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2012 IL App (3d) 110744-U

Order filed August 10, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

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|--------------------------|---|---|
| In Re E.M. and H.M.,     | ) | Appeal from the Circuit Court             |
| Minors                   | ) | of the 10 <sup>th</sup> Judicial Circuit, |
|                          | ) | Peoria County, Illinois,                  |
| (THE PEOPLE OF THE STATE | ) |   |
| OF ILLINOIS,             | ) |   |
|                          | ) |   |
| Petitioner-Appellee      | ) | Appeal No. 3-11-0744                      |
|                          | ) | Circuit No. 10-JA-89, 11-JA-94            |
| v.                       | ) |   |
|                          | ) |   |
| LATISHA T.,              | ) | Honorable                                 |
|                          | ) | Mark Gilles,                              |
| Respondent-Appellant).   | ) | Judge, Presiding.                         |

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JUSTICE McDADE delivered the judgment of the court.  
Justices Lytton and Holdridge concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's finding that respondent was dispositionally unfit was supported by the record and not against the manifest weight of the evidence.
- ¶ 2 Respondent, Latisha T., is the mother of E.M. and H.M. The trial court found E.M. and

H.M. to be neglected minors. Thereafter, the court found respondent unfit and placed E.M. and H.M. in the guardianship of the Department of Children and Family Services (DCFS).

Respondent appeals, arguing that the trial court's unfitness findings are against the manifest weight of the evidence. We affirm.

### ¶ 3 E.M. Procedural History

¶ 4 On March 26, 2010, the State filed a neglect petition alleging that E.M. was neglected due to an injurious environment. E.M. was adjudicated neglected. On July 21, 2010, respondent was found dispositionally unfit to care for E.M. Respondent did not appeal this ruling.

On June 15, 2011, the trial court restored respondent's fitness, but ordered that E.M. was not to be returned home until further notice by the court. On July 14, 2011, the State filed a motion to again find respondent unfit to care for E.M. based upon an incident that occurred on July 6, 2011. The State's motion was set for hearing on August 24, 2011.

### ¶ 5 H.M. Procedural History

¶ 6 On April 21, 2011, the State filed a neglect petition alleging that H.M. was neglected due to an injurious environment. Respondent stipulated that the State could prove the allegations in the petition. H.M. was adjudicated neglected. The dispositional hearing regarding H.M. was set for August 24, 2011.

### ¶ 7 Combined Hearing

¶ 8 On August 24, 2011, the trial court held a combined hearing: (1) a hearing on the State's motion for unfitness with respect to E.M., and (2) a dispositional hearing with respect to H.M. The hearing was continued and concluded on September 21, 2011. The following evidence was adduced at the combined hearing.

¶9 Officer Christopher Hanley of the Peoria police department testified that on July 6, 2011, he investigated a traffic accident involving respondent and Harold M. (Harold). Harold is E.M. and H.M.'s father. When Hanley arrived at the accident scene, respondent and Harold were acting nervous and evasive. Neither respondent nor Harold wanted to say anything to Hanley about the accident. Initially, respondent denied any involvement in the accident; however, respondent later admitted that she was the driver of the vehicle that was involved in the accident. Respondent told Hanley that she was backing up when Harold reached into her car window and began choking her. Hanley did not believe Harold attacked respondent because neither party had any visible injuries.

¶10 Harold told Hanley that respondent had come to his apartment and starting pounding on his door. Respondent was angry and an argument ensued regarding custody. Respondent then grabbed Harold's cell phone, ran out of the apartment, jumped in her car, backed up, and "slammed" into a parked car. Respondent was placed under arrest for driving with a suspended license.

¶11 While under arrest, respondent informed Hanley that she was struggling to breathe. Hanley called for an ambulance and respondent was transported to the hospital. Hanley went to the emergency room where respondent was being examined. Hanley told respondent that she was going to be arrested again after she was released from the hospital. Hanley stated that respondent was uncooperative with the hospital staff and reluctant to leave the hospital. Respondent claimed she had fallen down and had a seizure in the bathroom.

¶12 When the hospital was ready to release respondent, she claimed that she had "wet" herself and demanded to stay at the hospital to "find out what was wrong with her." Respondent tested

negative for bladder incontinence.

¶ 13 When respondent was eventually released from the hospital, Hanley transported respondent in a wheelchair to his squad car. Respondent argued loudly that she wanted a “video” and that “she was going to sue.” Hanley called for a transport wagon and when Officer Anthony Pence arrived with a police van respondent was sitting in Hanley’s squad car. Hanley opined that respondent then “immediately went into obviously a fake seizure.” Respondent objected on the grounds that Hanley was not qualified to testify to whether someone was having a “fake seizure.”

