the allegations in the petition so we're not asking for a trial any longer.

THE COURT: Okay. [Antaries G.], do you understand nobody can force you to amend your answer if you do not want to; do you understand that?

[ANTARIES G.]: Yes, sir.

THE COURT: Do you also understand that you have a right to a trial in this case; do you understand that?

[ANTARIES G.]: Yes, sir.

THE COURT: Has anybody forced you to amend your answer?

[ANTARIES G.]: No, sir.

THE COURT: Has anybody made any promises to you or otherwise inducing you to amend your answer?

[ANTARIES G.]: No, sir.

THE COURT: And you're doing so of your own free and voluntary act?

[ANTARIES G.]: Yes, sir.

THE COURT: Are you presently under the influence of drugs or alcohol?

[ANTARIES G.]: No, sir.

THE COURT: The Court will find that [Antaries G.] has voluntarily amended his answer."

¶ 6 Next, the State introduced certified copies of the respondent's convictions and photographs of, *inter alia*: (1) bruises to N.W.'s buttocks; (2) slippers; (3) sandals; (4) N.W.'s bedroom door that had no doorknob; (5) the doorknob on a shelf; and (6) a belt. The State then read its factual basis into the record, which contained the testimony of the Department of Children and Family Services caseworker, as well as a Peoria police detective who investigated the abuse allegations, and which expounded upon the allegations contained in the juvenile petitions. When the circuit court asked the attorneys about the State's factual basis, the following exchange took place:

"THE COURT: And, [counsel for the respondent], are there any additions or corrections to the factual base with regard to [Antaries G.]?

[COUNSEL FOR THE RESPONDENT]: No.

THE COURT: And is your client satisfied that the State could present witnesses and evidence to substantiate the matters set forth in the factual basis?

[COUNSEL FOR THE RESPONDENT]: Yes."

The court then found the juvenile petition's allegations proven by a preponderance of the evidence and adjudicated N.W. abused and all of the minors neglected.

¶ 7 Later, the respondent filed a motion to withdraw his stipulations, alleging that he misunderstood the consequences of the stipulations. The respondent alleged that he believed he would still have an opportunity to present his own factual account, and that the circuit court would weigh the factual accounts thereafter and possibly dismiss the petitions. At the hearing on the motion, the court stated that it had reviewed the transcript of the adjudicatory hearing and determined that the respondent understood the admonishments given by the court. Accordingly,

the court denied the respondent's motion. After the court found the respondent to be an unfit parent at the dispositional hearing, the respondent appealed.

¶ 8

ANALYSIS

¶ 9 On appeal, the respondent argues that "[t]he trial court's denying father's request to withdraw his stipulation to the petition and order finding father unfit was against the manifest weight of the evidence and an abuse of discretion." Initially, we note that the respondent has not provided any argument with regard to the circuit court's dispositional order. Accordingly, we hold that he has forfeited the argument that the court erred when it found him unfit. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (requiring that an appellant support arguments with citation to legal authority and pages of the record relied upon, and stating that "[p]oints not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 10 With regard to the respondent's argument that the circuit court erred when it denied the respondent's motion to withdraw his stipulations to the allegations in the juvenile petitions, we note that "[a]dmissions under the Juvenile Court Act must be voluntarily and intelligently made." *In re April C.*, 326 Ill. App. 3d 225, 242 (2001).

¶ 11 The record in this case reveals that the respondent's stipulations to the juvenile petitions' allegations were voluntarily and intelligently made. The respondent's attorney stated that the respondent no longer wished to go to trial on the petitions. The circuit court ensured that the respondent's amended answer was voluntarily filed. After the State read the factual basis, the court asked the respondent's attorney whether the respondent had anything to add, and ensured that the respondent agreed that the State could present witnesses and evidence to substantiate the

factual basis. The respondent was represented by counsel at all relevant times during the proceedings. *April C.*, 326 Ill. App. 3d at 242. The juvenile petitions were clear in their allegations and requests for an adjudication of wardship. *April C.*, 326 Ill. App. 3d at 242. Further, the minors' mother had already stipulated to the first and second allegations in the juvenile petitions, which would have been sufficient for the court to find the minors abused and/or neglected. *April C.*, 326 Ill. App. 3d at 242-43. Under these circumstances, we hold that the respondent understood the consequences of his stipulations. See *April C.*, 326 Ill. App. 3d at 243-44. Accordingly, we hold that the court did not err when it denied the respondent's motion to withdraw his stipulations.

¶ 12

CONCLUSION

¶ 13 The judgment of the circuit court of Peoria County is affirmed.

¶ 14 Affirmed.

¶ 15 JUSTICE O'BRIEN, dissenting:

¶ 16 I respectfully dissent from the majority decision for the following reasons.

¶ 17 The brief filed on behalf of the respondent fails to satisfy the requirements of Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). An appellate court is entitled to have the issues clearly defined and to be cited to pertinent authority. *In re Austin C.*, 353 Ill. App. 3d 942, 947 (2004), quoting *Canteen Corp. v. Department of Revenue*, 123 Ill. 2d 95, 111-12 (1988). The brief filed is devoid of the facts surrounding the father's request to withdraw his stipulation and is, more importantly, devoid of any citation to relevant case law, even though as the appellee points out, a dearth of case law is available on this issue. While it is true that this

court can consider the appellant's arguments waived due to the inadequacy of the briefs, I believe the better approach is to require appellate counsel to comply with Supreme Court Rule 341(h)(7).

Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). See *Austin C.*, 353 Ill. App. 3d at 948.

¶ 18 In addition I would order the appointment of substitute appellate counsel in this matter, because as the appellee points out in its reply brief, the appellant does not raise the issue of ineffective assistance of counsel in his appeal. But since Ms. Kelly was trial counsel and is now appellate counsel, that issue would be better fleshed out with different counsel.

¶ 19 For those reasons, I would not either affirm or reverse the trial court's ruling, but would instead order substitution of counsel on appeal and further order new counsel to file a brief that complies with Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).