¶ 14 Hanley asked respondent to exit the squad and get into the van. Respondent refused to comply with this request. Instead, respondent “slumped down” in the backseat of the squad. Hanley and Pence tried to persuade respondent to exit the squad. Pence then pulled respondent out of the squad. Respondent then “slumped” onto the asphalt. Both officers tried to persuade respondent to stand up, but she did not comply.

¶ 15 Pence sprayed a little bit of pepper spray on his gloved finger and put it under respondent’s nose. Respondent immediately became enraged and said that she was going to sue the officers because they had “maced her.” Respondent “slumped” down again onto the ground. Hanley then called Sergeant William Larson to the scene.

¶ 16 Larson arrived at the hospital at the same time some nurses came out from the emergency room. Respondent remained limp, but she allowed herself to be pulled up into the wheelchair. Respondent complained to Larson that she had been beaten. Hanley testified that nobody had beaten respondent.

¶ 17 Respondent was pushed in the wheelchair toward the police van. At that point, respondent complained that her legs were paralyzed and she began dragging her feet.

Respondent demanded that she be examined again by hospital staff. Respondent was then wheeled back into the emergency room instead of being placed in the van. Hanley stated that respondent was not arrested. Instead, she was given a notice to appear in court. Hanley's testimony was corroborated by Pence and Larson.

¶ 18 Respondent's medical records dated July 6, 2011, were admitted into evidence as State's Exhibit 2. The documentation for respondent's initial appearance at the hospital states under the section entitled diagnoses: "Seizures, Noncompliance with medications, and Wheezing." The record for her return from the parking lot states under the section entitled diagnoses: "Seizure" and "Noncompliance with medication regimen." The records list possible causes as "med or dosage change \*\*\* missed seizure meds and change in alcohol use \*\*\* recent illness." The discharge record states that respondent was to follow up with her doctors and "use medication exactly as prescribed \*\*\* do not miss any doses."

¶ 19 Respondent testified that she has been treated for epilepsy, off and on, since she was eight years old. She suffers approximately two or three seizures per year. She has experienced both absence seizures and grand mal seizures. A pamphlet called "Seizure Recognition and First Aid" was admitted into evidence as Respondent's Exhibit 1. The pamphlet indicates that "epilepsy is a common neurological condition \*\*\* and \*\*\* is the general term for more than 20 different types of seizure disorders produced by brief, temporary changes in the normal functioning of the brain's electrical system." Symptoms of an "absence" are "a blank state \*\*\* ending abruptly \*\*\* accompanied by rapid blinking." Under "simple partial" the pamphlet notes "jerking may begin in one area." Under "complex partial" the pamphlet notes "a blank stare \*\*\* followed by random activity." The pamphlet advises that seizures can sometimes be mistaken for "lack of

attention” or “deliberate ignoring of \*\*\* instructions” or “acting out.”

¶ 20 Respondent did not have a good memory of what occurred on July 6, 2011. She recalled the accident and being taken to the hospital and that she passed out in a hospital bathroom while receiving treatment at the hospital. Respondent remembered going into the bathroom, but did not remember coming out. The next thing she recalled after passing out was waking up “wet” and handcuffed to a hospital bed. Respondent surmised that she likely “wet” herself. Respondent then left the hospital in a wheelchair and in police custody. The next event respondent remembered was being in the parking lot, on the ground, with multiple police officers surrounding her. Her face was burning at this time. She then remembered being taken back into the hospital.

¶ 21 The hospital doctors prescribed respondent 1500 milligrams of Keppra per day for epilepsy. Respondent indicated that while she was pregnant with H.M. she had been prescribed 750 milligrams per day. There was a time period between the birth of H.M. and July 6, 2011, when she was prescribed 1000 milligrams per day.

¶ 22 Respondent admitted that she pled guilty to the July 6 charge of driving with a suspended license and that she expects to be sentenced to court supervision assuming she successfully completes the requirements of the “Diamond Program.” She testified that at the direction of her attorney she listed all four of her children as dependents on the “Diamond Program” application even though her parental rights to two of her children had been previously terminated. Respondent further admitted that her record contains three convictions for driving with a suspended license. While respondent testified that she last used illegal drugs in 2004 or 2005, the State called attention to the fact that respondent was convicted in 2008 for unlawful

possession of a controlled substance (cocaine). Respondent also has a 1999 conviction for battery and a 2007 conviction for unlawful use of a credit card.

¶ 23 Officer Matt Legaspi testified that he was a patrol officer for the city of Peoria and he was dispatched to Taft Homes on July 7, 2011. He spoke with respondent and she told him that she wanted to report a domestic battery that had happened the day before. Respondent told Legaspi that she was in the neighborhood visiting relatives when Harold flagged her down, jumped into her vehicle and began to choke her. Respondent said that she called the police but they did not do anything except arrest her for resisting arrest. She also told Legaspi that the officers sprayed her with mace. Respondent further complained that her face was swollen and red and that she had a scratch on her neck from Harold. Legaspi saw a minor scratch on respondent's neck, but he did not see any swelling or redness. He took photographs of respondent's alleged injuries, which were admitted into evidence as State's Exhibit 1.

¶ 24 The State submitted several police reports regarding respondent's alleged fraudulent cashing of checks. The reports allege that respondent was working as a caregiver in a private home caring for a woman who suffered a stroke. She allegedly forged checks from the checking account belonging to her patient, and was taken to the police station and questioned. The detective who was interviewing respondent stepped out of the interview room and when he returned he found respondent leaning back in her chair in an apparent seizure. The detective was going to arrest respondent for forgery and theft over \$500, but instead called an ambulance to transport respondent to the hospital. A charge of theft over \$500 was pending against respondent at the time of the combined hearing.

¶ 25 At the conclusion of the combined hearing, the trial court warned respondent not to speak while it was rendering its decision. The court stated that it had been wrong when it restored respondent's fitness on June 15, 2011. Respondent then ignored the trial court's warning and denied any wrongdoing and tried to leave the courtroom. The trial court ordered her stopped and stated that she was "out of control." Following a warning that she would be found in contempt if she did not sit down, respondent complied.

¶ 26 On September 21, 2011, the trial court, in separate orders, held respondent unfit as to E.M. and H.M. Specifically, the court found that respondent, on July 6, 2011, caused an argument with Harold, drove with a suspended license, feigned a seizure to avoid jail, lied to police, lied to medical personnel and resisted arrest. The court also noted respondent's "pattern of impulsiveness, dishonesty, and acting without regard to consequences." DCFS was named guardian of E.M. and H.M. On October 7, 2011, respondent filed a notice of appeal.

¶ 27 ANALYSIS

¶ 28 Jurisdiction

¶ 29 We are met at the outset with a challenge to our jurisdiction in this appeal. The State argues that we lack jurisdiction to consider respondent's appeal with respect to E.M. The State concedes we have jurisdiction to consider respondent's appeal with respect to H.M.

¶ 30 The State calls our attention to the fact that respondent did not appeal from the initial dispositional unfitness order regarding E.M., which was entered against respondent on July 10, 2010. We note, however, that the trial court found respondent fit on June 15, 2011. The State subsequently filed a motion for a finding of unfitness, which was granted on September 21, 2011. While respondent appealed from this unfitness order, the State contends it does not constitute a

final appealable order. Instead, the State asserts that the only final order pertaining to E.M. from which respondent could appeal, was the July 10, 2010 unfitness order.

¶ 31 While we have found no Illinois cases that have presented like facts, we note that an order's substance, and not its form, determines whether it is appealable. *People v. Albitar*, 374 Ill. App. 3d 718, 721 (2007). At the commencement of the combined hearing, respondent was fit with regard to E.M. as a result of the trial court's previous fitness determination on June 15, 2011. No dispositional decision was on the record with regard to H.M. This is why the trial court held a combined hearing. The issue at the combined hearing was one and the same – whether respondent was fit with regard to both E.M. and H.M. The trial court entered two separate orders following the hearing, both of which made the same substantive finding – respondent was unfit.

¶ 32 The State now contends we have jurisdiction with regard to H.M., but not E.M. We disagree. The substance of the September 21, 2011, orders is the same – that is, a finding of respondent's unfitness as to each child. Thus, we have jurisdiction to consider respondent's appeal with regard to both E.M. and H.M.

¶ 33 We have reviewed the State's cited cases and find them distinguishable. The State's cases all dealt with matters subsequent to an unfitness finding that was already of record. Stated another way, the parents in the cited cases were not appealing from orders that found them unfit. See *In re Alexander R.*, 377 Ill. App. 3d 553 (2007) (parent did not file notice of appeal until after his parental rights were terminated, over four years after the dispositional order); *In re V.M.*, 352 Ill. App. 3d 391 (2004) (unfitness order/finding in 1997; parent appealing from 2001 order regarding “private guardians appointed; wardship terminated; case closed”); *In re Alicia Z.*, 336

Ill. App. 3d 476 (2002) (unfitness orders/findings in 1997 & 1998; parent appealing from 2001 order regarding modification of the dispositional order of guardianship to DCFS and for return of custody to parent); *In re M.R.*, 305 Ill. App. 3d 1083 (1999) (unfitness order/finding in 1996; parent appealing from 1998 order regarding denial of continuance). Having found we have jurisdiction, we now turn to the merits of respondent's appeal.

¶ 34 Manifest Weight

¶ 35 Respondent argues that the evidence failed to establish that she is an unfit parent. She notes that she was found fit with respect to E.M. on June 15, 2011. Approximately two months later, the trial court held a combined hearing: (1) a hearing on the State's motion for unfitness with respect to E.M., and (2) a dispositional hearing with respect to H.M. Therefore, she contends that the only incident relevant to her fitness was the July, 6, 2011, incident, which occurred subsequent to her restoration to fitness. In regard to this particular incident, respondent alleges that the trial court erred in finding that she had indeed feigned a seizure. She concludes that the other findings of the trial court that she lied to police and medical personnel, resisted arrest, and acted outrageously, all stemmed from this alleged erroneous finding.

¶ 36 At the outset, we reject respondent's claim that the only incident relevant to her fitness was the July, 6, 2011, incident, which occurred subsequent to her restoration to fitness. The trial court does not consider the issue of unfitness in a vacuum. Instead, the trial court considers "the parent's past conduct in the then-existing circumstances." *In re Latifah P.*, 315 Ill. App. 3d 1122, 1128 (2000) (quoting *In re Adoption of Syck*, 138 Ill. 2d 255, 276 (1990)). Moreover, we note that the trial court, at the combined hearing, expressly found that its previous decision restoring respondent's fitness was "wrong." Specifically, the court stated:

“When I found you fit in June, I was wrong. I was wrong.

I had it wrong.”

¶ 37 We now turn to respondent’s claim that the evidence failed to establish that she is an unfit parent. A trial court may determine custody and placement of a child when it finds by a preponderance of the evidence that the parent:

“[Is] unfit or unable \*\*\* to care for, protect, train or discipline the minor or [is] unwilling to do so, and that the health, safety and best interest of the minor will be jeopardized if the minor remains in the custody of his or her parents.” 705 ILCS 405/2-27 (West 2010).

¶ 38 A trial court’s determination of parental unfitness at the dispositional phase will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104 (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.

¶ 39 Respondent initially challenges the trial court’s finding that she had feigned a seizure. We agree with respondent that the court lacked sufficient evidence to make such an independent finding. While the officers in the instant case could testify to the events they witnessed – respondent slumping to the ground or shaking, they were not qualified to testify as to whether respondent was actually having a seizure. All such testimony constituted improper opinion testimony and will not be considered here on appeal.

¶ 40 Absent the officers' improper testimony, the record is simply devoid of any evidence from which a reasonable trier of fact could conclude that respondent had feigned a seizure. If anything, the evidence before the court *may* have been sufficient to support a finding that respondent did in fact suffer a seizure. Respondent testified that she has been treated for epilepsy since she was eight years old. She suffers approximately two or three seizures a year. The July 6, 2011, medical records state, under the section entitled diagnoses: "Seizures, Noncompliance with medications, and Wheezing" and "Seizure" and "Noncompliance with medication regimen." The records list possible causes as "med or dosage change \*\*\* missed seizure meds and change in alcohol use \*\*\* recent illness." Upon discharge from the hospital on July 6, 2011, the hospital doctors prescribed respondent 1500 milligrams of Keppra per day for epilepsy. While we do not make the finding that respondent did in fact suffer a seizure, we hold that the trial court's finding that respondent had feigned a seizure was improper.

¶ 41 We now consider whether the remainder of the evidence supports the trial court's finding. We answer this question in the affirmative. Respondent admitted that she pled guilty to the July 6, 2011, charge of driving with a suspended license and that her record contains three such convictions. A charge of theft over \$500 was pending against respondent at the time of the combined hearing. While respondent testified that she has not *used* illegal drugs since 2004 or 2005, she was not entirely forthcoming about the fact that she was convicted for unlawful *possession* of a controlled substance in 2008. Respondent also has a 1999 conviction for battery and a 2007 conviction for unlawful use of a credit card.

¶ 42 With regard to the possibility that respondent was experiencing epileptic seizures at the hospital, we have found that there was insufficient evidence in the record to support the court's finding that her conduct was clearly "feigning" a seizure. We do, however, recognize the possibility that she was. If, on the other hand, she was not faking, any failure to take her prescribed medication on a consistent basis puts her at heightened risk of seizure and the resultant exposure of her children to the "lack of attention" and "acting out" such seizures can cause. In either event, her conduct provides further support for the court's finding of unfitness.

¶ 43 While questions remain as to the nature of and reasons for respondent's interaction with Harold and the officers on July 6, it is clear that her behavior was anything but cooperative. Likewise, we note respondent's inappropriate behavior before the trial court on September 21, 2011. In light of these facts, we cannot say that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 44 For the foregoing reasons, we affirm the trial court's judgment.

¶ 45 Affirmed.